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OF ELECTORAL MANAGEMENT BODIES**

**“FIGHTING AGAINST ELECTORAL FRAUD -
COMPLAINTS AND APPEALS PROCEDURES”**

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DISCOURS DE BIENVENUE

M. Gianni BUQUICCHIO
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Mesdames et Messieurs,

C'est un plaisir et un honneur pour la Commission de Venise d'accueillir pour la deuxième fois à Strasbourg la conférence des administrations électorales européennes. Cette conférence en est à sa quatrième édition et a donc atteint son rythme de croisière : c'est un événement destiné à rester régulier.

Je tiens à saluer les participants, particulièrement nombreux à l'occasion de cette conférence. Cela prouve l'intérêt des rencontres multilatérales entre les responsables nationaux d'élections, dans une approche paneuropéenne. Une approche paneuropéenne, mais qui va bien au-delà de l'Europe, à voir les nombreux représentants d'autres continents, des Etats-Unis au Nigéria, du Canada aux Philippines, de l'Angola au Mexique, du Lesotho à Panama, du Kirghizstan à l'Ouganda. La diversité géographique se combine ainsi avec la diversité des expériences juridiques et politiques et je me réjouis de l'intérêt que les représentants d'autres pays portent à notre conférence.

J'en viens maintenant aux sujets des débats de ces deux jours, la fraude électorale et le contentieux électoral.

Notre objectif n'est évidemment pas ici de frauder, ni de trouver des moyens de frauder. Ceux-ci sont innombrables mais d'autres nous ont précédés, il n'y aurait plus grand-chose à inventer si nous voulions vraiment aller contre les valeurs que nous défendons, les valeurs du patrimoine électoral européen.

La fraude est sans doute aussi ancienne que l'élection. La plus ancienne législation électorale encore en vigueur, le Statut de Westminster de 1275, prévoit en ancien français normand (que je reproduis en français plus moderne), « que nul, haut homme ou autre, ni par la force des armes ni par malice ne trouble la liberté des élections ».

Plus de cent cinquante ans plus tard, en 1430, une loi a été passée¹, qui a limité le droit de vote aux titulaires d'une propriété valant plus de 40 shillings par an.

Cette limitation du droit de vote a été motivée par la participation aux élections de personnes de "*null valu*", ce qui avait conduit à des meurtres, des émeutes et d'autres infractions à l'occasion des élections. Les propriétaires, considérés comme ayant quelque chose à perdre, étaient censés bien se comporter et pouvaient donc voter.

On peut évidemment discuter la pertinence de cet argument, mais on revient de loin. Enfin, on est largement revenu de loin, car il ne faut pas se faire d'illusion, la violence et le meurtre politique subsistent largement sur cette terre; des élections récentes, où plus de cinquante militants ont été tués², en sont l'exemple.

De manière moins tragique, mais dans un passé pas si lointain, on peut citer l'envoi des bulletins des partis à domicile, l'électeur se voyant conseiller de renvoyer à l'expéditeur ceux de l'opposition et de garder pour le jour de l'élection celui du parti au pouvoir³ ou encore de renvoyer l'enveloppe sans l'ouvrir⁴. Le don d'un soulier droit aux électeurs par un candidat, celui-ci leur promettant un soulier gauche s'il était élu⁵.

Parmi les élections observées récemment, on peut noter par exemple qu'on avait éteint la lumière lors du décompte, que le président du bureau électoral avait emporté l'urne et était revenu avec les résultats⁶, le vol des urnes⁷, ou, ce qui relève peut-être plus du dilettantisme que de la fraude proprement dite : les bulletins avaient été mis dans une enveloppe fermée après le décompte mais les résultats n'avaient pas été transcrits ; les membres de la commission

¹ 8 Henry VI Cap VII.

² Au Guatemala.

³ Au Maroc sauf erreur.

⁴ Dans un pays d'Afrique, je crois au Togo.

⁵ Histoire d'Achille Lauro rapportée par Gianni Buquicchio.

⁶ Les deux cas en Azerbaïdjan.

⁷ Affaire de Mukachevo (Ukraine).

électorale ont essayé ensuite de se rappeler des résultats, avec l'aide des observateurs...⁸.

Evidemment, il y a des procédés plus connus et classiques, le premier étant le bourrage d'urnes, un autre, très traditionnel aussi, le vote des morts et des absents. Dans un roman⁹, un notable local en vient même à dire que les vivants ne lui sont plus reconnaissants, mais qu'heureusement, les pauvres morts votent encore pour lui !

Et je ne parle pas des fraudes dans la transmission des résultats. La liste est infinie, et, comme en matière fiscale, l'imagination des fraudeurs infinie. Peut-être parce que, là aussi, il est question de chiffres, ça excite certains mauvais esprits...

Certaines législations peuvent favoriser la fraude, mais celle-ci ne se lit que rarement dans les textes de loi – et pour cause : la fraude n'est-elle pas la violation de la loi ? Il faut donc voir comment les lois sont mises en œuvre. Dans certains pays, le vote par correspondance ou même l'envoi de bulletins de vote à domicile (même si d'autres sont disponibles au bureau de vote) ont conduit à la fraude¹⁰.

Dans d'autres, ces techniques n'ont pas posé de problème sérieux, et l'envoi des bulletins à domicile a au contraire pu être considéré comme une garantie du secret du vote¹¹. La fraude est vraiment un domaine où il faut procéder au cas par cas.

La casuistique nous mène tout naturellement au deuxième thème de ce colloque, le contentieux électoral.

En matière électorale comme dans tous les autres domaines du droit, la législation n'est que *lex imperfecta* si des recours ne sont pas ouverts. Dès lors, la question des recours fait l'objet de beaucoup d'attention de la part des observateurs et de toutes les personnes impliquées dans les questions électorales.

⁸ En Géorgie, cas rapporté par Mme Arioli.

⁹ Silone, *Fontamara*.

¹⁰ D'où la suppression du vote par correspondance en France.

¹¹ En Suisse.

La Commission de Venise ne fait pas exception à cet égard. Elle est en particulier attentive à la question du contentieux lors de la rédaction de ses avis sur le droit électoral des Etats. Dans ce cadre, elle se fonde sur les principes définis par le Code de bonne conduite en matière électorale, qui est le document de référence du Conseil de l'Europe¹², et dont je rappellerai en substance les principales lignes directrices en la matière :

« (a) L'instance de recours en matière électorale doit être soit une commission électorale, soit un tribunal, qu'il s'agisse d'un tribunal ordinaire, d'un tribunal spécial ou de la Cour constitutionnelle. L'avantage du recours devant les commissions électorales est que celles-ci sont spécialisées, tandis que les juges ordinaires peuvent être moins expérimentés en matière électorale. Dans tous les cas, un recours devant un tribunal doit être possible en dernière instance.

(b) La transparence à tous les niveaux est un élément fondamental des élections libres et équitables. Aussi bien la législation que la procédure de recours doivent être simples, le formalisme est à bannir.

...

(e) L'instance de recours doit pouvoir annuler le scrutin si une irrégularité a pu influencer le résultat. L'annulation doit être possible aussi bien pour l'ensemble de l'élection qu'au niveau d'une circonscription ou au niveau d'un bureau de vote. En cas d'annulation, un nouveau scrutin a lieu sur le territoire où l'élection a été annulée.

(f) Tout candidat et tout électeur de la circonscription ont qualité pour recourir. Un quorum raisonnable peut être imposé pour les recours des électeurs relatifs aux résultats des élections. Cela concerne aussi les recours relatifs aux opérations pré-électorales telles que l'établissement de la liste des électeurs, la validité des candidatures, le respect des règles concernant la campagne électorale – y compris son financement et l'accès aux médias.

¹²

Voir CDL-AD(2002)023rev, II.3.3.

(g) Les délais de recours et les délais pour prendre une décision sur recours doivent être courts. Deux obstacles doivent être évités : d'une part, le report du processus électoral du fait de l'existence de recours pendants ; d'autre part, que les décisions sur recours soient prises uniquement après les élections, alors que les recours concernaient la procédure pré-électorale... »

Ces questions seront reprises plus tard en détail. Je ne les développe donc pas davantage.

Avant de conclure, je voudrais parler de l'avenir. Les conférences des administrations électorales européennes se tiennent désormais à intervalles réguliers. [Au terme de cette réunion, des propositions pourront être faites quant au thème et au lieu de notre prochaine rencontre. La Commission de Venise est prête à continuer volontiers d'organiser la conférence des administrations électorales européennes, mais nous pensons qu'il serait souhaitable de le faire en coopération avec une administration électorale nationale, afin d'assurer une certaine diversité d'approche.

Par ailleurs, nous hébergeons à la Commission de Venise un forum de discussion sur Internet entre les administrations électorales. Malheureusement, son utilisation est presque nulle. Je serais heureux que vous nous fassiez savoir d'ici à la fin de l'année si vous souhaitez qu'il soit maintenu. Nous sommes à votre disposition si vous avez besoin de davantage d'informations sur l'accès à ce site.

En vous souhaitant plein succès dans vos travaux, je vous remercie de votre attention.

CHALLENGING ELECTORAL RESULTS IN AUSTRIA

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1. Introduction to the Austrian Electoral System

Austria is a democratic republic whose law emanates from the people. Its head of state is the Federal President. Austria is composed of nine autonomous provinces named Burgenland, Carinthia, Lower Austria, Upper Austria, Salzburg, Styria, Tyrol, Vorarlberg, and Vienna. The country's size is approx. 84,000 km² with a population of about 8,000,000 inhabitants.

The nine provinces have specific executive powers, but no separate court system, and maintain provincial parliaments with select legislative powers. They have their own provincial electoral authorities and electoral legislation. The federal parliament is bi-cameral. It comprises a lower chamber (National Council) and an upper chamber (Federal Council). For nation-wide elections, specific federal laws are in force. Basic principles and provisions governing elections on all political levels are laid down in the Federal Constitution.

Nation-wide elections are:

1. National Council Elections (= National Parliamentary Elections)
2. Presidential Elections
3. European Parliamentary Elections

This presentation only focuses on nation-wide elections. Elections on the provincial level, that is Provincial Parliamentary Elections and municipal elections, will not be covered.

All elections in Austria are in accordance with the principles of the universal, equal, direct, secret, free, and personal right to vote. The Austrian electoral system is a proportional system (exception: election to the office of Federal President); voting is not mandatory. There is no need to apply for voter registration as all Austrian citizens with a permanent residence in the country are kept in local registers, maintained by the 2,358 municipalities. Every person shall only be registered once. For European Parliamentary elections, a separate European Electoral Register is maintained.

Since 1 July 2007, the right to vote can be exercised from the age of 16 onwards. The right to be elected can be exercised at 18 or above. In general, the Austrian citizenship is a pre-condition to enjoy the active and passive rights to vote (exception: in EP Elections and municipal elections citizens of EU member States also enjoy voting rights).

2. The 2007 Electoral Reform in Austria

Before discussing the Austrian system of electoral review and the past parliamentary election of 1 October 2006, a short look at the core elements of the 2007 electoral reform should be taken in order to provide this distinguished forum with an update on recent developments.

It has to be stressed that this year's reform was not the consequence of any negative experiences or system failures during the 2006 parliamentary elections. The newly formed Austrian government, which came into office on 11 January 2007, named a revision of the electoral provisions as one of their main priorities. In March 2007 the first draft for a new bill was prepared by the Federal Ministry of the Interior. Subsequently, the bill was passed by the Federal Government and submitted to the National Council for further treatment. The Electoral Amendment Act 2007 was adopted by the National Council on 5 June 2007. Following the promulgation in the Federal Law Gazette, the revised electoral laws went into force on 1 July 2007.

In addition to lowering the age limits for exercising the active and passive voting right, the 2007 electoral reform in Austria brought about the following main changes:

- Facilitation of voting from abroad;
- Introduction of “real” postal voting (no witness or attestation is needed any more);
- Allowing international election observation missions by OSCE;
- Extension of the legislative period from 4 to 5 years (after the next election);
- Enlargement of the Federal Electoral Board (= National Election Commission) – since 1 September 2007 all parties represented in the National Council hold seats in the highest electoral commission (in the past, according to the d’Hondt rule, only larger groups were represented in the electoral board).

The Austrian Governmental Programme 2007-2010 also stated that a possible future introduction of e-voting be further examined. Besides, the consideration of a model for “preliminary decision proceedings” of the Austrian Constitutional Court in cases of electoral disputes or irregularities in the pre-election period is mentioned in the governmental program. A group of constitutional experts convened at the Federal Chancellery is currently tasked with examining possible solutions. To date, no decision has been taken.

This means that the Austrian electoral law currently provides for a mere ex-post judicial review in case of disputes or irregularities arising before an election. The following part of this presentation will deal with said Austrian system.

3. Electoral Dispute Resolution and Judicial Review

Both the Austrian Constitutional Court and the Federal Electoral Board (“Bundeswahlbehörde”) can be mentioned when it comes to electoral dispute resolution measures.

The Federal Electoral Board only comes into play when certain electoral figures are challenged. The authorised recipient of any party who ran in a specific election is free to raise an objection in writing with the Federal Electoral Board against the figures ascertained by a provincial electoral authority or the federal electoral authority within three days after their respective announcement.

This objection shall furnish sufficient ‘prima facie evidence’ as to why and to what extent the figures computed by the provincial electoral authority or the federal electoral authority are not in compliance with the provisions of this

federal act. If such reasons are not brought forward, the objection can be rejected without any further examination.

In case of an objection presenting sufficient evidence the Federal Electoral Board shall re-examine the election result on the basis of the documents available. If these documents should reveal any evidence of an incorrect result, the Federal Electoral Board shall immediately rectify the respective result, revoke the announcements of the provincial and of the federal electoral authority, and announce the correct result.

With the exception of the aforementioned objection against figures ascertained, electoral actions can only be challenged before the Austrian Constitutional Court (“Verfassungsgerichtshof”). The Constitutional Court cannot take any action by itself but it is required to render a decision if it is called on to do so by a permissible application. The “Verfassungsgerichtshof” enjoys sole jurisdiction in electoral matters (“Wahlgerichtsbarkeit”; see Art. 141 of the Austrian Federal Constitution/B-VG).

Elections, referenda, public initiatives, or public opinion polls can be challenged at the Constitutional Court. This, however, is only possible after the end of an election, when the results have been passed and officially published by the Federal Electoral Board. This means that Austria only knows an ex-post judicial review; the Constitutional Court cannot take any ad-hoc decisions, e.g. by application of an electoral authority or party.

Full judicial review is guaranteed after the end of the electoral process. The Constitutional Court can be approached within a period of four weeks after announcement of the final results. Any illegality that could have influenced the results of the election may lead to the annulment and repetition of the entire election or part(s) of the same. In that case, a new ballot has to be held within a hundred days after the delivery of the Constitutional Court’s decision. While the National Council remains in session until the new final election results are public, an originally elected candidate for President does not take office until the re-election has been held.

As more lenient means, the Constitutional Court may merely revise a certain result or decision. In contrast to the correction of figures ascertained which can be carried out by supreme electoral commissions when, for example, counting errors took place (see above), a corrective ruling of the Constitutional Court will rather concentrate on the substance of a decision (e.g. certain circumstances were not considered in a correct way).

Only groups (parties) who ran in an election or applied for candidacy can file a complaint with the Constitutional Court. This is due to the fact that campaigning groups are considered the focus point of elections and are supposed to represent the electorate. Hence, no individual who may wish to challenge any part of the electoral process enjoys a personal right of action.

Aside from the Constitutional Court, cases of election fraud or illegal actions taken in connection with preparing or carrying out an election or referendum can also be subject to criminal prosecution.

The Austrian Criminal Code (“Strafgesetzbuch - StGB”) lists several election-related offences in Chapter 18 (“Criminal Offences at Elections and Referenda”):

- § 262 – Obstruction of elections (to hinder somebody by force, or menace, or by other means to exercise the voting right or cast a vote in a specific way).
- § 263 – Deception at an election or referendum (to deceive a voter in order to cause an error on the voter’s side or lead to a void vote).
- § 264 – Dissemination of bogus information at an election or referendum (to publicly disseminate deceptive information in order to prevent persons from casting their votes or to make them vote in a specific way).
- § 265 – Bribery at an election or referendum (to bribe somebody in order to prevent the casting of a vote or make him/her vote in a specific way).
- § 266 – Forgery at an election or referendum (to cast a vote without being entitled to vote or to vote on somebody’s behalf without justification, or to forge the results of an election or referendum).
- § 267 – Circumvention of an election or referendum (to prevent an election or referendum or the promulgation of the results by force or menace).
- § 268 – Breach of the secrecy of the vote at an election or referendum (to intentionally set actions to determine who somebody voted for).

It is not worthy that a criminal conviction as described above has no (subsequent) influence on the outcome of an election since rapid certainty of the law is preferred.

4. Excursus: The Constitutional Court and the Federal Electoral Board

The Constitutional Court is considered a part of the Judiciary Branch but does not come under the so-called “ordentliche Gerichtsbarkeit” (regular judiciary), which only sums up civil and criminal courts. Having sole jurisdiction in electoral matters, the Constitutional Court plays an indispensable role in reviewing elections. The Constitutional Court also determines whether or not a person should lose a seat he has already acquired (such as a seat in the National Council). There are no bodies or tribunals carrying out any kind “alternative dispute resolution (ADR)” as the Austrian constitution and electoral system do not provide for any such approach.

The members of the Constitutional Court are appointed by the Federal President from proposals given either by the Federal Government, the National Council or the Federal Council. The justices act independently and not along political lines after assuming office. All 14 members of the Constitutional Court (as well as the six substitute members) have to be qualified for the position through their study of law, as well as their extensive, relevant professional experience. They come from different professions (judges, university professors, civil servants, lawyers), from different provinces and different socio-political fields. Active civil servants must resign along with giving up the associated income. Others, such as judges, lawyers or university professors, continue their profession. The justices remain in office until they are 70 years old. They cannot be removed from office except by a decision of the Constitutional Court itself.

The Federal Electoral Board (“Bundeswahlbehörde”) is an independent authority comprised of the Federal Minister of the Interior as chairperson and 17 “Beisitzer” (assessors). Two assessors are drawn from the judiciary. The additional 15 assessors are nominated by the parties represented in the National Council. The Federal Electoral Board is completely independent of the government. All members of the Federal Electoral Board must not belong to any other electoral authority. The Federal Minister of the Interior can designate deputies. Currently, three deputies are appointed. In addition, every assessor is deputized by one co-assessor (“Ersatzbeisitzer”). Parties not represented in the National Council are entitled to delegate “Vertrauenspersonen” (observers) to the Federal Electoral Board. The principal regulations governing the structure of the Federal Electoral Board are laid down in the Austrian Federal Constitution. Further details are stipulated in the National Council Elections Act (“Nationalrats-Wahlordnung”).

5. Previously Challenged Elections

To date only two successful challenges of electoral results on the national level took place in the so-called “2nd Republic” (since 1945). The number of complaints filed by parties with the Constitutional Court is obviously higher though not more than an estimated dozen of remedies have been sought over the past decades. The number of complaints raised after an election is usually easy to survey as only campaigning groups enjoy the right of action.

It has to be added that the number of complaints filed after provincial or municipal elections and the number of successful revisions hitherto is significantly higher. Hence, many decisions of the Constitutional Court with relevance to electoral affairs stem from provincial or municipal elections rather than from national elections.

Hereinafter, the two successful challenges of national parliamentary elections will be shortly described:

a. 1970 Election to the National Council

Possible forgeries of several signatures under supporting declarations for the party “NDP” were detected in three Viennese constituencies. Even though the possible fraud was revealed before election day, no actions with regard to the electoral process were taken as the Constitutional Court can only be approached after the announcement of the final result of an election.

As soon as the final results had been promulgated, one of the campaigning parties filed a complaint with the Constitutional Court claiming that the “NDP” had only managed to be added to the ballot sheet due to the alleged fraudulent manipulation. The Court’s investigation determined that the forged signatures “had an influence on the results of the election” and ordered a re-election in the affected constituencies (i.e. in nine Viennese districts).

b. 1995 Election to the National Council

In the municipality of Donnerskirchen (province of Burgenland) approximately 100 incorrect ballot sheets were used (they listed candidates for another constituency). Since a seat in this constituency was only hedged by a small amount of votes (12) it became apparent that this might have had “an influence on the results of the election”.

The campaigning party “FPÖ” filed a complaint with the Constitutional Court and also brought forward another fact that created wide media attention: An Austrian politician (federal minister) had cast her vote in her home town Reutte (province of Tyrol) although she was actually registered in a different municipality and province. This obvious error may have not constituted a sufficient reason for a successful complaint by itself but as the Donnerskirchen incident was also under investigation, the Constitutional Court eventually rendered a repetition of the ballot in both Donnerskirchen and Reutte which took place in 1996, simultaneously with the EP elections. The “FPÖ” had also submitted an additional list of 50+ alleged irregularities but the Constitutional Court only considered one further claim in which a ballot sheet had been incorrectly interpreted. In this case, as more lenient means, the Constitutional Court merely revised the decision of the electoral commission and did not order a re-election.

6. 2006 Election to the National Council

The most recent election to the Austrian National Council took place on 1 October 2006. Prior to the election, sensitive legal debates had taken place upon the quality and possible identity of campaigning groups in the Austrian electoral law.

Within the framework of the 2002 National Elections, the party “FPÖ” had gained a certain amount of seats. In 2005, a significant part of these members of parliament and the executive board of the party formed a new movement, called “BZÖ”. A party called “FPÖ” continued to exist as well and both groups decided to run for the 2006 Parliamentary Election. The Federal Electoral Board had to determine whether the former “FPÖ” and the current “FPÖ” were (basically) identical or whether the new “BZÖ” was the successor of the campaigning group “FPÖ” of 2002. During the deliberations, even a third solution (none of the two parties is identical with the former “FPÖ”) was discussed. The Federal Electoral Board eventually decided that the current “FPÖ” group was the successor of the “FPÖ” in 2002.

Before election day, there was vivid rumour and media speculation that said decision might eventually be revised by the Constitutional Court. However, after the official results had been promulgated on 20 October 2007 it turned out that none of the campaigning groups brought the case before the Court.

Instead, the party “KPÖ” filed a complaint with the Constitutional Court on 16 November 2007 and challenged the legal provisions governing the Austrian proportionality system. “KPÖ” claimed that the 43 regional constituencies were of considerably different size and that it was virtually impossible to reach a so-called “direct seat” (based on a large number of votes) in some of these constituencies due to the high number of ballots needed. The Constitutional Court stuck to its precedents and held that the proportionality system was constitutional as parties were also able to gain representation when crossing a threshold of 4% of all votes cast nation-wide. The complaint of “KPÖ” was rejected on 12 December 2007.

7. Conclusion

Austria exercises a system of mere ex-post judicial review in electoral matters. The Constitutional Court enjoys sole jurisdiction when it comes to elections or referenda but is not authorised to take any ad-hoc decisions or render judgments without having been approached by those enjoying the right of action (i.e. campaigning groups).

There is no possibility of a court review in the pre-election period. This approach intends to ensure a speedy electoral process in which delays are prohibited and no unforeseen developments may compromise the set election date. The timetable for any election is filled with numerous fixed deadlines and allows little to no room for postponing decisions.

Experiences of past national elections prove that the current system does not impair proper remedies as full judicial review is guaranteed after the end of the electoral process. The Constitutional Court may order the annulment and repetition of an election or, as more lenient means, revise a particular decision.

The introduction of some kind of “preliminary ruling model” or the possibility of contesting particular decisions of electoral authorities in the pre-election phase bears the risk of an election adjournment. A group of constitutional experts convened at the Federal Chancellery is currently tasked with an evaluation whether such a model should nevertheless be introduced in Austria in the future.

**LA PREVENTION ET LE CONTROLE EXTERNES DES FRAUDES
CONTRE LE VOTE ELECTRONIQUE EN BELGIQUE**

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1. Introduction

Après une première expérience en 1991, le vote électronique a été introduit en Belgique de manière importante à partir des élections de 1994 (20 % des électeurs). Depuis 1999, 44 % des électeurs belges votent avec un système de vote électronique combinant, comme vous le savez, l'utilisation dans le bureau de vote d'un PC, d'un crayon optique, d'une carte magnétique et d'une urne électronique.

C'est bien sûr un vote particulier qui va nécessiter des procédures particulières de prévention et de contrôle de la fraude électorale.

Outre les mesures techniques de protection de la fraude imposées à ces systèmes dans la réglementation et dans les instructions (ex : la tête de l'urne électronique est incapable d'écrire sur la carte magnétique), le législateur belge a au fur et à mesure introduit des intervenants externes de contrôle dans le processus électoral électronique afin de renforcer la confiance des électeurs dans le système et d'éviter au maximum les possibilités de fraude.

Ces intervenants extérieurs sont au nombre de trois : le Collège d'experts, les organismes agréés et les spécialistes en informatique des partis politiques.

Deux autres mesures matérielles sont de grande importance dans le processus de transparence et de contrôle des fraudes électorales en matière de vote électronique : la mise au coffre du logiciel électoral et la publication sur Internet des codes sources de ce logiciel.

Je voudrais également insister sur le rôle important des membres des bureaux de vote et des témoins des partis politiques dans le respect de l'observation des procédures du vote électronique.

2. Les intervenants extérieurs

a) Le Collège d'experts

A l'occasion des élections de 1999 a été institué un Collège d'experts. Ces experts sont des spécialistes en informatique désignés par les différentes assemblées législatives de Belgique au niveau fédéral et régional.

Nombre de membres (élections 2007) : 9.

Depuis les élections de 1999, les tâches confiées aux experts parlementaires ont été élargies :

- les experts contrôlent lors des élections l'utilisation et le bon fonctionnement de l'ensemble des systèmes de vote et de dépouillement automatisés ainsi que des procédures concernant la confection, la distribution et l'utilisation des appareils, des logiciels et des supports d'information électroniques ;
- ils peuvent notamment vérifier la fiabilité des logiciels de machines à voter, la transcription exacte des votes émis sur la carte magnétique, la transcription exacte par l'urne électronique des suffrages exprimés sur le support de mémoire du bureau de vote, l'enregistrement exact du support de mémoire provenant du bureau de vote sur le support de mémoire destiné à la totalisation des votes et la totalisation des suffrages.

Les experts reçoivent du ministère de l'Intérieur le matériel ainsi que l'ensemble des données, renseignements et informations utiles pour exercer un contrôle sur les systèmes de vote et de dépouillement automatisés.

En pratique, avant le jour des élections, ils exercent un contrôle des codes sources et ils développent une procédure de recompilation au niveau du logiciel électoral.

Le jour des élections, ils font des visites dans les bureaux de vote : ils effectuent des votes de référence et ils prennent une copie de la disquette utilisée pour mettre en marche les systèmes de vote électronique. En 2007, ils ont visités 74 bureaux de vote (sur 3.853) et 6 bureaux de totalisation (sur 62).

Cette année, pour la première fois, ils ont utilisé une copie de toutes les disquettes des bureaux de totalisation et ils ont effectués un recomptage de tous les bureaux de vote.

Ils déposent un rapport sur leur mission au plus tard 15 jours après les élections. Ce rapport comprend également des recommandations. Ce rapport est disponible en français et néerlandais sur le site de la Chambre des Représentants (www.lachambre.be) ou du Sénat (www.senate.be).

b) Les organismes agréés

A chaque élection, le logiciel électoral doit être agréé par le Ministre de l'Intérieur. Notre administration n'a pas reçu les moyens humains et techniques pour effectuer ce contrôle de conformité avec les dispositions réglementaires techniques qui définissent le vote électronique belge.

Depuis 2000, il est donc fait appel à des firmes privées qui sont agréées par le Ministre de l'Intérieur. Lors des dernières élections législatives 2007, cinq firmes ont été agréées.

Il appartient alors aux fournisseurs du logiciel électoral (2) de soumettre celui-ci aux batteries de test d'une de ces 5 entreprises au choix qui remet un rapport détaillé des tests effectués ainsi que des résultats obtenus. Si des problèmes sérieux se posent, il appartient au fournisseur de logiciel de modifier son programme et de soumettre à nouveau le logiciel électoral. Sur base de ce rapport, le Ministre agréée les logiciels électoraux pour les élections concernées.

c) Les spécialistes des partis politiques

En 2003, le législateur a introduit une nouvelle mesure visant à renforcer la confiance des hommes politiques dans le système de vote électronique. Les partis politiques représentés au Parlement peuvent désigner des spécialistes en informatique qui vont recevoir à partir du 40^{ème} jour précédant les élections les codes sources des logiciels électoraux des systèmes de vote et de dépouillement pour contrôle et analyse.

3. Des mesures de transparence

a) La mise au coffre du logiciel électoral

Lorsque que le logiciel électoral est agréé, on effectue une cérémonie de la mise de ce logiciel dans un coffre d'une banque en présence de membres du ministère de l'Intérieur, des fournisseurs du logiciel, des experts, des organismes agréés et des spécialistes des partis politiques.

Cela permet de vérifier après les élections que le logiciel utilisé dans les bureaux de vote et les bureaux de totalisation est identique au logiciel originel.

b) Publication des codes sources du logiciel sur Internet

Une importante mesure au niveau de la transparence du vote électronique est la publication sur le site Internet du ministère de l'Intérieur, le jour des élections, des codes sources de tous les programmes utilisés dans les systèmes de vote et de totalisation.

Cela permet à chaque électeur, bien que cela nécessite bien sûr des connaissances informatiques, de vérifier que les systèmes de vote électronique remplissent correctement leur fonction.

4. Les acteurs traditionnels

Dans un système de vote électronique tel que nous le connaissons, les assesseurs et les témoins des partis politiques ne sont pas à même de vérifier la technologie. Leur rôle est différent, il se situe dans le contrôle du respect des procédures légales et réglementaires qui accompagnent l'utilisation des systèmes de vote électronique de manière transparente et sécurisée.

Ils ne sont donc pas à même de contrôler la technicité du processus de vote électronique. Ce rôle est, comme nous l'avons vu, confié au collège d'experts.

Leur rôle de contrôle et de surveillance du processus électoral se focalise plus sur le respect de la procédure prévue par la loi et des directives de sécurité fixées dans différentes instructions relatives à l'application du vote électronique. Le respect de la procédure est la garantie du bon déroulement des élections.

Ils sont les gardiens de la procédure d'organisation décrite dans la loi de 1994 organisant le vote automatisé (ouverture de l'enveloppe avec mot de passe devant tous les membres du bureau de vote, votes de référence, urne vide puis scellée, transport des disquettes, ...). Si pas respect de la procédure, possibilité d'annulation (ex : Jurbise en 2000 - transmission des disquettes - conservation).

Il faudrait par conséquent insister dans la formation de ces personnes sur le respect des procédures et des directives.

5. Conclusion

Dans le développement du vote électronique, la Belgique est à la croisée des chemins. En effet, les systèmes de vote utilisés depuis 1994 arrivent en fin de contrat (fin 2008) et il faut prendre la décision des nouveaux systèmes qui seront utilisés après cette échéance.

En dehors des systèmes de vote, une réflexion doit également être menée par rapport à la prévention et au contrôle de la fraude électorale dans un environnement électronique. Cette prévention et ce contrôle doivent-ils être confiés à des organes extérieurs ou une partie de ceux-ci peuvent être effectués par une administration ou un organe électoral indépendant ?

Le rôle des membres des bureaux électoraux est également à redéfinir et à clarifier. Ils sont les garants du bon déroulement du scrutin et la fonction de contrôle du respect des principes électoraux démocratiques ne doit pas être diminuée par l'utilisation des nouvelles technologies.

Telles sont certaines des questions que devront résoudre les décideurs politiques dans leur choix du prochain système de vote électronique belge.

INFORMATION ABOUT RECENT ELECTIONS IN FINLAND

Mr Jussi AALTONEN
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Information about recent elections in Finland

In the viewpoint of the election authorities, the recent elections in Finland have been running rather smoothly. No remarkable problems relating to enforcement have been noticed. Another indication to this is that an ODIHR needs assessment mission saw no need to observe the Finnish Parliamentary elections this year.¹

Finland in Figures

The total population of Finland is approximately 5.3 million and the total number of people entitled to vote is approximately 4.3 million.

For the purpose of Parliamentary elections the country has been divided into 15 constituencies in accordance with the division into provinces. There are 416 municipalities in Finland.

The number of candidates in general elections is (approximately) 2,000 in Parliamentary elections, 7-10 in Presidential elections, 40,000 in Municipal elections and 200 in European elections.

¹ An evaluation group from the Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE visited Finland at the turn of January–February and reviewed the Finnish election laws, campaigning, the registration of voters and the information disseminated about elections. The group met representatives of various bodies, such as election committees, political parties, the media, and civil society organisations.

On the basis of its findings, the evaluation group considers that the OSCE has no need to observe the Finnish parliamentary election held on 18 March. The evaluation group referred to Finland's parliamentary tradition and to the general confidence in democratic elections.

Elections history

This year Finland celebrated the centennial of elections. The centennial focused on the parliamentary reform of the early 20th century.

The Parliament Act and the Election Act of the Grand Duchy of Finland in 1906 contained many of the principles we still follow in our elections. It introduced universal and equal voting right and right to stand as a candidate, full political rights to women (3rd country in the world and 1st in Europe), 200 MPs and proportionality.

Recent elections in Finland

Altogether 2,004 candidates were nominated for this year's Parliamentary elections. Similarly to the previous Parliamentary elections, 18 political parties took part in the elections. Approximately two-thirds of the candidates were nominated by the eight parliamentary parties. The number of candidates from constituency associations was 21 of which 7 were nominated in the Åland Islands, where political parties may not nominate a candidate for Parliamentary elections.²

The three major parties were supported evenly. The Center Party kept its position as the biggest party. It got 23.1% of all votes cast and 51 seats in the Parliament. The Coalition Party was the biggest winner increasing its support by 3.7 percentage points. It got 22.3% of all votes cast, which gave 50 seats in the Parliament. The Social Democrats lost support by 3.0 percentage points (21.4% of the votes cast) and ended up with 45 seats in the Parliament (previously 53 seats).

Of all persons entitled to vote 52.1% were women. Women's proportion of candidates was 39.9% and women made up 42 per cent of all elected MPs.

² According to the Election Act (714/1998) in Parliamentary elections candidates can be nominated both by political parties and registered voters who have founded a constituency association. Founding a constituency association in order to nominate a candidate in parliamentary elections requires at least 100 voters from the same electoral district. As an exception to this principal rule in the electoral district of the Province of the Åland Islands, a constituency association, founded for the next Parliamentary elections by at least 30 registered voters in the electoral district, has a right to nominate a candidate for a member of parliament (Election Act sections 108, 110 and 119).

Of all candidates 69 per cent were aged 40 or over. The average age of all candidates was 46.4 years, 48.1 for male candidates and 48.3 for female candidates.³

A decreasing voting turnout has been a development trend in our recent elections. Participation in parliamentary elections has been low for a longer period. Since 1979 the voting percentages have decreased almost steadily from election to election.⁴

This year the voting turnout in the parliamentary elections was 67.9 per cent. Compared to the previous elections in 2003 it went down by 1.8 percentage points. In the presidential elections 2006 the second round turnout was 77.2 per cent, which is fairly low compared to the 80.2 per cent turnout in the previous presidential elections in 2000.

As one possible way to influence this development an election information campaign was carried out in connection with the Parliamentary elections. The objective of the campaign was to increase the citizens' awareness of elections and to encourage people to exercise their right to vote.

The campaign was launched in co-operation between the Parliament, the Ministry of Justice and the Finnish Youth Organisations. The campaign included television and radio spots, newspaper ads, web pages, an easy reading – brochure and a voters' guide for blind people, posters, rap music concerts in vocational schools and public discussions in city libraries. Near to 760,000 citizens under the age of 30 received a letter, which aimed to emphasize the importance of voting and encouraged them to vote.

³ Source: Election Statistics, Parliamentary elections 2007. Statistics Finland.

⁴ The latest turnouts have been:

- Parliamentary elections 2007: 67.9%
- Presidential elections 2006: 77.2%
- Municipal elections 2004: 58.6%
- European elections 2004: 41.1%
- Parliamentary elections 2003: 69.7%

The highest turnout ever was in presidential elections 1982 (86.8%) and the lowest ever in European elections 1999 (31.4%).

Proportionality problems

There are 15 electoral districts in Finland. The 200 Members of Parliament are elected from these electoral districts.

With the exception of the Åland Islands, the seats are divided to electoral districts on the basis of the number of Finnish citizens having their municipality of residence in these electoral districts.⁵

Different sizes of constituencies lead to an "invisible threshold", a percentage of votes which is needed to get one seat in an electoral district. The threshold differs from one electoral district to another. For example in Uusimaa district it is approximately 3% whereas in Etelä-Savo a party needs almost 14% of all votes cast to get one candidate elected.

As this invisible threshold is commonly regarded to be unfair, the Minister of Justice has nominated a committee to consider a proposal to amend the election system in the Parliamentary elections in this respect. The deadline set for the committee is at the end of March 2008.

⁵ One MP is always elected in the electoral district of Åland. A total of 199 representatives are elected by proportional vote in the other electoral districts.

**INFORMATION ABOUT RECENT ELECTIONS
IN THE NETHERLANDS**

**Mr Henk KUMMELING
Chairman, Electoral Council of the Netherlands**

Introduction

2006 and 2007 were busy election years for the Netherlands. Local elections were held in the spring of 2006, and the fall of the government in the autumn led to unplanned dissolution elections to the House of Representatives. These elections were followed in 2007 by elections to Provincial Councils in March and the Senate in May. Two subjects concerning these elections are addressed below. The first of them is the current debate in the Netherlands on the subject of voting machines. The second responds to the meeting's theme by considering the disputes and appeals related to these elections.

The voting machine issue

Looking back it is fair to say that the recent elections will be regarded as a turning point for those professionally involved in elections in the Netherlands. The situation where election activities took place behind the scenes was brought to an abrupt end when the 'Wij vertrouwen stemmachines niet' ['We do not trust voting machines'] foundation was established following the most recent elections. This foundation has successfully highlighted the weaknesses in the Dutch election procedure. The then minister (for Government Reform and Kingdom Relations) responded by taking various additional measures aimed at guaranteeing (as much as possible) a fair electoral process in the run up to the elections to the House of Representatives in November of last year. Those measures included the inspection and sealing of all voting machines, tightening up physical security for voting machines in the municipalities and inspecting the voting machines being used prior to and during election day. Additionally, the minister decided against using certain types of voting machines for these elections. The local authorities using those machines switched to a different type of voting machine or resorted to the 'traditional' red pencil.

The OSCE and the Advisory Committee on the structure of election procedures

The elections to the House of Representatives held in November of last year were the first Dutch elections to be monitored by an international observer mission of the OSCE. The report published by the OSCE contained notable recommendations regarding the organisation and monitoring of the elections. A committee instituted by the Minister for Government Reform and Kingdom Relations is currently looking into the future of the election procedure in the Netherlands. Their report is due for publication on 1 October. Also, a Decision-making Committee on Voting Machines was instituted in 2006. This committee has analysed the position and method of the various bodies that have in the past been involved in the decision-making process on voting machines. The combination of these three reports is likely to form the precursor to significant changes being made to the Dutch election procedure.

Appeals under administrative and criminal law

The Dutch election procedure makes provision for roughly two forms of judicial review. An administrative appeal can be lodged against a number of decisions specified in the Dutch Elections Act on the one hand, and a number of offences under electoral law are summarised in the Elections Act and the Dutch Penal Code on the other. We now turn to a more detailed discussion of both types of legal dispute. It is important to start by pointing out that in contrast to the situation in many other countries, it is not possible in the Netherlands to lodge an appeal against the result of an election at a court of law. Under Dutch electoral law the result of elections to the House of Representatives is ratified by the Electoral Council in its capacity as the central electoral committee. After that the decision on the validity of the vote and the admission of the members is a matter for the representative body. These decisions are not open to appeal at a court of law. It is however possible for voters to raise irregularities at various points during and after the vote. That can be done at the polling station and during the public session to ratify the result of the principal electoral committee or the central electoral committee. Finally, voters can report irregularities to the representative body itself.

Administrative procedures relating to registration and nomination

In the run up to the House of Representatives elections various administrative appeals were lodged under electoral law. Although issues to do with electoral law can arise at any time, they tend to concentrate during the preparations for an election in two periods. Most of the cases have arisen in the time following closure of the period for the registration of appellations and after nominations.

The court with competent jurisdiction, the Administrative Jurisdiction Division of the Council of State, pronounced rulings in seven cases following the period for the registration of an appellation for elections to the House of Representatives in November. These cases were instituted by political groupings whose registration applications were for various reasons rejected or declared inadmissible by the Electoral Council. Five cases concerning nomination were instituted at the Council of State. These cases had to do with the (late) submission of nomination documents or the method used to announce candidates on the list of candidates.

Criminal proceedings around the date of the election

The Electoral Council reported a Dutch radio station to the authorities around the date for elections to the House of Representatives. This radio station had called on voters not planning to vote to send their signed polling cards to them. They then went on to share these polling cards among especially enthusiastic voters, who were able to fill in their names in order to vote by proxy. The Dutch system allows a voter to authorise someone else to vote on their behalf. However systematically calling on voters to surrender their polling card is unlawful. One of the accused has since been acquitted for lack of evidence. The Public Prosecutions Service has offered an out-of-court settlement to the other.

During the local elections in March 2006 a political party offered homeless people 10 euros to sign a declaration of support for it. Touting for declarations of support is punishable under Dutch Electoral Law. The court considered it proven that the suspects had committed a criminal offence and sentenced them both to three to six months' imprisonment, partly suspended and with an operational period of two years. The offenders lodged an appeal, which has since been rejected. Touting for declarations of support and the surrender of polling cards is a recurring issue at all Dutch elections, especially municipal council elections. The Electoral Council is due to publish its report on the

prevention and punishment of touting for declarations of support during nominations and for proxy votes.

After the municipal council elections there was a commotion concerning the result of the elections in the municipality of Landerd. This culminated in another landmark dispute under criminal law. It turned out during the count that a candidate had received substantially more votes at a certain polling station than at all the others. The candidate was a member of the polling station team and operated the voting machine at that station, which was also the one where he was himself entitled to vote. However the court found that there was insufficient proof of fraud. The accused was acquitted by the court of committing fraudulent practices in elections. The Public Prosecutions Service has appealed against that ruling, but the appeal has not yet been heard.

Eman-Sevinger

Finally, it is worth mentioning at this point the two Eman-Sevinger cases. The first was instituted by two Dutch nationals living on Aruba – Messrs Eman and Sevinger – who wanted to vote in the elections to the European Parliament. The authorities refused them permission to register as voters because the Elections Act only grants voting rights for the European Parliament to Dutch nationals living in Aruba and the Dutch Antilles if they have lived in the Netherlands for ten years, which was not the case. The case was referred to the Court of Justice of the European Union, which ruled that if the Netherlands allows Dutch nationals living outside of Europe to vote in the European elections, which is the case, the principle of equality is at issue. The Court ruled that it is untenable that Dutch nationals living outside the Kingdom *do* have voting rights, even if they have never resided in the Netherlands, while Arubans and Antilleans only have voting rights if they have resided in the Netherlands for at least 10 years. The Court ruled that these Dutch nationals living abroad are in a comparable situation to Arubans and Antilleans. In its ruling dated 21 November 2006, the Division responded by upholding the appeals of Messrs Eman and Sevinger. The ball is now in the legislator's court.

In the second case¹ instituted by Messrs Eman and Sevinger, they claimed that they should also enjoy voting rights for the House of Representatives. The Division ruled that there was a difference here between the Dutch nationals in Aruba and the Netherlands Antilles and other Dutch nationals living abroad, reasoning that residents of Aruba and the Netherlands Antilles have voting rights for their own Parliament and are able to influence its formation via the state legislative procedure.

Conclusion

The outcomes of the appeals, under criminal law on the one hand and administrative law on the other, justify the conclusion that virtually all of the electoral authorities' decisions stand up to scrutiny. It is proving difficult to tackle fraud cases and related problems concerning offences under electoral law owing to the frequent occurrence of technical evidence issues on the one hand and the failure in some cases of the police and the Public Prosecution Service to give them priority on the other. That underlines the importance of structuring the system in a way than minimises the chance of fraud. In that context, the Electoral Council recently recommended the introduction of mandatory proof of identity for voting.

¹ Administrative Jurisdiction Division of the Council of State, 21 November 2006, 200607567/1 and 200607800/1.

THE SWEDISH APPEALS SYSTEM
CHALLENGES AFTER THE 2006 GENERAL ELECTIONS

Ms Kristina LEMON
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1. The Swedish electoral appeals system

The provisions concerning electoral appeals are stipulated in the constitution and in the Elections Act. The constitution provides the organisational framework of the appeals body while the Elections Act contains details concerning the actual appeals procedure.

All electoral appeals are handled by the Election Review Board, which is a special body sorting under the Swedish Parliament. The board consists of seven members, of which one is the chairman. The members of the board are all appointed by Parliament after each general election, but the members themselves do not have to be MPs. The chairman must be, or must have been, an ordinary judge and cannot be a Member of Parliament. The board is the only instance for electoral appeals and the decisions taken cannot be challenged.

Electoral offences listed in the Penal Code are settled in regular court and not handled by the Election Review Board.

The Election Review Board has a strong position and enjoys high confidence. There have been no voices raised to challenge its organisational framework, composition and competence.

2. Timeframe and scope

Appeals should be lodged within 10 days from the formal announcement of the final result or decision. The same procedure is applicable for parliament and local elections.

The Election Review Board is appointed for one mandate period at a time and convenes whenever there is an appeal lodged. The Swedish electoral system provides for appointment procedures and administrative decisions in electoral matters throughout the mandate period, such as appointments of new members of central/regional and local parliaments after resignations etc. This makes it necessary for the board to be on duty during the whole mandate period and not only in direct connection to the elections.

3. A new Elections Act!

Before the last general elections in September 2006 a new Elections Act was introduced. This act contained three pieces of news which would affect voters' behaviour:

- a. New type of premises for advance voting within the country.** This was previously arranged by Swedish Post Co. and the post office was a well-know place for casting an advance vote. In 2006, the responsibility for advance voting within the country was transferred from Swedish Post Co. to the municipalities. The new voting premises would as an effect be libraries, municipal offices or similar places – a change constituting a huge information challenge for the whole election administration! According to statistics, approximately 30 percent of the voters cast an advance vote instead of going to their polling stations on E-Day.
- b. Identity control of voters at polling stations on E-Day.** The identity of the voter was previously checked at the polling station only by asking the voter of his/her personal identification number, which is unique for all persons living in Sweden. Stricter identification rules applied for casting a vote in advance. However, a case of impersonation together with a general demand that all channels of voting should require the same type of identification controls, made the legislators introduce new and stricter provisions in the Elections Act.
- c. Stricter rules for voting by messenger.** To vote by messenger means that the voter will prepare the vote him/herself and use a messenger to deliver the vote to a voting place. The procedure is allowed for sick, disabled, old and persons in jail, and requires a witness and a messenger to be present. To underline the importance

of the witness'/messenger's responsibilities, stricter rules on stating and checking their identities were introduced.

The question was to what extent – if any – these new features would become visible in appeals. It turned out that these events did not become especially visible in the appeals cases. Only one errand dealt with the identification issue, where the appellant claimed that the electoral officers in a certain voting place lacked knowledge of what constitutes a valid identification document. The number of appeals even became fewer than usual; only five appeals were lodged contesting the parliamentary result, compared with the usual 10-20. All five appeals dealt with procedural errors and none resulted in favour of the appellant. So far, app. 30 appeals have been handed in and settled for local elections.

4. New challenges after the 2006 general elections

Even though the number of appeal cases turned out to be fewer than previous years, some new challenges could be noted after the 2006 general elections. These challenges are direct consequences of the present electoral system and of the new Elections Act and could, if we are lucky, only be features which will correct themselves in time. But if we are not lucky, these challenges will have to be subject to discussions to find satisfactory solutions. The challenges are as follows:

- a. The question of involuntary candidacies.** Due to the free right of nomination (i.e. the voter's right under certain limited circumstances to write the name of any person who he/she would like to vote for within the choice of party) some persons were added by voters on a party's ballot paper and even got elected to the local assembly. There are no mechanisms in place to "un-elect" someone and this person will always be named in the result protocol for a political party which he/she might not belong to or even want to be associated with. The issue of personal integrity versus the principle of the free right of nomination has come up on the agenda after 2006 general elections, since some persons were elected for a political party they strongly opposed to. One person has even claimed personal and financial damage.

- b. An increasing number of empty chairs in municipal assemblies.** Due to the fact that one specific political party received more votes on the local level than expected (they had not nominated enough candidates or even failed to have candidates at all in some municipalities) the election results for the local election showed that 14 chairs would remain empty for that political party. Unfortunately, this number is constantly increasing and in November 2007 the number had amounted to 36. No other political party has so far during this mandate period suffered from an empty chair. It should be noted in this context that the involuntary candidacies mentioned in 1. above all concern this particular political party.
- c. Identity controls caused long lines and complaints were filed during voting procedure and not through official appeals.** The long lines was a result of the provisions in the new Elections Act and the municipalities had problems in finding smooth procedures for checking the voter's identity. The Election Authority received information that voters stood in long lines and that some even turned around and refrained from voting. Complaints were made throughout the voting period, and some problems could be solved after re-shuffling personnel, but we do not know to what extent (if any) voters felt that these circumstances were such an obstacle that they went away not to come back again. The practical side of this can of course be solved easily through better planning until next election, but it points at a grey-zone between filing formal complaints and solving problems ad hoc. In some cases we might benefit from a formal decision based on an appeal – to have strong enough incentives to push all independent actors (in our case, the local election authorities) to act in a certain way. That does not mean, of course, that problems should not be solved on the spot...
- d. New voters' behaviour may cause increasing discrepancies between preliminary and final results.** Last election showed a considerable increase in the number of advance votes received too late for the municipalities to be delivered to the polling stations on E-Day. Such advance votes are instead counted a few days after E-Day in a special public procedure. The higher this number is, the larger the discrepancy will become between the preliminary result on election night and the final result. The Election Authority could find two main reasons for this; a) the transportation schedule between municipalities did not work properly during election weekend, and b) an increasing

number of voters tend to vote at advance voting places even on E-Day (which is allowed), for example at train stations. If the second reason proves to be true also in the next election and the numbers will increase further, the question must be asked how large a discrepancy between the preliminary and final results can we accept for the preliminary result to be useful as a result indicator.

5. Conclusions

A functional and legitimate electoral appeals system is a fundamental feature in most electoral systems. The electoral administration should of course do its very best to hold elections in such a correct and fair manner as to minimise the number of appeals due to procedural errors. However, appeals also serve as a good reminder of how the electoral system appears for the voters, parties and any other stakeholder. Through appeals we may receive necessary information about practices which need modification, outdated rules and indications of new behaviour in need for regulation.

As for Sweden, the future will tell what will become of our challenges.

**THE MEXICAN ELECTION OF 2006: RECENT EXPERIENCES
AND IMPLICATIONS FOR THE FUTURE**

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1. Mexican Electoral System's characteristics

Regarding electoral issues, Mexico has a competence distribution scheme based on two main traits. First, national elections (President and Congress – Senators and Representatives) are conducted and regulated by federal bodies, while local elections (governors, local congresses and mayors) are the responsibility of local authorities. The federation and each of the 32 states of the country have their own standards, institutions and procedures to regulate elections.

Second, the administrative attributions – planning, organising and conducting the elections– are differentiated from the jurisdictional ones –solving controversies and applying electoral justice. At the federal level, the administrative attributions correspond to the Federal Electoral Institute (IFE). The jurisdictional ones correspond to the Electoral Court, which is a specialised organism of the Federal Court System. The prosecution of electoral crimes corresponds to the Office for Special Prosecution of Electoral Crimes, an organism of the Executive Branch.

Every six years, the IFE organises the elections for President and 128 senators, and every three years it organises the election for 500 members of the Chamber of Representatives.

The IFE has its headquarters in Mexico City, and in order to carry out its functions on the entire national territory, it is assisted by 32 local offices which are placed in each federal entity; and 300 sub-offices in each of the federal electoral districts in which the country is divided into.

The main decision-making organ of the Federal Electoral Institute is the General Council, which is responsible for the enforcement of constitutional and legal provisions in electoral matters. The General Council is integrated by a President Councillor and eight electoral councillors, with the right to vote. Besides, with the right to take part in discussions, but without the right to vote, there is one representative per each political party with representation in the Congress – currently eight, and one representative of each registered political party – eight representatives.

According to the law, the electoral process period starts nine months before the Election Day – first Sunday on July. It finishes on September, when the Electoral Court declares the election valid.

During the months along which the federal electoral process is implemented, the citizens supervise the activities the IFE carries out in order to organise the Election Day. For that purpose, 32 Local Councils (one per federal entity) and 300 District Councils are called up. These Local and District Councils are integrated by a president, six electoral councillors (prominent citizens in their own communities) and political parties' representatives.

2. Characteristics of the Electoral Process of 2006

In 2006, the IFE organised the federal election for President, Senators and Federal Representatives. This election was the most competitive in Mexico's history, given a razor- thin difference of 0.56 points between the two leading presidential candidates. Some of the main characteristics of this election are the following:

a. The citizens themselves are in charge of the election

Although the electoral authority is the responsible for guaranteeing a free and fair Election Day, the citizens themselves become the electoral authority in the polling stations.

The votes cast in the election for President, Senators and Federal Representatives, are received and counted by citizens who were randomly selected and trained by the IFE. The Institute trained 2,266,541 citizens as polling station officials, and 499,163 of them performed as polling station officials on Election Day. Both the selection of citizens and their training are regulated by the law.

Therefore, the citizens become the authority in charge of implementing the Election Day in every polling station of the country. Polling stations on Election Day were overseen by 393,126 political parties' representatives, as well as by national electoral observers. In 2006, there were 25,321 national observers and 693 international visitors. Some of the most relevant international missions to observe the Mexican Election Day in 2006 were: the Parliamentary Assembly of the Council of Europe observer delegation (PACE), the United Nations Development Program, Global Exchange, the National Democratic Institute, among others.

In this way, it becomes virtually impossible for the actors responsible for the instrumentation of the Election Day to favour or damage any particular political party or coalition.

In the conclusions and recommendations section of its report, the PACE observer delegation stated that “[the] Federal Elections in Mexico on 2 July 2006 were about the best organised and conducted elections the Assembly has ever observed [...] The run-up to the elections, albeit conducted in a tense and highly competitive atmosphere and at times marred by negative campaigning, was characterised by an unprecedented degree of transparency and public confidence in the political process.

(<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc06/EDOC11016.htm>)

b. Election Organisation Logistics

The IFE deployed and coordinated a huge logistic effort in every corner of the country, and its information networks showed that the institute fulfilled its own organisation and operation goals. Some of the most remarkable figures are presented below.

The Electoral Roll was the one with the largest coverage in the history of Mexican elections. For the federal elections on 2nd July 2006, the Electoral Roll was integrated by 71,730,868 citizens, which accounts for 95.41 per cent of the population in age of voting. The current total population in Mexico is estimated in 105.3 million (Mexico's National Council of Population, CONAPO).

Only 11 out of the 130,488 polling stations approved by the IFE's General Council were not installed, which represents the lowest number, in absolute and relative terms, of the last five elections (see Table 1).

Table 1. Approved, installed and not installed polling stations in the elections of 1994 to 2006

Election	Approved polling stations	Installed polling stations		Not installed polling stations
		Number	%	
1994	96,415	96,393	99.98	22
1997	104,716	104,595	99.88	121
2000	113,423	113,405	99.98	18
2003	121,367	121,284	99.93	83
2006	130,488	130,477	99.99	11

Source: IFE's Executive Office for Electoral Organisation

Regarding party financing, the electoral law establishes that political parties are basically financed with public resources. The advantages of public resources are that they foster competition equity, avoiding the excessive influence of private financing, and make more transparent the origin of the resources spent by the political parties. During 2006, political parties received 386.6 million dollars as financing for its permanent ordinary activities and for campaign expenditures (see Table 2).



Table 2. Public financing to political parties in 2006 (million dollars)

Party	Permanent ordinary activities	Campaign expenditures	Total financing
PAN	51.95	51.95	103.9
PRI	57.32	57.32	114.65
PRD	33.71	33.71	67.42
PT	12.62	12.62	25.24
PVEM	17.81	17.81	35.64
Convergencia	12.43	12.43	24.88
NA	3.72	3.72	7.43
PASC	3.72	3.72	7.43
Total	190.5	190.5	386.61

Source: IFE's Executive Office for of Political Parties Financing.

To provide information on the results of the elections of July 2nd, the IFE had three mechanisms: quick count, Preliminary Electoral Results Program (PREP) and district level counting. Even when the results are based on different methods, they showed results that were consistent with each other.

Table 3. Comparison between the election results for the two main political powers (Quick Count, PREP, district level counting and final counting of the Electoral Court)

	 PAN	 CPBT	Difference
Quick Count			
Classic Method	35.68 - 36.53	34.97 – 35.7	Intervals overlapped
Robust Method	35.25 – 37.4	34.24 – 36.38	Intervals overlapped
Bayesian Method	35.77 – 36.40	35.07 – 35.63	-
PREP	36.38	35.34	1.04%
PREP (including inconsistency statements)	35.91	35.29	0.62%
District level counting (IFE)	35.89	35.31	0.58%
Final counting (Electoral Court)	35.89	35.33	0.56%

c. Previous political context affected the post election scenario and the incentives to accept the results

In order to fully understand the development and outcome of the Mexican electoral process in 2006, it is necessary to set out from the fact that the election was shaped by a political situation which was characterised by the junction of several factors never seen before in the Mexican political arena.

In first place, this was an election with early political pronouncements and positioning. As an example, since the second semester of 2003, several surveys which talked about the electoral strength of feasible candidates for the Presidency begun to be published.

A second factor which had an incidence in the attitudes and perceptions on the electoral process was the confrontation between different political actors. In 2005, the process of impeachment against Mr López Obrador, then Mexico City's Mayor, divided the political environment. Had the legal proceedings continued, they would have legally prevented him from being a presidential candidate.

Political context shaped players' attitudes and strategies, especially in the post-electoral stage. The 2006 election in Mexico shed light to the fact that the more conflictive the political context is, the less likely players are to abide by the outcome. Political context can also affect voters' perceptions regardless of the evidence.

d. Margin matters

The difference between the first and second place, according to the final count of the Electoral Tribunal, was of 0.56% of the cast votes. This difference contrasts with the previous two Presidential Elections organised by the IFE. In 1994, the winning candidate (PRI) surpassed the results of the second place (PAN) by a 23.4% of the cast votes. On the other hand, in the election of 2000 the candidate of *Alianza PAN-PVEM* surpassed the results of the PRI candidate by a 6.4%.

Tight elections affect the political strategies of the contenders and these likewise impact the attitudes and perceptions the society has of the electoral system and democracy as a whole. Tight margins have a tendency to generate controversy and conflict both in consolidated democracies and those which are in the process of being consolidated. The passions raised by a closely fought campaign may be harder to manage. However, very narrow results can be accepted as legitimate by contenders, but this culture of acceptance is constructed over time and demands the responsibility of actors involved.

e. Fraud accusations may have an impact notwithstanding the lack of evidence

After the election, three imprecise ideas about the handling of the information on the part of IFE regarding the electoral results were disclosed.

The first of those ideas suggested that the IFE decided not to disclose the results of the IFE's quick count on July 2nd. A quick count is a statistic exercise to know the presidential voting tendencies on the very Election Day.

The data, from which the IFE's quick count was carried out, were the results of a set of 7,281 randomly chosen polling stations. However, the confidence intervals of the candidates which obtained a greater number of votes overlapped; hence it was not statistically possible to identify the candidate who obtained more votes.

The second statement is that IFE did not duly inform the public opinion about a special file of the Preliminary Electoral Results Program (PREP).

The PREP is a system which concentrates the results of 85-95% electoral polling stations in real time. It is consulted via Internet and concentrates preliminary results which are not considered official. In order to obtain the PREP information, the IFE uses a 'PREP tally sheet', which has no legal value and is not the official tally sheet used in the district level counting. The district level counting uses the official tally sheets, which are fulfilled by the citizens on the very Election Day. The PREP's objective is to offer citizens an instrument of electoral transparency to check the results of most of the polling stations (typically 90%) during the Election Day.

The IFE and the political parties agreed, as of 10 February 2006, that in the case that PREP tally sheets presented errors in their filling, the system would send them to a file different from the number accumulated by PREP. The PREP website included a hyperlink to show such file to the public. The representatives of the political parties consulted, as of 6 p.m. on July 2nd, in more than 800 occasions the information stored on that file.

Political parties were informed at every time of the reason those votes were stored on a specific PREP file. Notwithstanding, one of the candidates for the Presidency declared that there were "2 million votes lost", which were roughly the votes contained in that special file.

f. Equity in the electoral process

In 2006 several electoral issues, on which the rules are not very clear, or else, on which the IFE has not enough legal faculties to take care of, acquired special relevance. With the aim of filling several voids in the electoral law in force, the IFE approved several measures to strengthen the equity and transparency of the election process, among which the suspension of campaigning "Christmas ceasefire", the neutrality agreement, the monitoring to newscasts and to spots of political parties stand out.

The “Christmas ceasefire” was an agreement of the General Council of the IFE for the political parties to abstain from making electoral proselytism acts during the period of 11 December 2005 to 18 January 2006. This agreement had the purpose of thwarting any possible anticipated positioning by some of the contenders, in order to strength the equity in the election process.

On the other hand, the neutrality agreement was approved in order to avoid that, 40 days before the Election Day, the holders of the federal, state, and municipal executive branches carried out supporting works or propaganda in favour of certain political parties or candidates, such as publicised public works, social development programs or their own image.

As of the beginning of the electoral campaigns and until June 28th 2006, the IFE monitored different newscast and special political discussion programs in order to verify the treatment that was given to electoral campaigns. A total of 77,000 hours were recorded. The results of this monitoring allowed to confirm that there was predominance of a balanced treatment among the main contenders.

During the electoral campaigns (from 19 January until 29 June 2006) the IFE carried out sampling monitoring of spots in radio and television, press releases and large billboards in the public roads. The three main contenders used radio and television time to promote their candidacies in an extensive and fairly balanced way.

g. Old rules, new problems

The challenges that the IFE encountered in 2006 were fundamentally a result of the gap between the existent regulation and the reality when it came to the electoral process. The dilemmas that the IFE and the Electoral Court faced in 2006 revealed the importance of carrying out a review of the electoral law that contained legal provisions which date from 1996. The review of these legal provisions was especially needed regarding neutrality of public officers and negative campaigning, which were two highly controversial issues in the electoral process 2006.

3. Electoral Constitutional Amendment

The last election confirmed that there was a need for an electoral amendment in order to provide the electoral authority with the adequate tools to face new problems.

From September to October 2007, the Mexican Congress and the majority of Local Congresses approved an electoral amendment to the Mexican Constitution and, correspondingly, to the electoral law. The electoral amendment includes several elements which contribute to foster the equity during the electoral processes:

- a. The amendment establishes competition standards to be implemented within the political parties, which generate greater certainty and equity in matters such as duration and spending limits during the internal selection of candidates.
- b. The prohibition of using the image of the president, governors and mayors in governmental advertisements avoids the use of public money to promote the personal image of public officers with political aspirations.
- c. The prohibition to broadcast government advertisements during the electoral campaigning period promotes electoral equity since it prevents the federal and local governments from influencing the electorate in favour of a given candidate or political party.
- d. The IFE will have more and better legal instruments to enforce constitutional provisions, which shall provide a better efficacy to electoral arbitration.
- e. Political parties will have free-of-charge access to the media, which eliminates commercial hiring and private negotiation between political parties and the electronic media. This measure shall improve the transparency of the expenditures during the political campaigns.

Notwithstanding that the electoral reform contains positive elements, it includes also some drawbacks. For instance, it modified the Constitution to set the removal of the electoral councillors before their constitutional tenure finished in 2010. This situation may negatively affect the autonomy and independence of the Federal Electoral Institute before the political parties. The precedent that the councillors may be removed due to political reasons and not legal causes (impeachment trial) was set.

4. Concluding remarks

As of its creation in 1990, the IFE has organised six federal elections with trustful results. Each election has left important experiences which have been useful in order to improve the following ones. In fact, the election of 2006 has been the best organised according to several indicators. It has also been the most competitive and controversial of all. The IFE is committed to transform the acquired experiences into learning for the future.

The Congress, from last year's experience, has implemented measures that were necessary to strengthen equity for the upcoming electoral processes and has sorted out several aspects of the electoral arbitration which turned out to be controversial in 2006. The approved amendment should be evaluated according to the experiences in future electoral processes.

**COUNCIL OF EUROPE STANDARDS ON COMPLAINTS
AND APPEALS PROCEDURES**

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Together with human rights and the rule of law, democracy is one of the three pillars of European constitutional heritage. At the same time democracy is inconceivable without elections held in accordance with certain principles.

European electoral heritage is based on five fundamental principles: suffrage must be universal, equal, free, secret and direct.¹

But for the elections to be really democratic, it is not enough to have only a good normative basis, which declares the above fundamental principles.

Active and passive election rights are established in Article 3 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms. Although the number of matters, reviewed by the European Court of Human Rights on the basis of the above Article is not great, the Strasbourg Court has established several principles, which shall be taken into consideration when taking decisions on the validity of restrictions to election rights. Even though the election rights are not absolute, and the states enjoy rather broad discretion when determining restrictions, the restrictions are to have a legitimate aim and shall be determined by law, at the same time the measures for reaching that aim shall be proportionate, besides there shall be guarantees for averting arbitrariness of their application and in the whole process of elections.

¹ See Code of Good Practice in Electoral Matters, Collection, Science and technique of democracy, No. 34, p. 19; Europe's electoral heritage CDL(2002)007rev, p. 10; Draft Convention in Electoral Standards, Electoral rights and Freedoms CDL-AD(2004)010, §. 57.

The Code of Good Practice in Elections was adopted by the European Commission for Democracy through Law at its 52nd Plenary session (Venice, 18-19 October 2002). These guidelines provide that as procedural guarantees for implementing principles of European electoral heritage every state must establish an effective system of appeal (Chapter 3.3)

The appeal body in electoral matters should be either electoral commission or a court, but in any case, final appeal to a court must be possible.

Historically there exist two models for verification of the rightness of the elections and the obtained deputy mandates in the world. Historically the first model is characterised by the fact that the Parliament itself carries out the process of verification. My State – the Republic of Latvia - also has implemented this model, because the Article 18 of the Satversme (Constitution) determines that “The Saeima (the Parliament) itself shall review the qualification of its members.” In the above model the control of rightness of the elections is political. The deputies authorise their mandates by vote and thus any discussion on illegality of the Parliament is excluded.

Today the second model dominates – verification of the results of the elections by court. In Latvia corresponding amendments to the Saeima Election Law have also been introduced. Thus, the decision of the Central Election Commission about registration of the candidate list (or polling paper) or the refusal to do it, as well as deleting the name of a candidate from the list may be appealed against at the Administrative Regional Court during three working days after adoption of the decision. The court in the body of three judges shall review this matter. The court ruling shall be passed within seven days.

In its turn, the decision of the Central Election Committee by which the complaint of the applicant on the lawfulness of the protocol on counting of votes has been rejected as well as the decision on approval of the election results may be appealed against at the Supreme Court Administrative Cases Department within three days after the adoption of the Central Election Committee Decision. Even in this case the court ruling shall be passed within seven days.

In other states the results of the elections may be contested at the Constitutional Court. Thus, for example, complaints on the legality of the elections of the State President or the Parliament as well as the results of the referendum are reviewed by the Constitutional Courts in Albania, Armenia, Bulgaria, Georgia, and Lithuania.

In several district lands of the German Federative Republic verification of the election results is carried out by the Landtags themselves (for example in Baden-Wurttemberg, Brandenburg, Hamburg), but their decisions may be appealed against either at the Land State or Constitutional Court. In several Lands of the German Federative Republic specific courts are formed at the Landtags (for example in Bremen, Hessen), the decisions of which may be appealed against at the Land State Court.²

One has to mark that such an approach meets the requirements of the Code of Good Practice in Electoral Matters – “Appeal to Parliament, as the judge of its own election, as sometimes provided for, could result in political decisions. It is acceptable as a first instance in places where it is long established, but a judicial appeal should then be possible.”³

“The effective system of appeal about local elections should be also provided and regulated by law. The procedure must be simple and devoid of formalism.”⁴

Thus, the Republic of Latvia Election Law on City and Town Councils envisages extensive possibilities of submitting complaints on different stages of the course of election. Thus the third Paragraph of Article 35 of the above Law establishes that “Voters may submit complaints about the procedure of the election to the Chairman of the Election Commission and they shall be filed with the minutes on the course of the election. Any complaint about the course of the election shall be immediately examined and a reply shall be given to the person, submitting the complaint, and the context of the complaint shall be filed with the minutes about the course of the election”.⁵

² See, Розмари Вилль. Практика Конституционных судов Германии по избирательным делам – Политические права и свободные выборы – Сборник докладов. М. Институт права и публичной политики.

³ See: Code of Good Practice in Electoral Matters, p. 42.

⁴ Ibidem, p. 16.

⁵ See: The Election Law on City and Town Councils, District Councils and Pagasts Councils.

In its turn, Article 22¹ of the same Law determines that the decision of the respective Election Commission on acceptance of the candidate lists or refusal to accept them, as well as the decisions on deleting a name of a candidate from the registered candidate list may be contested at the Central Election Commission within three working days from the time of receiving the particular decision. The Central Election Commission shall review the complaint and reach its decision within three days from the time of receiving the complaint. Within three days the decision by the Central Election Commission in its turn may be appealed against at the Administrative District Court. This Article also establishes what activities shall be undertaken by the respective Election Commission to realise the court judgment.

The Law also establishes that after completing counting of the votes and signing the protocol, within three days the submitters of the candidate lists as well as the nominated candidates may contest the protocol at the Central Election Commission, which shall review the complaint and adopt the decision also within three days. Within three days the decision of the Central Election Commission about the protocol of counting of the votes may be appealed against at the Administrative Regional Court. The Court shall review the complaint within seven days. If the Court establishes that violations of the Law, which have affected the distribution of number of deputies between political organisations (parties), their unions or voter associations, have taken place, it annuls the decision on confirmation of the results of the respective election district and either requires the particular Election Commission to count the votes again or asks the Central Election Commission to announce that the election shall be repeated. It may take another decision as well.

If the Court judgment, by which the decision of a respective Election Commission on confirmation of the results of the Dome (Council) elections is revoked, has taken effect and it is decided to announce repeated elections, the Central Election Commission under the procedure established by the Law has to announce repeated elections of the respective Dome (Council).

Article 47 of the Election Law on City and Town Councils establishes that persons, who have hindered citizens from participation in the elections, or from conducting campaigns through violent means, threats, bribery or any other illegal means, and Election Commission members, State or political organisation officials, who have forged election documents, deliberately counted the ballots incorrectly, avoided to follow the secrecy of voting or otherwise violated this Law, shall be held responsible as prescribed by law. After the convicting judgment in a criminal case on violations of election

rights has been received, the respective Election Commission shall assess whether the distribution of places has been affected during the particular elections. It shall take the decision either to redistribute number of places between the registered for the respective elections candidates or not to do it. The decision may be appealed against within ten days at the Central Election Commission. It shall pass its decision within three days. The decision of the Central Election Commission may be appealed against at the Administrative Regional Court within three working days.

As you see, the Republic of Latvia Election Laws comply with the European Code of Good Practice in Electoral Matters, especially as concerns introduction of an effective system of appeal.

The Code established that a body for appeals should either be electoral commission or a court, but in any case there must be a possibility for a final appeal to the court. The appeal body must have authority in particular over such matters as the right to vote – including electoral registers- and eligibility, the validity of candidatures, proper observance of election campaign rules and outcome of the elections. Item “e” of Chapter 3.3 also provides that appeal body must have authority to annul elections where irregularities may have affected the outcome. It must be possible to annul the entire election or merely the results for one constituency or one polling station.⁶

It should be observed that by the Venice Commission on the basis of contributions by Mr Francois Luchaire (Andorra), Mr Giorgio Malinverni (Switzerland) and Mr Pieter Van Dijk (Netherlands) Draft Guidelines on the Holding of Referendums have been worked out. These Guidelines in Chapter 3.3 also provide an effective system of appeal.⁷

Draft Convention on Election Standards, Electoral Rights and Freedoms in its Article 18 “Complaints against and Responsibility for Violation of Electoral Rights and Freedoms” also provides that national constitutional, civil, administrative and criminal judicial procedures shall ensure the legitimate and public nature of elections: the protection and realisation of electoral rights and freedoms of citizens, candidates and political parties (coalitions) participating in elections, as well as other election candidates.⁸

⁶ See Code of Good Practice in Electoral Matters, p. 17.

⁷ CDL–EL(2006)024rev. 2.

⁸ See CDL(2003)057.

Convention on the Standards of Democratic Election, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States in Article 16 “Complaints about and Responsibility for Violation of Electoral Rights and Freedoms of Citizens” also provides some programmatic but not detailed provisions in this field.⁹

The Venice Commission in its activities has rendered really important assistance to many Member States of the European Council in the process of elaboration of new and democratic election laws or their perfection so that they would comply with the European principles and standards of democratic elections. Assistance to Member States is being rendered also in the process of implementation of Council of Europe General Standards on Complaints and Appeals Procedures.

⁹ See CDL–EL(2006)031; See also Opinion on the Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms on the Member States of the Commonwealth of Independent States adopted by the Venice Commission at its 70th Plenary Session (Venice, 16–17 March 2007) on the basis of comments by Mr Christoph Grabenwarter (Member, Austria; CDL–AD(2007)007).

**FIGHTING ELECTORAL FRAUD:
SPECIALISED BODIES OR ORDINARY COURTS?**

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I. Introduction

The right to elect and to be elected is one of the fundamental rights of citizens to participate in the government by their own freely expressed will through the act of voting. This is of great significance for democratisation of the election process, and also for democratisation of the society as whole. This is especially significant in societies, that is, countries which are in process of transition in the fundamental social-economic relations towards market economy, which means rule of economical legitimacy, and more importantly, the rule of law. Certainly transition happens and should happen in all institutions of the political system (parliament, executive, administrative, court, repressive bodies, etc.). That also means adequate behaviour of every citizen as an individual and member of a collective of any kind.

Here we are especially interested in:

- Is the will of citizens completely expressed in the election process?
- Are representative bodies and to what extent, by legal solutions, due to imprecise legal norm not wanting or perhaps with an intention, leaving possibility of abuse of voting right, that is electoral fraud?
- Are there legal mechanisms in place, that is, legal framework that guarantees freely expressed will of the citizens?
- How are members of electoral bodies appointed? Those members, who should ensure free expression of will at the elections and who should respect freely expressed will. According to principles of: expertise, transparency and especially independence from political influence of any political party, both those in power as well as those in opposition; or is politically influenced creation of election management bodies creating conditions for breach and lack of realisation of the electorate's will, namely the will of citizens?

- What is the role of second instance bodies in protection of the election right?
- What is the role of the media, independent organisation and civil society?
- What is the role of observers in monitoring and observing the voting, work of the election management bodies and the election process in whole?

These are only some of the questions to which answers must be provided in order to create effective mechanisms (legal and institutional) in fighting electoral frauds. Why is this important? This is important because of one very simple reason!

First of all for ensuring freely expressed will of the citizens at the elections, as one of the most important tests of the democratic development of every society. Without adequate legal and institutional solution in the segment of electoral right protection, we cannot talk about free, fair and democratic election. We can formulate the question in another manner. Can we even talk about free, fair and democratic elections if we do not have adequate legal and institutional framework disabling electoral frauds?

Further in the text I will make comparative analyses of legal solutions in Bosnia and Herzegovina and in the surrounding countries. Why Bosnia and Herzegovina and surrounding countries? First of all, because for the last 10 years I have been an active participant of all elections held in Bosnia and Herzegovina (as member of Provisional election commission of the OSCE Mission, as its first President, and later on as member of the BiH Election Commission and as the President of the Election Appeals and Complaints Council) and because I am very familiar with the matter and because those are the countries in transition in which it is necessary to send a clear message to citizens, though election process, that without democratisation of the election process, without democratic and fair elections, and without consistent respect of the citizens' will expressed at the polling stations, there is no democratisation of the society as whole.

II. Legal Framework

1. Bosnia and Herzegovina

The Election Law of Bosnia and Herzegovina stipulates that protection of election right is ensured by election commissions and Appellate Division of the BiH Court. Municipal Election Commission have first instance competence over decisions on complaints submitted for violations at the polling stations at the Election Day, as well as for violations of behaviour rules by political parties, coalitions and independent candidate (there are certain exceptions for which first instance competence rests upon the Central Election Commission (CEC)).

All decisions of the municipal election commission can be appealed with the Central Election Commission as a second instance body. Decisions of the BiH CEC can be appealed with the Appellate Division of the BiH Court, whose decisions are binding, final and executive. In this manner two-instance process is ensured and international-legal standards are satisfied. However, practice and experience indicate that in certain cases established legal solutions are not sufficient to ensure full legitimacy of the election process.

Namely, according to the BiH laws, municipal election commission are obligated to submit complete voting material to CEC 24 hours after closure of the polling station, which disables them to appropriately decide on submitted complaints, because they cannot review material, which is the subject of the complaint. Such legal provision, in my opinion, leaves enough possibility for electoral manipulations by the members of the polling station committees, who are aware that municipal election commissions, as first instance bodies, cannot completely ascertain the facts and base their decision on that. Practice shows that such complaints are mostly rejected as “unfounded”. On the other hand, because of the time pressure and the deadlines in which BiH CEC must pass a decision on appeal submitted on the decision of first instance body, the Central Election Commission does not use all envisaged mechanisms when passing a decision, as hearings, witness statements, etc. In this manner and without a clear intention, a message is being sent that certain irregularities will not be sanctioned.

Provisions of the BiH Election Law which stipulate that elections will be annulled only if established irregularities can affect results of the elections also enable certain irregularities. I am completely aware that results of the elections must be announced as soon as possible in order to constitute a government by the will of citizens expressed at the elections. Also I am convinced that the citizens' confidence in election system, sanctioning of electoral fraud and annulment the elections where fraud is observed, is the only guarantee of democratic elections and a guarantee of the increased interest of citizens to participate in the election process and even better turnout at the elections. Therefore, it is my opinion that one must contemplate as to form such legal presumptions, which will make annulment of elections possible even in the situation when irregularities do not substantially affect the results of the elections. Every observed irregularity should be sanctions and achieve clear and democratic solution.

2. Republic of Croatia

In the Republic of Croatia constitutionality and legitimacy of the elections is monitored by the Constitutional Court of Republic of Croatia. Constitutional Court of Republic of Croatia also settles electoral disputes, which are not under competence of courts, taking a decision on the appeal submitted to the decision of the competent election commission. Same as in Bosnia and Herzegovina, electoral legislation stipulates annulment of elections in cases when observed irregularities substantially affect the results of the elections.

As the second instance body in protection of the election right there is the Constitutional Court of the Republic of Croatia.

Election legislation of the Republic of Croatia established the Ethic commission, as supra-party body of recognised public reputation, which by statements and warning affects promotion and achievement of ethic and democratic principles in the elections. This commission assesses behaviour of participants in the election process and conducts non-administrative monitoring of election campaign. Members of the commission are appointed by the Constitutional Court, and the president is the President of Croatian Academy of science and art. Competence of this commission is also adoption of Electoral ethic code, which stipulates rules of behaviour for individuals and political parties in the election campaign and the election procedure.

Establishment of such apolitical body, which is to promote ethical and democratic principles in the election process, can be a good example for prevention of the electoral frauds.

3. Republic of Serbia

According to the Law on election of delegates the protection of the election right in the Republic of Serbia is ensured through republic election commission and the Supreme Court of Serbia, as the second instance body. The right to submit a complaint has every voter, candidate and submitter of the election list for violation of the election right during the elections or due to irregularities in the appointment/election procedure.

In the Republic of Serbia, similarly as in the Republic of Croatia, the law has stipulated formation of a Monitoring Board, which main task is to monitor actions of political parties, candidates and the media during administration of the elections. In cases when this board observes certain irregularities, it gives initiatives for a proceeding before competent state institution.

Existence of such bodies can contribute to the democratisation of the election process in whole and prevent electoral frauds.

4. Republic of Montenegro

According to the Law on election of delegates of the Republic of Montenegro, the protection of the election right is ensured through competent election commissions, Republic election commission and Constitutional Court of the Republic of Montenegro, as the last instance in protection of the election right.

III. Practice

At local elections held in Bosnia and Herzegovina in 2004 electoral frauds had been observed at more than 30 polling stations, whereof only in Zvornik municipality electoral fraud was observed at 29 polling stations. In this municipality it was a classical form of fraud, where one of the fundamental postulates of democratic elections “one man-one vote” was breached.

Who did or made possibility for this electoral fraud? Members of the polling station committees, who should have been the pillar of legality and legitimacy at the Election Day.

I find that, if we ensure good legal solutions, members of the polling station committees are the ones in the whole election process who to a great extent decide whether there will be electoral frauds at the Election Day or not. What was undertaken against members of the polling station committees for whom it was ascertained that they participated in the electoral fraud. Their work in the election administration bodies was forbidden and criminal charges were submitted to the competent prosecutors' office. Were criminal charges submitted? The answer is NO. I think that we here arrive at the crucial question and the crucial answer. The fact that perpetrators of the election fraud are not sanctioned brings into questions the legitimacy of election process and an unequivocal message is being sent ELECTION FRAUD IS NOT PERMITTED, but at the same time IT IS NOT SANCTIONED.

In processing electoral frauds when compared with Bosnia and Herzegovina, Republic of Croatia went a step further. At the 2005 presidential elections in the Republic of Croatia, State Prosecutor's Office of the Republic of Croatia decided to initiate an investigation for abuse of electoral right and electoral fraud against unidentified perpetrators in the area of municipalities in Bosnia and Herzegovina (according to the election legislation of Republic of Croatia, citizens of BiH who hold Croatian citizenship can vote at the elections in Croatia). It had been ascertained that during the elections in Croatia in January 2005, deceased persons were registered in the voters registers. Decision on investigative actions with which individual responsibility or responsibility of the organisation suspected of electoral fraud would be ascertained, according to opinion of many was passed by the State Prosecutors' Office after media pressure, especially by GONG, non-governmental organisation entrusted with monitoring of elections in Croatia. State election commission of Republic of Croatia identified 71 persons as perpetrators of the electoral fraud. After conducted procedure 4 persons had been validly convicted, against 25 persons criminal proposals were submitted, while criminal charges were rejected in 35 cases. This example clearly illustrates efficiency of judicial institutions in processing and punishing electoral fraud. At the same time it clearly shows cooperation of all state institutions in exercise of their constitutional and legal powers, but also significance of nongovernmental sector's role in democratisation of election process and establishment of rule of law.

Browsing the internet one can see that electoral frauds are also present in countries of developed democracy. I recall the electoral frauds in the Great Britain in 2005, which had been mostly successfully sanctioned. Namely, at those elections there was a record number of voters registered to vote by mail, what, according to British public opinion and opinion of political parties' representatives, strengthen presumptions for easier electoral frauds. Polls that were at that time led in 135 constituencies by one of the leading print media showed that number of applications for by-mail voting was increased, and in the cities u inland even tripled. Some cases, which were processed in courts, showed that there were false filling in of applications for by-mail voting.

IV. Factors which anticipate electoral frauds

Which factors can assist or slow down and make impossible democratisation of the election process, and support electoral frauds, namely which factors have determining influence on that process?

- Place, role, rights and responsibilities of representative body-parliament as a legislative body, which passes election law and other regulations referring to the election process, and especially to the elections of members of the election commissions;
- Also executive and administrative bodies, which need to ensure conditions for efficient and successful work of election administration bodies;
- Competent judicial bodies which pass legal advice on possible appeals or prosecution;
- Public and private media: electronic and print media, which can by objective and true reporting to the public influence both positively or negatively democratic development of the election process;
- Special role and responsibility of political parties, as well as of independent candidates and candidates on independent lists.

What weaknesses are manifested in Bosnia and Herzegovina and in our surrounding in the sense of above-mentioned factors?

It can be concluded that in acts (laws and other) of the parliament a significant contribution to democratisation of total election process is given. Nevertheless, it also must be concluded that party influences are not completely or adequately eliminated in the parliament's acts. That is shown in some important elements of the election process, as who comprises election body, manner of drafting voter register and especially in the election of the members of the state election commission, where unfortunately still determining party affiliation and deals of certain political parties to elected evident or hidden party candidates on the cost of expertise, independence and competence for conduct of such a very responsible work.

Relation and action of executive and administrative bodies, especially at lower levels of authority, can be characterised as inadequate and insufficient. As the election is not their primary task.

Our experience shows that judicial bodies (mostly) timely react and on time pass decisions stipulated by the law.

Electronic media, especially, public media, as indicated by experience, report more or less successfully correctly and objectively about the most important events in the election process.

In the newspapers, those privately owned, there is a great presence of things that are not objective. On contrary, there is a lot of incorrect and false information. Such media are acting as sympathisers, not only during the elections but continuously, and in that manner support electoral fraud by their actions.

Political parties are both in electoral process and outside it behaving according to their internal organisation and degree of democratisation of the parties themselves.

In my opinion and such opinions are heard more often from political scientists and others familiar with party theory, new political parties more or less function on the principles of earlier political parties. Improvements are small as well as their steps in their democratic set-up, development and acting.

On stage we have systematic concentration of political power and decision making in the hands of the closest bodies of the political parties and more often in the face of party's president. That is known reduction of members' participation in setting politics, political program, and especially in every day

activities and decision making. Members once in four, three and in the best case two year elects members for election convention. The convention elects the main board and at the end the president of the party is the one to decide on all concrete issues. The president comprises election list, determines positions on the list, and by that the possibility of being elected, constitutes government, autonomously and authoritatively speaks in public on all issue, and publicly corrects statements of certain minister and other state officials. In one word, acts like a chancellor even more than in countries there are chancellors as institutions of the system.

Not accidentally, at the end of presentation I will say something about shown negative instances, which basically, mean neglecting voters' will, and rarely imposture of voters. In the other words, they represent electoral fraud.

I say not accidentally, because if such instances are not efficiently disabled, they can have serious and far-reaching consequence on overall electoral process, and can especially influence constant increase in voters' abstinence and their lack of interest in the elections.

Namely, when forming bodies of executive and administrative authority at all levels coalition of parties are being formed, having different opinions on crucial issues of development of the country and the society in their programs with main and only aid to exercise authority. Individuals elected on the lists of "their" party go to another party in forming parliamentary majority. This is especially evident with independent candidates and independent lists, which ensure that concrete political party forms executive authority, even though for that it did not receive the mandate- trust of the citizens, voters. For such a behaviour, they are awarded with ministerial or similar position in the system or with some other benefit.

I am not certain that it would be possible to prevent all mentioned weaknesses with election law or any other regulation, but some as: voters register, composition and manner of appointment of election administration bodies, transfers from one to another party, should regulated by law.

I am convinced that if we make legal framework, which disables electoral frauds, the only manner of fighting electoral frauds is professionalism, expertise, and above all independence of bodies for administration of election. Then it is completely not important whether there are regular courts or some special body involved.

V. Conclusions

I would end my presentation with the following:

- Members of the elections commissions should not be in the service of any political party. They must be in service of citizens-voters, in service of democratic electoral process. They must not be in the service of daily politics, which would favour any political party, not in a slavish role by which the attempt is being made to manipulate citizens-voters and the election results;
- Members of the polling station committees and other election bodies implementing elections and participate in ascertaining the election results should conduct their work completely knowingly, responsibly and transparently;
- Appellate bodies at all levels should be independent. They have to be competent and authoritative bodies and pillars of the legal state. This especially and with emphases refers to appellate bodies at courts-mirror of the legitimacy and guarantee of the rule of law, all important presumptions of democracy.

**CHALLENGES POSED BY DISTANCE VOTING IN GENERAL:
POSTAL VOTING AND IN PARTICULAR, E-VOTING**

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I. Introduction

Democracy in its various forms, with free and equal elections and free speech, has become a major factor in maintaining the stability of countries worldwide. Although the number of countries ruled by democratic structures has steadily increased since the Second World War and the end of Communism, voter turnout and satisfaction with these systems has steadily decreased (United Nations Development Programme, 2002). Unlike democracies in transition, which increased their turnout at one point in the 1980s to over 80%, but have since decreased to 70%, established democracies have consistently lost voters since 1945 and have reached levels that were formerly only seen in transition countries, according to a worldwide 2002 IDEA study on voter turnout (Pintor and Gratschew, 2002).

Increased mobility of voters has also contributed to lower voter turnout, both inside (especially in urban areas) and outside the country limits. Many governments have therefore increased their efforts in the area of distance voting, hereby increasing access to the electoral process for their citizens.

Before we can discuss distance voting in detail, we need to have a look at the general electoral process. The most widely accepted standard was passed in 1966 by the United Nations, who facilitated the agreement on the International Covenant on Civil and Political Rights (UNHCR, 1966). Article 25 defines eight principles for elections that depict the whole electoral process: (i) periodic elections, (ii) genuine elections, (iii) stand for election, (iv) universal suffrage, (v) voting in elections on the basis of the right to vote, (vi) equal

suffrage, (vii) secret vote, and (viii) free expression of the will of the voters. Suksi (2003) groups these principles into a cycle consisting of three periods:

1. Pre-Election Day: This is the time from calling an election until the actual start of the polling.
2. Election Day: This is the actual election day(s) on which casting votes takes place.
3. Post-Election Day: This is the time during which the results are announced and the time until a new election is called.

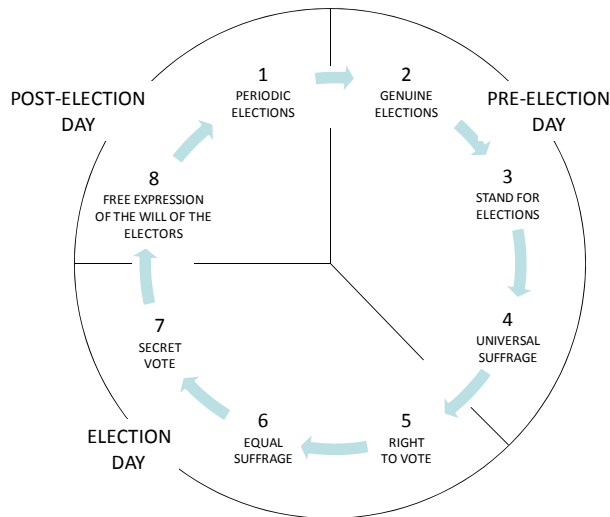


Figure 1: Electoral cycle (Suksi, 2003)

The electoral process usually takes place at polling stations and is supervised. This can be referred to as presence voting. But there is also the possibility of distance voting. The criterion used to differentiate between the two is whether an election commission supervises the act of voting or not (Krimmer, 2002). At presence elections, the voter comes to the polling station where the election commission checks the voter's identity and eligibility and ensures anonymity when casting the ballot. When the election is concluded, the election commission counts the votes. With distance elections, the identity and right to

vote is checked beforehand or remotely and the voter is responsible for making sure that her/his anonymity is not compromised.

The Internet, which emerged in the early 1990s, has begun to complement the “old” medium of paper. Distance voting includes postal and internet voting. The biggest advantage of the Internet to paper is its truly global approach. Information can be transported anywhere in real-time. This has consequences for the timing of the electoral process. There are three main tasks in the electoral process: (i) sending voting material, (ii) casting the vote, and (iii) collecting and counting the votes. With postal voting, casting the vote takes place before the main Election Day (when the polling stations are open). On Election Day, postal votes may be cast if the laws provide for counting several days after the election. With Internet voting, the time issue is less pressing. Voting material¹ is sent before the election and, if allowed, vote casting may also begin. On Election Day, both the casting and counting of votes may happen.

Form \ Period	Pre-Election Day	Election Day	Post-Election Day
Postal Voting (PV)	Sending VM Casting the vote	Casting the vote Counting of the votes	Counting of the votes
Internet Voting (IV)	Sending VM Casting the vote	Casting the vote Counting of the votes	-

Figure 2: Matrix of the electoral process and distance voting

In this paper, we will discuss the major advantages and challenges that need to be overcome both for electronic- and paper-based distance voting.

¹ Depending on the system (see Krimmer 2006 for an overview of different e-voting solutions).

II. Distance Voting

The definition of distance voting states that the voter casts her/his vote in an environment where no election commission or poll workers are present to ensure the proper proceeding of the voting process; moreover, no polling booth is installed to provide a secret environment.

With presence voting, officials ensure that the voter can cast her/his vote without being affected, coerced, or observed; thus, a free and secret election is ensured even for those voters who might want to show others how they voted. With distance voting, all of this responsibility is shifted to the voter.

1. Advantages

The introduction of distance voting is first and foremost related to the need of a country to fulfil the criteria of including all citizens, thereby fulfilling the criteria of universal suffrage. As standards for elections can never be 100% fulfilled, assessments must always be made as to which standard to emphasise. Using methods for distance voting allows for the inclusion of mobile citizens, whether they live outside the country or are just not present in their home town on Election Day. For countries introducing distance voting, universal access to elections is more important than the problems that arise from it.

2. Challenges

We will now discuss possible fraud in private environments to which the voter can be exposed.

The direct and secret election principle could be violated by someone else casting the vote on behalf of the voter because the voter chooses to sell his or her vote (vote buying). The freedom of voting and the secret election principle could be violated by someone observing the voter casting her/his vote and forcing the voter to make a particular choice. Coercion can either be direct (made by a particular person) or indirect (for example, several family members casting their votes together, thus influencing one's vote).

These are well-known problems. To stress the voter's responsibility, Austria demands a sworn declaration from the postal voter saying that the vote has been cast in person, unobserved and unaffected; similarly, Germany demands a sworn declaration from the postal voter saying that the vote has been cast in a secret environment.

The disadvantages discussed in this chapter are common for any form of distance voting. Both postal and Internet voting share problems related to the private environment, such as voter coercion and vote buying. However, the differences lie in the security mechanisms for the transportation and storage of the vote. These specific additional challenges are discussed in the following two sections.

III. Postal Voting

In general, postal voting works in the following way (see fig. 3). Where necessary, the voter sends a request to the election commission which checks the voter's right to vote and then sends the election material, including the ballot, an identification sheet and two envelopes. If a request is not necessary, the election commission sends complete election material directly to authorised voters. The voter then casts her/his vote by choosing her/his candidates and putting the voting sheet in the inner envelope. This envelope is sealed. Then, there is the identification sheet which, in some cases, needs to be signed. This sheet is put into the second envelope, together with the first one, and is also sealed. This envelope is sent to the election commission. There, the postal votes are stored until a particular date (often at the end of the Election Day) and then processed as follows: The outer envelopes are opened and the identification sheet is pulled out. The inner envelope is thrown into a ballot box and the identification sheet is used to label this person as an elector in the election register. Next, the anonymous envelopes in the ballot box are opened and the votes counted.

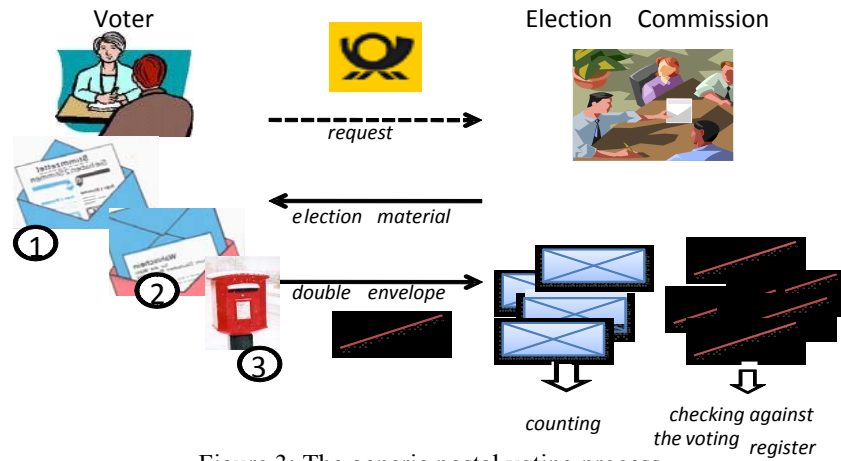


Figure 3: The generic postal voting process

1. Advantages

Postal voting has been used for a couple of years and has proven to be of value. For the voter, the process after casting the vote until the counting of votes is evident and similar to sending a letter or post card. Thus, voters use a medium with which they are already familiar and have used for years. The rising numbers of postal voters show that this process is accepted and established (Gratschew, 2006).

2. Challenges

The challenges of postal voting come especially from universal and secret suffrage election standards. One main challenge is ensuring universal suffrage with postal voting caused by sending the ballot and the vote by mail. In some countries, the first step is sending a ballot request to the election commission. While the reliability and delay of postal services in one's own country are well known to the election commission, conditions might be worse in other countries. Consequently, the postal voting process must start early enough to take into account any unforeseeable conditions. There are two possibilities for implementing the process. Either postal voters whose votes arrive before Election Day are counted or they can cast their vote on Election Day. However, this means the final tally cannot be computed at the end of Election Day because the postal votes will not arrive until a couple of days later. Both

have disadvantages. The first disadvantage is that the voter cannot react to short-dated political happenings and some voters might be excluded from their right to vote because their vote arrives too late. The second disadvantage occurs when results are delayed for several days which is not welcomed by the parties or candidates.

The postal service problems do not only address the delay but also its reliability. The general postal service does not provide a 100% guarantee. If one requires full reliability, then more expensive shipment options must be chosen. Combined with the large number of postal voters and the multiple shipments (requests, voting material and votes cast), this would make elections much more expensive. With the usual postal service, some of the shipments may never arrive at their destination. Thus, corresponding voters are excluded from the election or have to undergo a great deal of effort in order to get a second chance to vote.

There exists another disadvantage with regard to delays and the reliability of the postal service. This disadvantage is that the voter never knows whether her/his vote has been delivered to the election commission in time and has therefore been counted.

The second challenge is related to election secrecy which is ensured by the two envelopes (therefore, the envelopes must be thick enough that it would not be possible to read the content using a bright light source or other method) and the privacy of correspondence. Very few people, usually only those working for the postal service, have access to the envelopes. If one has access, it does not require any technical knowledge to open such envelopes in order to see how people voted (even in cases where you do not know them). Thus, only a couple of people can possibly break election secrecy. But, once the envelopes are opened, they cannot be closed in such a way that this intrusion remains undetected. Thus, the corresponding vote will not be counted.

Beside postal officers, the election commission can also break election secrecy by opening both envelopes at the same time. Therefore, the election commission must consist of people who control each other because of their different political interests. Thus, the voter needs to be able to trust that the postal staff and election commission will not open both envelopes at the same time.

IV. Internet Voting

Internet voting can be described on a higher level in the following way (see fig. 4): The voter needs a device (usually a PC) which is connected to the Internet. She/he uses the device to connect to the voting server. After successfully authenticating his/her identity (e.g., by a voting Transactional Number - TAN - or a digitally signed message), the voting client using the device displays the ballot and makes her/his choice. The vote is then sent to the voting server and the voter receives confirmation on the successful storage of his or her vote. At the end of the election phase, the votes are counted by the voting server and the results are delivered to the election commission.

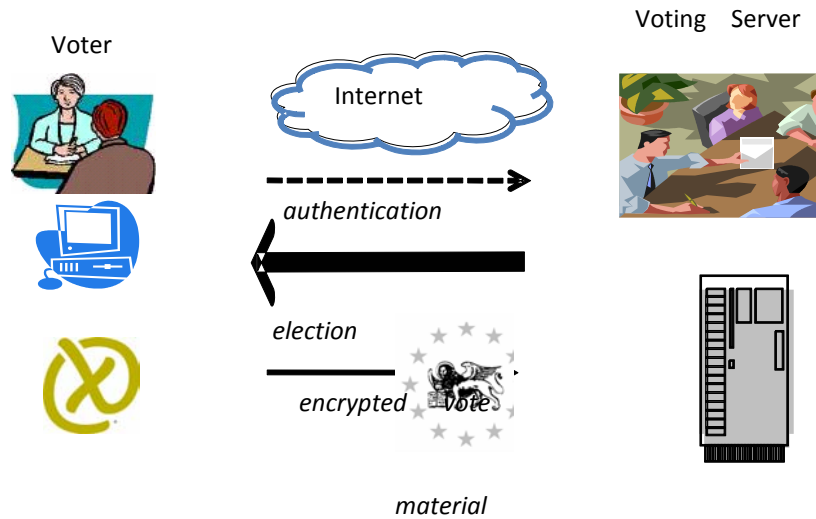


Figure 4: The generic internet voting process

1. Advantages

Advantages of Internet voting, compared to postal voting, include the possibility of easily correcting choices made by the voter (at least before having cast the vote), notifying the voter that her/his vote is invalid before she/he casts it, and sending the voter a confirmation that her/his vote has been successfully stored on the voting server. Some approaches (Fujioka, 1993) even propose the possibility of verifying whether a vote is included in the final tally.

Another big advantage is the possibility of overcoming challenges discussed for distance voting with respect to the private environment. So-called “re-voting”, proposed by the Estonian e-voting system (Estonian Election Committee, 2004; Maaten, 2004) and discussed in detail by Volkamer and Grimm (2006) solves the problem of voter coercion and vote buying. Both become unattractive because the voter can later update her/his vote as often as she/he wants.

2. Challenges

One of two challenges with respect to universal franchising is the vulnerability of the voting server. An attacker might try to distribute a Denial of Service attack (DoS) to the voting server in order to prevent voters from connecting to it. Therefore, the time interval to cast a vote should have an arbitrary length, thus making DoS attacks unattractive.

The second challenge with respect to universal franchising is the authentication techniques ensuring that only authorised voters cast votes. Here, several different techniques are proposed, for example, voting TANs, digital signatures from identification cards, and biometrics. While the last two require particular hardware, they are more secure than voting TANs. Depending on the particular election, one of these mechanisms needs to be chosen (for further information, see Volkamer and Krimmer, 2006).

The challenge with respect to election secrecy is transportation of votes over the Internet, which is an open network that everyone can access. Thus, similar to the envelopes in postal voting, Internet votes need to be encrypted. Cryptographic techniques need to be implemented to ensure that the transported messages, including the votes, cannot be changed on the way from the voter to the voting server and vice versa.

A further challenge that does not exist in postal voting is the trustworthiness of the voter’s device. A virus or Trojan horse on the voter’s device could easily break election secrecy by sniffing (listening on the communication channel of the computer) the vote before it is encrypted. Moreover, such malware could violate universal suffrage by either changing the vote before it is encrypted and sent to the voting server or by preventing the voter from sending the vote to the voting server. This is still an open issue. There are some theoretical solutions, such as those proposed by Volkamer et al. (2006), but in practice, only recommendations on how to improve trustworthiness are in use.

Internet voting is often criticised as being hard to understand. This is because only virtual values are exchanged between the voters and election commission. While paper can be seen by the human eye, bits and bytes are invisible. This failure of transparency is hard to deal with and has to be compensated using standard procedures like stressing the division of power in the election commission and a step-by-step approach in building trust.

V. Conclusion

In this paper, we assess the challenges and advantages of distance voting in general and then differentiate it into the two categories of postal and Internet voting.

Both distance voting channels share problems, such as voter coercion and vote buying, which are related to the uncontrolled environment where vote casting takes place. One way to handle this is requiring the voter to sign a statement specifying that she/he has not been influenced while casting his/her vote. When using the Internet to vote, technical possibilities can overcome these problems through re-voting, thus making these threats unattractive.

Postal voting has been in use for quite some time and a lot of experience has been gained over the years. Furthermore, it is easy for the voter to understand, which enhances its transparency. Challenges come mainly from the transport of the votes in terms of reliability and delays in delivery.

Internet voting is relatively new and therefore raises a lot of issues. Most questions have to do with transparency, as bits and bytes are invisible. Also, Denial of Service attacks could hurt universal suffrage as some voters might be excluded from participating. The biggest potential threat comes from Trojan horses that might read or change votes.

Manipulating postal voting might be more easily accomplished because the attacker needs no technical knowledge. However, the scope of manipulation is limited. With Internet voting, hacking and cracking demands technical knowledge and needs specific hardware and software resources, but its scope is much broader and more dangerous.

In general, while distance voting is a good method for adapting voting procedures to meet the needs of mobile, modern societies, its two variants, postal and Internet voting, pose challenges which have to be addressed before their use can be successfully implemented in modern elections.

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ABSTRACT

In this paper, the authors discuss the challenges posed by distance voting in general, including vote buying, vote coercion and family voting. Furthermore, the particular advantages and disadvantages of postal and Internet voting as the most popular representatives of distance voting are presented; both implementations are compared.

**LE FINANCEMENT DES CAMPAGNES ELECTORALES
UN DEFI AUX RESULTATS D'UNE ELECTION**

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La question de l'importance de l'argent dans la vie politique, qu'il soit le moyen d'obtenir le pouvoir ou la rétribution de sa conquête, s'est posée de tout temps. Elle prend une acuité nouvelle avec le suffrage universel qui exige que l'on puisse convaincre des milliers, voire des millions, d'électeurs, ce moment particulier de mobilisation où il faut entraîner l'adhésion, suppose, aussi modeste soit-elle, des moyens. Pendant longtemps la question est restée dans le non-dit et le non-droit en reposant sur un consensus inavoué : même si ceci serait à nuancer, aux partis de gauche le soutien des syndicats et de leurs militants, et, en compensation si l'on peut dire, aux partis de droite le soutien des « milieux économiques », grandes fortunes ou entreprises... Ce consensus est mis à mal lorsqu'en l'espace de quelques années (à partir de 1960 en Europe) le coût des campagnes croit de façon exponentielle avec l'irruption des procédés modernes : marketing, sondages d'opinion, émissions télévisées etc. D'où de multiples lois, dans à peu près tous les pays d'Europe (mais pas seulement) tant sur le financement public des partis (pour éviter la corruption et la dépendance) que sur la réglementation des dépenses électorales, seul sujet que l'on évoquera ici. Et la question du poids de l'argent sur les campagnes se trouve ainsi renouvelée : la vieille question était celle de l'achat des voix, le bon bulletin contre un billet, pratique que le secret du vote et les progrès de la conscience civique ont fait à peu près disparaître (même s'il y a quelques versions contemporaines plus subtiles), la question nouvelle est celle des moyens dont peut disposer un candidat et de l'éventuelle inégalité que cela peut créer entre les différents postulants. A cela la réponse principale a été apportée par des efforts de limitation des dépenses électorales, ce qui suppose leur contrôle, et par un remboursement sur l'argent public destiné à rétablir une certaine égalité entre candidats.

1. La limitation des dépenses électorales

L'idée relève du simple bon sens : pour que l'argent n'ait pas un poids excessif dans les campagnes il convient de le limiter, de limiter les sommes qui peuvent y être dépensées, ce qui devrait en outre permettre à plusieurs candidats d'atteindre le même niveau. Cette limitation prend plusieurs formes.

a. l'interdiction de certaines dépenses

C'est l'idée la plus simple : interdire les actions de propagande les plus coûteuses, ce qui fait automatiquement baisser le coût de la campagne. L'interdiction la plus couramment pratiquée est celle de l'achat de spots télévisés, à charge pour l'Etat de compenser en offrant aux partis et aux candidats des plages d'expression sur les chaînes du service public (là où il existe). C'est ce qui se pratique dans de nombreux pays européens : l'Allemagne, la Belgique, le Danemark, la France, l'Irlande, le Portugal, le Royaume-Uni pour citer ceux dont j'ai connaissance. On sait qu'à l'inverse l'achat de temps de télévision constitue l'essentiel des (énormes) dépenses électorales aux Etats-Unis d'Amérique.

Le Mexique réfléchit actuellement à cette interdiction. La France est allée plus loin en interdisant également toute publicité par voie commerciale (presse ou affichage) non pas totalement mais dans les trois mois qui précèdent le mois de l'élection, ce qui enlève de fait tout intérêt à cette forme de propagande ; on considère que cette interdiction a fait baisser de 40 % le coût potentiel des campagnes, notamment pour l'élection présidentielle.

b. le plafonnement général

Combiné ou non avec les interdictions précédentes, le plafonnement des dépenses limite celles-ci à un montant maximum fixé à l'avance, chaque candidat ayant alors à choisir les actions qu'il va privilégier tout en veillant à rester dans les limites. De telles dispositions existent au Royaume-Uni, en Belgique, en France, en Italie et en Espagne, pour prendre quelques exemples.

Le montant tient généralement compte de la taille de la circonscription, avec souvent une somme fixe augmentée d'une autre variable en fonction du nombre d'habitants ou d'électeurs, avec parfois une distinction supplémentaire (Royaume-Uni) entre circonscriptions urbaines et circonscriptions rurales où la dispersion de l'habitat rend les dépenses plus importantes.

La question n'a pas la même acuité selon le mode de scrutin utilisé : on peut considérer que la représentation proportionnelle qui amène à voter pour des listes, en fonction généralement de considérations nationales, entraîne des campagnes moins onéreuses que le scrutin uninominal où, pour se faire connaître personnellement, chaque candidat est amené à dépenser davantage.

A titre d'exemple, le plafond est fixé en France à 16,1 millions d'euros pour l'élection présidentielle (porté à 21,6 millions pour les finalistes du second tour) et, en moyenne, 64.000 euros pour une circonscription législative (chiffres 2007).

c. la solution optionnelle des Etats-Unis d'Amérique

Aux Etats-Unis, le coût des campagnes est considérable ; le Congrès s'en est ému et a voté en 1972 et 1974 des lois établissant un plafond de dépenses pour les différentes étapes de l'élection présidentielle. Ces lois ont été partiellement invalidées par la Cour Suprême dans sa célèbre décision *Buckley v. Valeo* du 30 janvier 1976. Le raisonnement de la Cour repose sur le fameux premier amendement qui protège la liberté d'expression, ce qui a pour conséquence, selon la Cour, qu'on ne peut empêcher un citoyen de dépenser son propre argent comme il l'entend ; si donc un plafonnement est possible s'il s'agit de financement public, il ne l'est pas lorsqu'il s'agit de financement privé. Cela a conduit à une nouvelle loi, votée en 1976, et qui laisse le choix aux candidats à l'élection présidentielle :

- ou ils ont recours au financement public et leurs dépenses sont plafonnées ;
- ou ils renoncent et le montant de leurs dépenses est libre.

La tendance actuelle est que les candidats renoncent au financement public pour les primaires (on sait l'importance, en particulier en ce moment des money primaries) mais y ont recours pour la campagne finale. Ceci dit, malgré une nouvelle loi de 2001, les plafonds sont allègrement dépassés (les dépenses des partis n'étant pas celles des candidats) et les chiffres sont astronomiques : certains observateurs les évaluent à 4 milliards de dollars pour 2004, moitié pour l'élection présidentielle, moitié pour le Congrès...

2. Le contrôle des montants

Une règle de plafonnement n'a de réalité que si sa transgression entraîne une sanction : il faut donc avoir une vue précise de ce qui est considéré comme une dépense électorale, faire en sorte que leur ensemble soit retracé dans un compte unique soumis à contrôle et enfin prévoir des sanctions.

a. la notion de dépense électorale

L'exemple américain montre quelle est la difficulté principale de l'exercice : qu'est-ce qu'une dépense électorale et à qui l'imputer ? Certaines législations (Royaume-Uni, Etats-Unis) ne retiennent que les dépenses faites personnellement par le candidat, à l'exclusion des dépenses nationales des partis, ce qui évidemment limite l'efficacité du dispositif :

L'affiche nationale du parti apposée dans ma circonscription n'est pas à inclure dans mes dépenses de campagne et pourtant il est probable qu'elle m'apporte plus de voix que telle ou telle activité ponctuelle qui, elle, devra être prise en compte.

En France la législation, si elle n'est pas parfaite, est très exigeante sur ce point : doit être comptée comme dépense électorale toute somme (ou avantage en nature) dépensée dans l'intérêt du candidat, qu'elle soit payée par son mandataire financier (ce ne peut être par lui-même) ou par un parti ; ceci dit la jurisprudence sur ce qui est une dépense électorale et ce qui ne l'est pas est devenue d'une particulière complexité...

On notera l'idée intéressante, développée notamment au Canada, des third parties, c'est-à-dire des groupements qui, sans soutenir expressément un candidat, interviennent dans l'élection et dont les dépenses sont aussi limitées.

b. le compte de campagne et son contrôle

Pour permettre la vérification du niveau des dépenses, il est nécessaire que leur totalité soit retracée dans un unique compte de campagne, établi sous la responsabilité du candidat ou de son agent. Ce compte, établi dans les semaines qui suivent l'élection (dans les deux mois en France) est transmis à l'administration qui en l'espèce est souvent - et c'est heureux - une autorité indépendante : la Federal Election Commission aux Etats-Unis, la Commission nationale des comptes de campagne et des financements politiques (CNCCFP) en France. A charge pour ces organismes de vérifier, autant qu'ils le peuvent,

sa vérité et son exhaustivité, mais il n'est pas toujours facile d'avoir connaissance d'une dépense qui aurait été « oubliée ». Une procédure contradictoire peut (et il est souhaitable qu'elle le soit) être organisée pour conclure à l'approbation, la réformation ou le rejet du compte. En cas de rejet, la transmission est faite au juge, juge pénal et/ou juge électoral, pour éventuellement prononcer une sanction.

c. Les sanctions possibles

La plus évidente est une sanction financière, par exemple une amende équivalente - ou supérieure - au montant du dépassement si dépassement il y a.

Une autre sanction qui peut être très lourde, consiste à priver le candidat fautif du remboursement par le Trésor Public de tout ou partie de ses frais de campagne, là où ce remboursement existe.

Une sanction plus lourde encore, mais qui n'existe à ma connaissance qu'en France, consiste à frapper le candidat fautif d'inéligibilité avec effet immédiat, ce qui veut dire que s'il a été élu, il est déchu de son mandat et ne peut se présenter à l'élection partielle organisée pour le remplacer (l'inéligibilité étant pour un an). Cette rigueur, sans doute nécessaire au départ pour faire prendre la loi au sérieux, a des inconvénients : très dure pour le candidat élu, elle est en revanche sans grand effet, autre que symbolique, sur le candidat battu puisqu'il retrouvera ses droits un an après ; de ce fait le système est en voie d'assouplissement.

Bien entendu, de telles sanctions nécessitent l'intervention d'un juge, demandent à être entourées de toutes les garanties procédurales (débat contradictoire, droits de la défense, etc.) et ne doivent en aucun cas permettre au pouvoir en place d'écarter sous ce prétexte les candidats qui lui déplaisent.

3. Le remboursement public

C'est là une idée différente qui peut accompagner, ou non, la règle de plafonnement : plutôt que de laisser le financement des campagnes à la seule initiative privée, qui ne se répartira probablement pas de façon égale entre les candidats, on peut penser à un financement public, l'affecter aux partis ou aux campagnes, et déterminer les règles de calcul de son montant.

a. Financement privé et financement public

Le financement par des personnes privées est rarement interdit (sauf pour certaines sociétés étrangères, entreprises de jeux, etc.) mais il est souvent limité pour que l'élu ne soit pas trop l'obligé de son généreux donateur, celui-ci pouvant bénéficier d'un « special access » selon le terme américain. D'où l'idée que chaque personne privée ne peut donner qu'une somme limitée, par exemple quelques milliers d'euros pour une campagne qui va coûter beaucoup plus ; on peut en outre penser à réserver cette possibilité aux personnes physiques et à la refuser aux personnes morales (c'est-à-dire en fait aux entreprises) ce qui est le cas en France depuis 1995, et aux Etats-Unis où les personnes morales ne peuvent intervenir qu'à travers les political action committees (Pac). Donc encourager les "petits dons" et, pour le faire plus encore, prévoir leur déductibilité fiscale.

Avec cette déductibilité, on aborde déjà le financement public des élections qui présente évidemment l'avantage (normalement...) de supprimer tout lien de dépendance entre le fournisseur de la ressource et l'élu. C'est la recherche de la neutralisation de l'argent dans la campagne, idée juste et séduisante mais dont la mise en œuvre est complexe.

b. Financement des partis ou financement des campagnes

Le financement public peut prendre plusieurs formes : soit un financement régulier des partis politiques, à charge pour eux de répartir leur dotation entre leur financement ordinaire et le financement des campagnes ; le prototype en est la Suède depuis 1966. L'autre solution consiste à rembourser, au moins partiellement, les dépenses de campagne et c'est la solution, pour citer un autre précurseur, choisie par l'Allemagne en 1969, avec à l'époque un montant de 5 marks par voix obtenue, versé selon un système d'acomptes annuels ... mais le système allemand a beaucoup évolué et apparaît plus aujourd'hui comme relevant d'un financement régulier des partis.

Dans beaucoup de pays, le financement est double : à la fois une alimentation régulière des partis et parallèlement un remboursement des campagnes : ainsi en France, en Italie et en Espagne par exemple.

On notera que le Royaume-Uni est un des seuls pays en Europe à refuser tout financement public, qu'il s'agisse des partis ou des campagnes.

c. Le calcul des montants

Il se fait généralement, ce qui est assez logique, en fonction des résultats électoraux en fixant un montant pour chaque voix obtenue, ou parfois pour chaque siège, la différence n'étant pas très importante pour les pays où le mode de scrutin est très proportionnel mais pouvant l'être bien davantage pour les autres. Une solution médiane peut être de prendre en compte les deux résultats, ainsi en Espagne où il est tenu compte des voix recueillies et des sièges obtenus.

Pour éviter une trop grande dispersion qui encouragerait des partis marginaux (et parfois fantaisistes) un minimum de voix (0,5 % en Allemagne à la suite de la décision de la Cour Constitutionnelle) ou de sièges (un siège en Espagne) peut être exigé, ce qui est admissible si le seuil est bas. En France, si le seuil est plus bas pour le financement des partis, il n'y a pas de remboursement public pour les élections autres que présidentielles si le candidat ou la liste n'obtient pas au moins 5 % des suffrages exprimés.

Le système français présente par ailleurs une autre originalité du fait que le remboursement est indépendant du résultat mais calculé en fonction du plafond de dépenses autorisé : pour l'élection présidentielle un candidat qui obtient moins de 5 % des suffrages exprimés a droit au remboursement jusqu'à concurrence du vingtième du plafond et, s'il obtient plus de 5 %, jusqu'à concurrence de la moitié, sans naturellement que ce remboursement puisse dépasser le montant de ses dépenses effectives. Pour les autres élections, c'est la moitié du plafond, sous réserve donc d'avoir obtenu 5 % des suffrages exprimés, ce qui veut dire qu'un candidat qui limite ses dépenses à la moitié du plafond peut voir ses frais de campagne intégralement remboursés.

* *

On le voit, les formules sont nombreuses et on ne peut soutenir que l'une ou l'autre soit nécessairement meilleure : les règles de financement s'inscrivent dans un ensemble plus large, mode de scrutin, état du système de partis, culture politique nationale, etc.

Mais ce qui paraît certain c'est que, si l'on peut éviter un poids excessif de l'argent sur les élections, il faut des règles : le montre a contrario le cas des Etats-Unis d'Amérique où les études prouvent que c'est très généralement le candidat qui a dépensé le plus qui est élu (même s'il faut se méfier d'un biais : c'est aussi dans 90 % des cas le sortant qui est élu et il a évidemment plus de facilités pour collecter les dons).

La règle minimale me paraît être celle du plafonnement des dépenses, en tenant compte de toutes les dépenses, quel qu'en soit l'auteur, dès lors qu'elles sont susceptibles d'orienter des voix vers le candidat dont il s'agit. Reste à voir, ensuite, si l'on veut ou non y ajouter un financement public, en prenant toutefois garde, à ce moment-là, que la politique ne devienne pas une activité commerciale subventionnée par l'Etat comme le signale, à juste titre, la théorie des partis-cartels.

**PREVENTION RATHER THAN PROSECUTION STRATEGIES
TO MEASURE AND COMBAT ELECTORAL MALPRACTICE
IN THE UNITED KINGDOM**

Mr Sam YOUNGER
Chairman, Electoral Commission of the United Kingdom

I. Background

The United Kingdom (UK) is a parliamentary democracy. The UK Parliament, often referred to as the Westminster Parliament, is a bicameral legislature. The House of Lords is a non-elected chamber consisting of hereditary peers, bishops of the Church of England, the Law Lords (the highest court of appeal) and directly appointed peers (called 'life peers'). The House of Commons is a directly elected chamber whose 646 members are elected from single member constituencies using the first past the post system.

The UK is party to a number of international treaties and agreements that provide for the safeguard of democratic rights and require the holding of genuine and periodic elections. Most crucially, the UK is party to the European Convention on Human Rights and the 1998 Human Rights Act allows claims relating to convention rights to be heard directly in UK courts.

The UK conducts elections to a number of bodies. Firstly the members of the European Parliament are directly elected every five years. Powers have been devolved from the UK Parliament to the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. Significant powers are also exercised by local government, which is directly elected across the UK. In Greater London a separate authority consists of a directly elected Mayor and Assembly.

The United Kingdom operates a common law legal system. Electoral law has evolved over time since major reforms in the mid-1800s. Elections in the United Kingdom are run by Returning Officers, who are independent officers of the Crown. These individuals are usually senior local government officers. The Electoral Commission, established in 2000, has powers to provide advice

and assistance but no power to direct Returning Officers in the conduct of their duties.

A variety of election specific offences are included in relevant electoral law. In addition prosecutions can be pursued under other more general legislation – such as that relating to counterfeiting and forgery, or under common law, such as conspiracy to defraud a public official. Electoral offences are investigated by the police and prosecutions brought by the relevant independent prosecution service.¹

II. Electoral malpractice in the United Kingdom: perception and reality

Electoral malpractice as a term encompasses a wide range of activity. In the Commission's view it includes any attempt to falsify the electoral register or procure false or amended electoral results. Malpractice includes both practices directly prohibited by law and other practice that is designed to achieve a false electoral register or electoral result.

Electoral malpractice can encompass activities relating to the funding of political parties, candidates and electoral campaigns. This paper will not cover these areas directly, as they are considered in other sessions of this conference.

In common with all long standing democracies, allegations of electoral malpractice have been a feature of UK elections for many years. Over time the nature and location of allegations has changed, and electoral law reform has in many cases been directed at minimising the opportunities for malpractice to occur.

In recent years, most concern has centred around the absent voting processes in place in the UK, and what opportunities for malpractice are offered by either postal voting or proxy voting.

¹ In England and Wales the Crown Prosecution Service, in Scotland the Procurator Fiscal and in Northern Ireland the Public Prosecution Service.

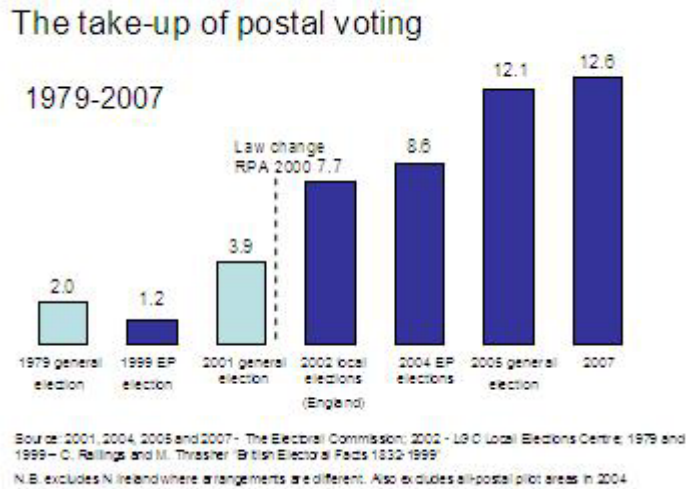
Postal voting in the UK was first introduced in 1918 for people with a physical incapacity and for those required to undertake a journey by sea or air, and has continued until today. The prompt for this was the number of servicemen who had not returned from the First World War in time to vote in the 1918 general election. On a number of occasions the availability of postal voting has been widened, for example to include those taking holidays. Moreover, UK residents overseas (provided they had not been absent for more than 20 years, now reduced to 15 years) have traditionally been able to vote by proxy (these voters have since 2001, also, been allowed postal votes). Until recently, legislation had always defined specific categories of people who could apply for a postal vote within the UK if service or employment kept them away from the polling station, or they had moved out of the area, or were disabled.

More radical change came with the recommendations of a government working party set up after the 1997 election to examine ways to modernise electoral procedures and persuade more people to vote. It recommended that postal voting should be available on request in all parts of the UK except Northern Ireland, and to all registered voters living overseas. A witnessed declaration of identity would continue to be required for all postal votes. The Representation of the People Act 2000 gave effect to these changes. Because a number of allegations about fraudulent proxy voting were at that time being investigated by the police, the working party did not recommend any changes to the conditions for a proxy vote. It is important to note that the decision to move to what is known as ‘postal voting on demand’ was taken before the inception of the Commission.

Any move to increase access to remote voting can engender concern that opportunities are being given for manipulation and malpractice. The Commission has been concerned with the issue of absent voting integrity since its inception. Our very first report identified problems in relation to public perceptions about postal voting fraud and the bureaucratic nature of the postal voting process and the implications of increased demand for postal voting. The Commission concluded that: ‘... there is no case for reversing the extension of postal voting (on demand)...’ however, ‘...attention must be focussed on streamlining the administration of the current postal voting arrangements... and to provide sufficient safeguards against fraud.’²

² The Electoral Commission (2001) Election 2001, p. 39.

The popularity of postal voting on demand has proved to be higher than expected, and more constant.

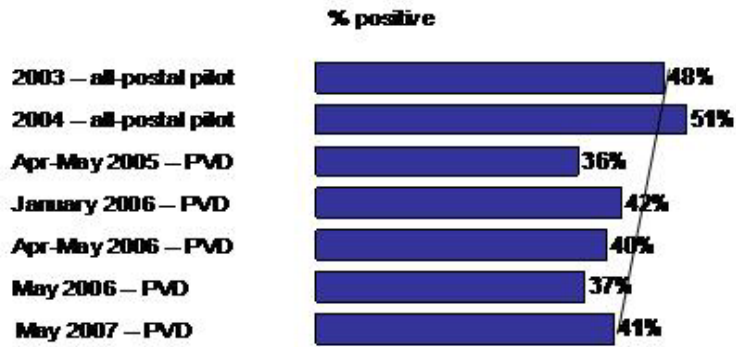


At the same time as demand for postal voting has firstly increased and then remained steady, public confidence in the security and integrity of the electoral process has not remained as high or as constant.

The Commission has tracked public confidence in the electoral process for many years through opinion research. In 2003 and 2004 around half of our survey responded positively on whether voting by post was safe from fraud and abuse. This figure declined markedly in 2005, following well publicised incidents in some English cities, but has since slowly improved, although much remains to be done.

Summary: 2003-7

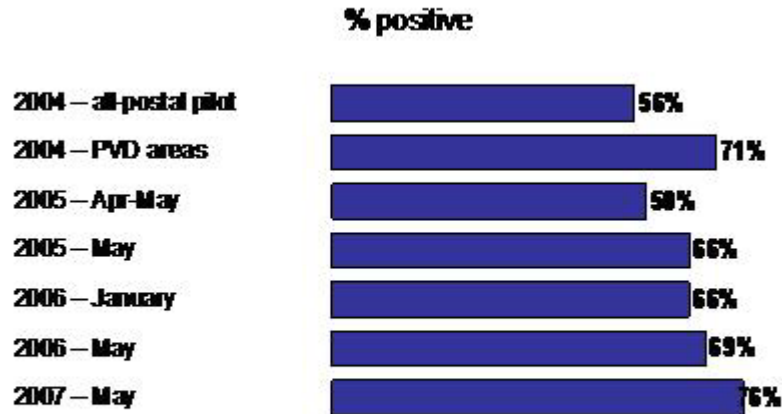
N.B. Change in question wording 2003-4



Source: MOR/The Electoral Commission (2003); ICM/The Electoral Commission (2004); MOR/The Electoral Commission (2005); MOR/The Electoral Commission (Jan 2006); BMR/The Electoral Commission (2006); GfK NOP/LGC Elections Centre/Electoral Commission (2007)

Confidence is higher amongst those who actually use postal voting, explaining what may otherwise be the paradoxical increase in use and decline in confidence. In fact, a majority of those who vote by post were always confident in the system, and this confidence is increasing. This may be explained by the changes made to the system in recent years to improve its integrity, which are immediately obvious to those who use the system.

Summary: 2004-7, users



Source: ICM/The Electoral Commission (2004); MOR/The Electoral Commission (April/May 2005); BES (May 2005); MOR/The Electoral Commission (January 2006); BMR/The Electoral Commission (May 2006); GKNOP/LGC Elections Centre/The Electoral Commission (2007)

Allegations of electoral malpractice have surfaced regularly in UK elections, but prior to 2001 these were incidents of an isolated nature. Public, media and political attention focused on this area in late 2004 and early 2005 due to extensive and sensationalist coverage of an electoral court challenge. This case was the hearing of two election petitions challenging the election of three councillors to Birmingham City Council at the elections held on the 10 June 2004.³ These cases involved a series of allegations of corrupt conduct on behalf of the successful candidates and their supporters, mostly in relation to postal ballots. The judgement is long and detailed, and forms useful reading for those interested in the topic. The case was an electoral petition, the method of challenging the result of an election in the UK. The judge found that corrupt practice had taken place to such an extent as to place the results of the elections in doubt and so overturned the results and ordered the elections to be rerun.

³ In the matters of Local Government elections for the Bordesley Green and Aston Wards of the Birmingham City Council both held on 10 June 2004 judgment available at <http://www.hmcourts-service.gov.uk/cms/2384.htm>.

The publicity surrounding these cases and the judgement was considerable, and the effect was magnified by the closeness of a likely UK Parliamentary general election. The judgement was eventually handed down on 4 April 2005; the Prime Minister announced the election on 5 April.

Following widespread administrative problems at the June 2004 European Parliamentary elections, the sudden focus on electoral processes by the media and the public in 2005 increased political pressure for reform in the system. The Government announced a Bill in the Queen Speech of late May 2007 to improve the integrity of the electoral process. This was eventually implemented at the May 2007 elections, and its impact is discussed below.

Quantifying malpractice

The Commission has often been asked how many cases or allegations of electoral malpractice or fraud have been reported in the UK. Electoral malpractice is investigated by the police and prosecuted by the relevant prosecution service. However, there is no one central database of allegations of electoral malpractice and breaches of electoral legislation in the United Kingdom and no requirement on police and prosecutors to notify any central body of allegations.

On 15 January 2007, at an elections conference entitled Elections: new thinking, new standards, it was reported that the Committee on Standards in Public Life - at that time reviewing the Electoral Commission⁴ - had been made aware that since 2001, 342 “cases of electoral malpractice” have been reported to the Crown Prosecution Service.

On 21 January 2007 The Times newspaper published a comment piece by Dr Michael Pinto-Duschinsky suggesting that he had been notified of statistics by the CPS that “revealed that there were no fewer than 390 cases of alleged electoral offences in the past seven years.”⁵

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<http://www.solaceenterprises.com/elections/ppt/Sir%20Alistair%20Graham%20Speech.pdf>.

⁵ Michael Pinto-Duschinsky, ‘Postal voting is a giant fiddle’, *The Times*, 21 January 2007, available at <http://www.timesonline.co.uk/tol/comment/article1294927.ece>.

Following these comments the Crown Prosecution Service (CPS) allowed the Commission unprecedented access to its files relating to electoral malpractice. The CPS is the independent prosecution service for England and Wales, and we were able to inspect all the files they held alleging breaches of the main electoral legislation – the Representation of the People Act – since 2000. The Commission’s analysis of this material remains underway, but an interim analysis was published earlier this year.⁶

In period under review, 25,057 separate elections took place in England and Wales. Around 123,592,971 votes were cast for 109,535 candidates. We classified the allegations according to the section of the Representation of the People Act that was alleged to have been infringed, grouped into four broad types of legislative provisions:

Electoral administration: those provisions relating to the duties and responsibilities of those administering the process.

Electoral registration: provisions relating to the process of registering to vote.

Election campaigning: provisions relating to the rules on election campaigns, such as nominations, imprint requirements, candidate expense limits.⁷

Voting: provisions relating to the voting process, including absent voting.

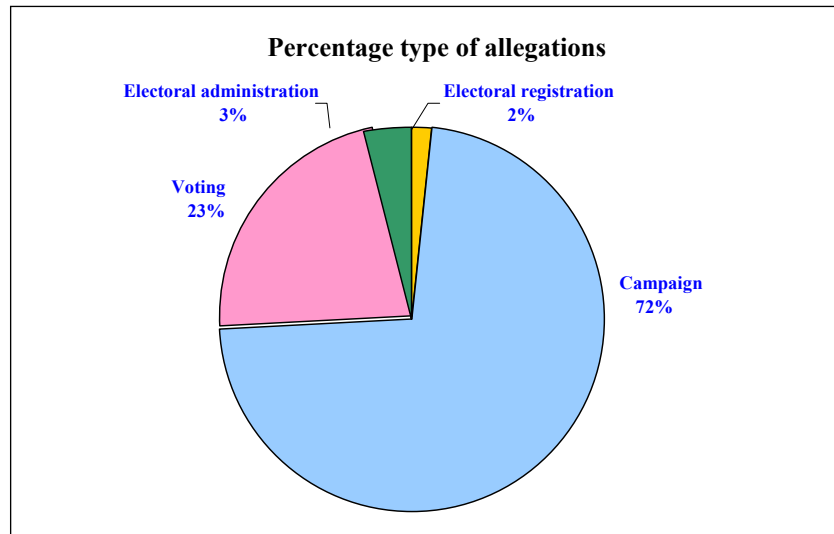
The following table summaries the allegations over the years since 2000; postal voting on demand was available from 2001 onwards

Number of allegations 2000-2006	
2000	50
2001	66
2002	59
2003	90
2004	59
2005	59
2006	19

⁶ *Allegations of electoral malpractice in England and Wales 2000-2006* at http://www.electoralcommission.org.uk/files/dms/IntFindsreAllegations21March_25132-18641_E_N_S_W_.pdf

⁷ The analysis did not include offences relating to the funding of political parties, which are regulated under a separate enactment.

As figure 4 illustrates, the vast majority of allegations related to campaign conduct; especially popular are allegations that campaign materials do not carry the necessary identifying imprint of the author.



In addition to this analysis, since 2003 we have examined and proposed various methods of compiling an accurate and complete database of electoral malpractice allegations and prosecutions. However, to date, none of these initiatives has secured the ongoing support of Government and none is without practical limitations. The Commission has therefore concluded that we should attempt ourselves to collect information in the future that will provide us with the ability to consider trends in allegations and the relative volume of allegations. We will request information from police and returning officers at least twice in a calendar year. Details of any individual allegation or case will not be published – and indeed may be the subject of ongoing law enforcement activities – but we will report on any trends or patterns disclosed by this data. We have begun this data collection at the May 2007 elections in Great Britain.

III. Commission work to prevent electoral malpractice

In its March 2003 report *Absent Voting in Great Britain*, the Commission set out a programme of actions that it would itself take to measure and improve public confidence in the system of postal and proxy voting in Great Britain. Following the August 2003 report *The Shape of elections to come* the Commission decided to focus on the prevention and detection of fraud in postal voting and set aside resources to do so. This work has only been carried out in Great Britain due to the different structures for both electoral administration and law enforcement in Northern Ireland, and the major changes to the electoral process in Northern Ireland following the Northern Ireland (Electoral Fraud) Act 2001.

The Commission's overall objective for this work is to promote electoral integrity by tackling electoral impropriety, both real and perceived, to reach a better understanding of the nature and extent of electoral fraud and to develop a framework to help others detect and deter electoral fraud.

At the same time we remain aware that raising the profile of electoral fraud can exacerbate the fears of those with reservations about the integrity of the process and other electoral participants. Other tensions are also evident in discussions around fraud, such as the need to balance where possible measures to prevent fraud and those aimed at increasing turnout and our concern that tensions between procedures designed to help the administration of elections and voter expectations may be irreconcilable.

Practical tools for electoral administrators

We have provided a number of practical tools for electoral administrators to assist them in their duties. Returning Officers do not have a clear duty to 'minimise fraud' in the same way that they now have a duty to, for example, promote participation. Nonetheless the Commission continually encourages Returning Officers and Electoral Registration Officers to be alert to malpractice – or the potential for malpractice – and to exercise vigilance. We track progress on this through our offices throughout Great Britain and reflect these experiences in our election reports.

Guidance to police forces on electoral matters

The Commission began working with the police and prosecuting authorities in 2003 to disseminate information and guidance on electoral matters to local police forces. This helps local police forces to access information and resources to handle electoral malpractice allegations competently and swiftly. The need for such support was highlighted in several investigations into allegations of electoral malpractice and is assisted by a unique arrangement in UK electoral law, which allows for cases to be referred to the prosecution services earlier than may be usual, so that expert advice can be proffered and decisions on how to proceed agreed.

This guidance was issued in 2005, 2006 and again in 2007. It is accompanied by a pocket guide of summary information for issuing to beat officers during the election period, to equip 'the bobby on the beat' with introductory information on electoral law and practice.

We also conduct briefing sessions in conjunction with the organisations representing senior police officers - ACPO and ACPO(S) - to brief police forces on electoral matters. These are offered every January or February to appropriate groups depending on the electoral calendar.

Postal Vote Code of Conduct

In 2003 the Commission announced a wish to codify good practice in relation to the handling of postal vote applications and postal ballots by representatives of political parties and so pledged to develop a Code of Practice in conjunction with political parties. The Commission recognises the merit of encouraging action by candidates, agents and local party workers to promote postal voting applications, including the handling of applications, but wishes to discourage these representatives from handling actual ballot papers.

The Commission released a draft Code on 16 April 2004, in time for the June 2004 elections. The draft was promoted by the Commission, Returning Officers and others. A finalised Code was agreed in the run up to the May 2005 elections. The Code was widely promoted and followed at the May 2005 elections and is now considered to be a reasonable effort to promote participation with confidence. The parties are increasingly promoting adherence to the Code within their own structures.

A system to record and monitor reported electoral malpractice and prosecutions

The Commission has been asked on a number of occasions to measure the extent of electoral malpractice. As an example, section 10 of the Representation of the People Act 2000 requires the Commission to conclude whether electoral pilot schemes have “led to any increase in personalisation or other electoral offences or in any other malpractice in connection with elections”.

As noted in Absent voting in Great Britain, the Commission had no accurate evidence base to work from in making such assessments. We have therefore examined various methods of compiling an accurate and complete database of electoral malpractice allegations and prosecutions. We have been most successful in tracking malpractice taken through to prosecution through liaison with the prosecution services.

There are however many allegations made to police that do not get reported to us. We have not been able to formulate an effective method for collating this ourselves, and this was never the Commission’s intention, although we continue to advocate for an electoral code for the police national computer.

At the May 2005 elections a very successful initiative was launched by the DCA, Home Office and ACPO. Using the resources of the Police National Information and Coordination Centre every force in England, Wales and Northern Ireland reported serious allegations to a central team created solely for the duration of the election. This allowed ACPO, Home Office and DCA to monitor levels of allegation as well as type of allegation. This remains the most positive attempt yet to ascertain the level of alleged malpractice.

In March 2007 we published an interim analysis of files made available to us by the Crown Prosecution Service on allegations made under the Representation of the People Acts in England and Wales from 2000-2007, and this is available on our website.

We are in discussions with the police and prosecutions to agree a way forward to provide up to date and accurate information to us, Parliament and Government on this important area.

Electoral integrity roundtables

Since 2004 the Commission has convened 'electoral integrity roundtables' several times a year. In the run up to the June 2004 elections the Commission agreed to set up a meeting specifically to discuss electoral malpractice with Returning Officers, police forces, CPS and Government. The sharing of knowledge, processes and expectations was valued and the initiative praised.

Subsequently the Chair of the Commission has chaired 7 meetings of the now Great Britain wide 'Electoral Integrity Roundtable'. The meeting has now been enhanced by the addition of political party representation.

IV. The road ahead

The Commission will continue to conduct work in this area, as we believe this is not only consistent with our strategic direction but also a vital contribution to the health of our democracy. We will continue to provide the support outlined above to electoral administrators, the police and political parties.

The Commission's work has not been conducted in a vacuum, and three key events have not only affected the Commission's work, but coloured the view of many stakeholders and commentators in relation to electoral malpractice:

- Issues surrounding the all-postal pilots at the June 2004 elections, including the Government's decisions on four regions, the legacy of postal voting mistrust in some of those areas, media speculation and slanted reportage and the Commission's conclusions in *Delivering democracy*;
- The two electoral petitions that followed the June 2004 local elections in Birmingham and their hearings in early 2005, with high public interest and media coverage of vulnerabilities in the postal voting system;
- The high level of political, media and public interest in the administration of postal voting at the May 2005 elections.

The following extract from the Birmingham judgements summarises the view of Commissioner Mawrey regarding the Commission's stance on the security of postal voting:

“the Electoral Commission ... not only warned about fraud but actually drew attention to the particular aspects of the system that were vulnerable to fraud. On several occasions the Electoral Commission made detailed practical recommendations for tightening the law and warned of the consequences if this were not done. No action was taken.”

The Commission continues to advocate a new system of individual electoral registration for Great Britain, akin to that in Northern Ireland, as the most immediate and practical step that could be taken to improve the integrity of our electoral process. Many of the problems that have arisen in elections can be traced back to the inadequacy of our electoral registration system to provide a secure basis for our elections.

It is also important that the wider legislative environment is not ignored, as room for improvement remains. The cost of policing our current electoral system is high. The Commission has been briefed on one electoral malpractice investigations that has been running for over two years, involves over 10,000 pieces of documentary evidence, has required significant police and administrative time as well as forensic and other expert input. The CPS also invests a significant amount of time in considering files from such investigations and prosecuting where possible. In many instances electoral law remains archaic and in some areas has not kept pace with developments in technology and campaign practice.

Some reform has taken place. Most notably, the Electoral Administration Act 2006 introduced a range of measures designed to improve the integrity of our elections. This Act was implemented at the May 2007 elections across Great Britain. Key provisions provided for:

- two new offences – that of supplying false information or failing to supply information to the electoral registration officer at any time and that of falsely applying for a postal or proxy vote
- a revised offence of undue influence, enabling the offence to be effective even where influence has not led to any action being taken
- accredited observers into polling stations to observe the electoral process, and at other parts of the process, such as the count.
- A longer period of time available for the police to carry out investigations into electoral fraud

The biggest change was to require that those who wish to vote by post must supply a signature and date of births on their postal vote applications and again when voting on the postal vote statement, enabling checks to be carried out. This was overtly designed to reduce both the opportunity and perception of electoral malpractice in absent voting.

We were requested by Government to undertake an evaluation of these new provisions, which was published in July 2007.⁸ While recognising that electoral malpractice prosecutions have often taken time to percolate, and can be launched up to 12 months from the alleged offence, our information was that the volume and scale of allegations has considerably reduced since the May 2006 elections. While we of course take any suggestion of malpractice very seriously, it is gratifying to see that the allegations that are being reported now involve 10s of votes rather than the 100s or 1,000s previously reported.

We have not seen any allegations made that are near the scale of those made in Tower Hamlets (2006) Bradford (2005) Peterborough (2004) or Birmingham (2004), where police have or are still investigating reports of large organised exercises clearly designed to manipulate election results.

In addition to encouraging the full extension of this system to Scotland as soon as possible, the Commission will continue to advocate vigilance on the part of all those involved in the electoral process. Shifting scrutiny and increasing security in one part of the electoral process may lead some determined fraudsters to shift their efforts to other areas seen as more vulnerable, such as indirect influencing of electors or abuse of the proxy voting system. A move to individual electoral registration would close many of these loopholes, and the Commission and our partners will be alert to new patterns of abuse or malpractice.

⁸ The Electoral Commission (July 2007) *The introduction of absent voting identifiers in England and Wales*.

**OSCE COMMITMENTS AND COMPLAINTS
AND APPEAL PROCEDURES**

Mr Gerald MITCHELL
Head of the Election Department, OSCE/ODIHR¹

Mr. Chairman,
Ladies and Gentlemen,

First of all I would like to thank the Venice Commission for inviting the OSCE/ODIHR to contribute to this conference. In my presentation to you today, I wish to share a few thoughts on the significance of OSCE commitments in the context of complaints and appeal procedures.

Since adopting the 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension, commonly referred to as the Copenhagen Document, OSCE participating States have committed themselves to a wide array of standards to support, protect, and promote democratic governance and human rights. These commitments represent political obligations taken by participating States to uphold and protect fundamental civil and political rights.

The 1990 OSCE Copenhagen Document has several references with relevance to complaints and appeal procedures, including paragraphs 2 and 5.

Paragraph 2 serves as a foundation, stating that participating States "...consider that the rule of law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression..."

¹ Organisation for Security and Co-operation in Europe / Office for Democratic Institutions and Human Rights.

Paragraph 5 summarises commitments with regard to the performance of the judiciary, stating in particular in paragraph 5.9 that "...all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law will prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground...", and in paragraph 5.10 that "...everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity...". In addition, paragraph 5.12 expresses participating States' commitment to ensure the independence of judges and the impartial operation of the public judicial service.

Furthermore, paragraph 11.1 states "...the right of the individual to seek and receive adequate legal assistance."

The election related commitments, paragraphs 6, 7 and 8, do not make specific reference to complaints and appeal procedures. However, they stress that participating States "recognise their responsibility to defend and protect, in accordance with their laws, their international human rights obligations and their international commitments, the democratic order freely established through the will of the people ..." in paragraph 6. Thus, indirect reference is made to paragraphs 2 and 5.

The OSCE/ODIHR has been mandated by all OSCE participating States to observe their respective electoral proceedings, based on Paragraph 8 of the 1990 OSCE Copenhagen Document. Further, the 1993 Rome Document explicitly tasks the OSCE/ODIHR to enhance its role in "*comprehensive election monitoring*". The 1994 Budapest Summit Decisions related to the Human Dimension² states that the "*ODIHR should play an enhanced role in election monitoring before, during and after elections*", as a recognition of the fact that an election is a process rather than a one-day event. At the 1999 Istanbul Summit, participating States reiterated their commitment to invite the OSCE/ODIHR to observe their electoral proceedings, and in addition to engage in follow-up dialogue on OSCE/ODIHR recommendations.

² Chapter VIII, point 12.

Election disputes are inherent to elections. The possibility to challenge aspects of an election process should be perceived as a proof of the strength, vitality, and openness of the electoral system. Fundamentally, what is at issue in election disputes resolution is the right to (1) challenge administrative action of election officials in implementing the existing electoral legal framework, (2) to redress possible violations of suffrage rights, or (3) to prosecute possible criminal offence attempting to corrupt the election process.

There are also a variety of models with regard to the legal process through which election disputes are handled. However, the respective country's discretion in its choice of a model for complaints and appeals should remain in compliance with international legal and political obligations, and should be exercised consistently.

While observing elections the OSCE/ODIHR assesses how these principles are reflected in the relevant legislation and how they are implemented. According to more than a decade of observation experience, challenges that have appeared in some participating States in the context of complaints and appeals processes include: an unclear or ambiguous process for filing complaints; a judiciary that is not independent from the executive; lack of due process in court proceedings; postponing rulings on complaints until after the elections; lack of transparency in the implementation of the appeals process; or failure to hold accountable those who violated laws leading to a culture of impunity.

The legal framework should clearly state who is permitted to file complaints with election administration bodies and courts for electoral violations. The legal framework should provide that every voter, candidate, and political party has the right to lodge a complaint with the competent authority when an infringement of electoral rights has occurred. Care must be taken when drafting such provisions to ensure that the right to seek protection of electoral rights is not unduly restricted to a limited group, such as political parties or candidates only.

Deadlines complying with the election timetable are necessary to avoid protracted litigation. Deadlines should not, however, be so restrictive as to undermine the prospect of achieving a just solution to a legitimate complaint. An excessively short deadline can lead to injustice.

Proceedings on complaints and appeals, including within election administration and in the courts, must be transparent and accessible by the public. The consideration and resolution of complaints and appeals, like any other election process, must be transparent so that voters and candidates can be assured that the will of voters has been respected. Transparency also requires, in addition to public access to proceedings and documents, that decisions include substantive reasons and explanations supporting them. It must be clear that a decision has a factual and legal foundation and is not an arbitrary decision.

The legal framework should provide a clear and understandable complaints and appeal process that defines the role of each level of election commission and each level of court. The legal framework should avoid establishing multiple forums for consideration of the same issue in order to ensure consistency and uniformity in processes and decisions. This is critical to developing reasoned decisions and building a stable administrative and court practice for the protection of electoral rights and resolution of electoral disputes. The legal framework must create clear and efficient processes and identify which bodies act as fact-finding bodies of first instance and which bodies act as appellate review bodies.

Evidentiary issues are raised in most election disputes. An evidentiary question over what evidence will be admitted for consideration can become critically important, as the winner of the evidentiary question is often the winner of the election dispute. It is important that the legal framework anticipate evidentiary issues and provide guidance before there is an election dispute. All parties should know in advance what types of evidence will be considered as probative of the issues to be decided in the adjudication of the dispute.

The legal framework should provide for the consideration of any evidence: (1) that, based on the circumstances, has a sufficient level of trustworthiness and (2) provides that the interests of voters and justice will best be served by consideration of the evidence.

The legal framework must provide effective remedies for protecting electoral rights. The legal framework should ensure that the remedy that is applied is the one that provides the best solution for correcting the wrong. The legal framework must take into consideration that a single form of remedy is not the solution for all electoral wrongs. Thus, the legal framework should provide a specific remedy to address the specific harm involved.

The law must provide the right to appeal to an appropriate court from the final decision of the election administration. The appropriate court must have the authority to review and exercise final jurisdiction in the matter. The processes in the court and decision of the court must also be subject to the general principles stated above regarding the initial consideration of complaints, particularly concerning transparency and the proper remedy for the wrong.

The protection of electoral rights is critical for ensuring a legal framework for democratic elections. Thus, not only must there be mechanisms for effective remedies to protect electoral rights, there must also be sufficient criminal or administrative penalties to deter violations of the law and prevent injury to suffrage rights. However, care must be taken not to create a system where politically motivated and unsubstantiated charges are easily prosecuted against opponents. Further, all sanctions and penalties must be proportionate punishment for the conduct that resulted in the harm.

In summary, the right to appeal to election bodies and courts must be established to enable a clear, understandable, singular, hierarchical complaint process that defines the roles of each level of election commission and each level of the courts. This will avoid the potential for a complainant to appeal to the body considered likely to offer the most favourable consideration of the complaint, and ensure that all complaints are addressed in a consistent manner. If complainants are required to appeal first to election bodies, the law should nevertheless always provide the right to appeal to a court of law as a second or third instance. Likewise, the involvement of judges in election administration should not preclude the right to appeal to a court.

IFES ACTIVITIES ON COMPLAINTS AND APPEALS ISSUES

Mr Jean-Pierre KINGSLEY
President
International Foundation of Electoral Systems (IFES)

Ladies and gentlemen,

I am delighted to appear before you today to discuss a subject that is of the utmost importance to Election Management Bodies in guaranteeing a fair and transparent election process.

During my seventeen years as Chief Electoral Officer at Elections Canada, and now in my role as President of IFES, I can attest to the vital nature of maintaining a system of adjudication of complaints and appeals that is unquestionably fair for all parties and accessible to all stakeholders.

In my brief remarks this afternoon I would like to

- underscore what I feel are the critical elements of electoral dispute resolution,
- offer some thoughts on different models that an Electoral Management Body may employ, and
- discuss how IFES has met the challenge of guiding dispute resolution development in different international contexts.”

Introduction

The issue of grievance adjudication has taken on a high profile, especially recently - i.e. United States 2000, Venezuela and Ukraine 2004 and Mexico 2006. It is an issue of great contemporary relevance.

- The integrity of the democratic system is at stake; how do you deal with fraud?
- Complaints and Appeals are part of the election process; Prevention is key;
- A clear system of resolution/adjudication is essential.

- Enforcement measures must be credible and realistic. If absent, other measures are bound to fail.

Principles of Electoral Dispute Resolution

The process of resolving electoral disputes contains some universal elements, such as:

- Guaranteeing basic political rights, including the right to elect and be elected;
- Ensuring application of a legal framework;
- Ensuring that violations are heard before impartial and independent bodies;
- Hearing cases in a fair, transparent and timely manner (both during and after the elections) – allow for action to be taken during the election process to stop the violation rather than only punishing after the violation has been committed, when it's already too late (the “carrot” as well as the “stick”).
- Prosecution of those found guilty of committing electoral violations.

Existing Modalities: Trade Offs

“We may group the different kinds of grievance adjudication bodies into three main models:”

- **Judicial Model:**
According to the EPIC Project, a joint research effort sponsored by IFES and UNDP, of 122 countries recently surveyed, the judiciary is now placed in charge of the initial hearing of election disputes in 56 countries.

Judicial models are especially prevalent in Europe, where the British first gave jurisdiction on election-related cases to the judges on the Queen's Bench Division at the High Court of Justice in 1879.

- **Electoral Management Bodies (EMB) Model:**
55 of the countries cited in the EPIC Project have EMBs that not only administer elections, but hear, investigate and/or rule on electoral complaints.

The Philippines was one of the first countries to adopt this model of dispute resolution, expanding the role of its Commission on Elections (COMELEC) to include enforcement responsibilities in 1963.

Other countries that assign primary EDR responsibility to EMBs include Canada, Albania and Thailand.

– **Special/Electoral Tribunal Model:**

Some countries have created special courts or tribunals that deal exclusively with electoral cases. This model was first adopted in Uruguay in 1924 and Chile in 1925 and was especially popular during the “third wave” of democratisation that swept through Latin America in the latter half of the twentieth century.

Only 20 countries in the EPIC Project database have specialised court systems. They include Nepal, Pakistan, Bolivia and Mexico, where a special court was established in 1996.

IFES Experience

“IFES works with EMBs, civil society, academic institutions, and other international partners on issues of Election Dispute Resolution (EDR) across the globe.”

1. Azerbaijan – Strasbourg Process through the Council of Europe / Venice Commission

IFES is providing guidance on improving the system of Election Dispute Resolution during the Commission meetings on Azerbaijan currently being held here in Strasbourg and in Baku.

This assistance is being rendered in advance of presidential elections in Azerbaijan scheduled for November 2008 and parliamentary elections set to take place in 2010.

2. Central America – Mexico and Costa Rica Workshops

IFES has organised conferences in Mexico and Costa Rica on the issue of election dispute resolution, with the merits of international examples discussed for their applicability to local conditions and to the region in general.

A compilation of the papers presented at Mexico and Costa Rica meetings was published and made available by IFES as a resource on EDR in region.

3. Africa – Nigeria Workshops

Under a USAID-sponsored project in Nigeria, IFES worked with the Legal Defence Center (LDC), a Nigerian NGO, to undertake research and organise a workshop on election dispute adjudication in the 2003 Nigerian general elections.

In addition, a national seminar to debate ways to strengthen the judicial processes for a fairer and more efficient adjudication of election disputes was organised, and brought together representatives of the Election Commission, the Ministry of Justice, the Court of Appeals and other stakeholders and civic leaders.

4. Africa – Liberia

In 2005, with USAID funding, IFES held a series of training seminars for the Liberian Election Commission, judges, lawyers and civil society on how to bring, adjudicate and communicate on complaints related to the October 2005 elections.

Based work done in Liberia, IFES dispute resolution expert Judge Barry Weinberg worked with IFES to publish “The Resolution of Election Disputes: Legal Principles that Control Election Challenges”, which is the first book of its kind to provide a centralised information source for understanding, responding to, and preventing election disputes and irregularities.

5. Asia – Indonesia Workshop

In 2004, IFES organised a workshop for the judges and staff of the newly-created Indonesian Constitutional Court. The workshop empowered the Court to adjudicate election disputes in a fair and timely manner, and manage caseload transparently and efficiently.

IFES also developed a handbook on election dispute adjudication, which had a significant impact in the courts successful addressing of disputes in the 2004 parliamentary and presidential elections.

An IFES workshop presentation was developed and published as part of the IFES Rule of Law White Paper series in a paper entitled *The Resolution of Disputes Related to Election Results.*”

6. Afghanistan

IFES, in close collaboration with Joint Electoral Management Body of Afghanistan, and the ECC, developed a training curriculum, organised and implemented a two-day training program for all the Provincial Election Commission PEC Commissioners, their respective secretaries and the Afghan Provincial Election Officers.

The training was conducted based on experiences from the 2004 Presidential election, which showed that the capacity of the election authority to effectively and professionally deal with a large number of complaints was pivotal to the credibility of the electoral process. A bulk of these complaints was most likely to be generated during polling day and the subsequent vote count.

Summation

In closing, let me reiterate the main points I would like to leave you with today for continued consideration and discussion, namely, that:

- An essential ingredient in ensuring the legitimacy of any election is a defined, functioning mechanism that addresses complaints and appeals occurring both prior to and on the day of an election;
- There are different mechanisms that can be set up to adjudicate electoral grievances, all of which need to be completely transparent;
- IFES has worked with election commissions, candidates, judges, voters, and other stakeholders around the world in establishing sound legal norms and procedures for addressing complaints and violations;
- While grievance resolution systems may differ per country, and there is no one perfect or universal model, they all must strictly correspond to legal code and be fully understood by the voters, candidates, election officials, judges, political parties, and media.
- Election Management Bodies need to have the tools to induce behavioural changes via the “carrot,” but also the real ability to prosecute violators, i.e. the “stick.”

Thank you very much indeed for your attention, and continued success to you all in your efforts to promote an open and fair environment at every stage of the electoral process.

ELECTORAL DISPUTE RESOLUTION MECHANISMS

Mr Ayman AYOUB
Senior Consultant, International Institute for Democracy
and Electoral Assistance (IDEA)

I. Electoral Justice: A Conceptual Note

Despite the general agreement that elections should be an instrument to manage conflicts and to strengthen the consolidation of social peace, they nevertheless are found, in many cases, in the origin of internal conflict. Elections should indeed be the best way to mitigate conflicts and to ensure, not only the alternation in power, but also the representation and combination of all social interests in an equal, inclusive and peaceful manner. However, if elections are held in the absence of a comprehensive and agreed legal framework, and if not well managed, they may aggravate existing frictions, or even lead to new conflicts, mainly in emerging democracies.

Therefore, Electoral Justice may be regarded as a key element to bridge the credibility gap that may affect electoral processes and lead to the rejection of their management, procedures, or results.

The achievement of Electoral Justice requires that elections are organised and conducted with fairness, equity and in an even-handed manner, ensuring a level playing field for all stakeholders in the electoral process. Based on the fact that all elections may give ground to disputed matters, the development and application of effective Electoral Disputes Resolution mechanisms (EDR) becomes a critical component that influences the legitimacy and credibility of elections. Social peace and political stability are of paramount importance, not only for newly established or emerging democracies, but also for democracies that are continuously searching for ways to improve their systems and processes.

Despite its importance, EDR has been a neglected area of elections in most cases until relatively recent years. In many cases, the establishment of new electoral legal frameworks or the amendment of long lasting ones, started to refer to EDR collaterally, focusing mainly on procedures to be applied in defined cases and for determined parts of the process, such as nomination, electoral campaign and election results. Only recently and in a few cases, especially in Latin American countries some of which have played a leading role in this field for long years so far, there is an increasing focus on the establishment of integrated and comprehensive legal and institutional frameworks for EDR. There is a need for, and increasing pressures to, put EDR high on the agendas of electoral reform, at this point where observers and analysts agree that elections around the world are shifting from a knowledge gap to a credibility gap.

EDR systems may also have a high influence on the inclusiveness of elections, the levels of turnout and the effective participation of all parties and social segments. When political parties, individual candidates and the public in general are confident that the process is well guarded against harassment and fraud, and incorporates efficient mechanisms to repair potential improbity and restore them in the full and free exercise of their electoral rights, they are more likely to participate vigorously. As a result, this will promote their confidence in the process and ensure higher levels of acceptance of its results, thus reducing the risks of violence and conflict.

II. Electoral Disputes Resolution & the Electoral Cycle

A comprehensive approach to EDR may only be possible if the entire electoral cycle - including its three pre-electoral, electoral and post electoral periods - is taken into account when designing and applying an EDR system. Focusing only on the electoral period, when high attention is paid to all aspects of the process, is not the best way to ensure the correctness, probity and sustainability of elections. The pre and post electoral periods may provide a much better opportunity for attempts to hamper the freedom and fairness of elections, and to gear the process towards partisan interests. In fact, the periods that precede the conduct of an election, as well as that follow its completion, may actually provide a golden opportunity for illegal and illegitimate practices, as the general interest for and survey of electoral related activities is in its low. The manipulation of the electoral legal framework and the procedures for political parties' registration, voters' registration and information, as well as other important aspects of the process that directly and highly influence the conduct

of elections, are all activities that may take place during those periods that are not usually regarded as part of the high momentum of elections.

It is therefore very important that EDR systems are designed in such a way that enables the relevant bodies to exercise their duties and to ensure the correct management of elections and the free and effective exercise of electoral rights throughout the entire electoral cycle. This requires an adequate legal framework and an efficient institutional setup that provides EDR bodies with sufficient powers, resources and tools to fulfil their mandate.

Electoral disputes in the Pre-Electoral Period may refer to many aspects, such as boundaries delimitation, political parties' registration, voter registration, voter information and education, etc. EDR bodies need to be empowered and backed with the needed resources to deal with such potential disputes, and to lay down the grounds for the organisation and conduct of free, fair and equitable elections thereafter.

During the Electoral Period, all electoral activities may give rise to disputes, including the nomination of lists and candidates, electoral campaign, distribution of polling locations, appointment of polling and counting officials, accreditation of elections monitors and observers, voting operations, counting of the votes, tabulation of results, etc. Unless there is an effective and efficient EDR system in place, that is able to respond swiftly to demands and issue enforceable decision without delay, the entire process may fail, and its results may be rejected.

Once an election is over, and immediately after the announcement of results, the process usually seems to hibernate and not to wake up until a few months before the following elections. Nevertheless, during this Post-Electoral Period, a number of electoral related activities may also originate disputes that could influence the development and sustainability of the electoral process. The continuous update of voters' lists, the review of electoral boundaries, the reform of relevant legislation and procedures based on lessons learnt are all important activities for the future of elections in a country. Concerned parties may well have a stake in such activities, thus leading to potential conflict of interests and/or perceptions and understandings. EDR bodies need to have a clear mandate, with sufficient powers and resources, to continue to exercise their responsibilities during this phase of the process, in order to ensure its sustainability and consolidation. This is especially important in the light of the fact that many electoral laws provide for ad-hoc judicial or other EDR bodies

that are established with a temporary mandate that does not enable them to continue to function well beyond the electoral period itself.

It is also important to mention here that EDR bodies and mechanisms should be established and empowered to deal with all kinds of elections, including, national, regional, local and supranational elections. They may also play an important role in the organisation and conduct of Direct Democracy Instruments including referenda, recall votes and citizens initiatives.

III. Generic Classification of Electoral Disputes Resolution Systems

EDR systems may be classified based on different grounds, such as the legal system and traditions, the type of elections or the nature of the bodies entrusted with EDR responsibilities, etc.

Based on the nature of such bodies, EDR systems may be classified as follows:

1. Legislative (Political) Systems

These EDR systems are found where a political assembly, such as the legislature or one of its committees, holds the ultimate responsibility of hearing and judging electoral related disputes, either as a first instance body or, mainly, through the certification of election results. Known as the traditional EDR system, its historical background lays in the principle of separation of powers. Basically, it is adopted as a tool to preserve the legislative authority independence against executive interference, and to safeguard the judiciary's autonomy by avoiding its involvement in disputes of political or partisan nature. They may consist of a mixed political-judicial or political administrative system, where the political assembly plays the role of last instance and rules on appeals against judicial or administrative bodies' decisions. The current trends include mixed political EDR systems, such as the USA, Italy or Switzerland where a mixed political-judicial EDR system is used, and Argentina and some Eastern European countries like Hungary, with a mixed political-administrative system. With very few exceptions, their rulings are usually final and not subject to any further appeal, and are based on political bargaining considerations rather than on legal provisions. However, and despite their political nature, it is important that these EDR bodies fulfil their responsibilities to guarantee the fairness and freedom of elections, and not as a way to achieve political advantages or take political revenge.

2. Legal Systems

These systems are found where EDR is handled by judicial, administrative or other bodies, different from political assemblies, with specific legal responsibilities to hear and judge electoral disputes, through the strict application of pre-established legal provisions. These include:

a. Judicial EDR Systems - Ordinary Courts of Justice

The resolution of electoral disputes in last instance under this system is the responsibility of judicial bodies that are established and function as part of the judiciary. They are staffed with judges with generic judicial competencies and usually not specialised in electoral matters. They may be directly responsible to consider electoral disputes and resolve them according to ordinary judicial appeals procedures, or indirectly through an appeal against a decision made by an administrative body, i.e. an EMB. They may also be responsible for all electoral disputes or for specific complaints determined in the law. The Supreme Court or equivalent body usually holds the ultimate responsibility, either directly or indirectly via an appeal procedure. This system was first adopted in England, where it is still used, and is referred to as the English System sometime. Examples of this system may be found in many commonwealth countries, such as Australia, Canada and India.

b. Constitutional Courts and/or Constitutional Councils (Austrian system)

Where the constitution and, therefore, the electoral legal framework empower constitutional councils and/or courts or equivalent bodies, that are not part of the Judicial Branch generally (with a few exceptions, such as in Indonesia), to certify elections results and to deal with certain electoral disputes. Usually this system is combined with other EDR procedures where minor disputes may be kept under the responsibility of an administrative body or ordinary courts of justice. Like other courts, constitutional courts and/or councils may consider electoral disputes either directly, like in Austria, or indirectly through an appeal procedure, like in Germany. Other examples include Rumania with its constitutional court, and France and many francophone countries with a constitutional council. Decisions of such bodies put an end to the process.

c. Specialised Electoral Courts (Latin American system)

Where, mainly as a reaction to the political system, specialised electoral courts are established with a specific mandate to resolve electoral disputes. They may be under the Judicial Branch, such as in Mexico and Venezuela, or independent courts that do not belong to the judiciary while implementing their EDR responsibilities, such as in Chile, Peru or Palestine. These courts are usually staffed with judges specialised in electoral matters, and whose jurisdiction is limited to elections. The establishment of specialised courts, although they still belong to the judiciary in some cases, also aims at avoiding the involvement of ordinary courts of justice in matters of political or partisan nature. Their rulings may be final or, in some cases, subject to an appeal before the constitutional or equivalent court. This system has been one of the major contributions made by countries in Central and South America, and thus is also referred to as the Latin American system.

d. Administrative EDR Systems

Under these systems, responsibility to deal with EDR is given to an administrative body, usually with electoral management powers. However, an EDR system may be classified under this mechanism only when the decisions of the administrative body are final and may not be subject to an appeal before any other authority or body. In some cases, these bodies may be under the judicial branch, like in Brazil and Paraguay, or be completely independent like in Costa Rica, Nicaragua or Uruguay.

In many emerging democracies, and in post conflict situations, it is possible to observe an increasing interest to keep the entire electoral process away from the influence of any external authority, especially typically established powers, including the legislative, the executive and the judiciary. Many believe that the best guarantee for free, fair and credible elections is to maintain all electoral related matters, including EDR, under the responsibility of an independent body or bodies that manage the process from A to Z. However, this requires a serious consideration of the potential limitations and challenges that such independent bodies may face, and actually face, that ultimately may affect their credibility and legitimacy. A counter argument to this view lays in the fact that an Electoral Management Body (EMB) should not be part and arbiter at the same time, as many electoral disputes are usually originated by EMBs' decisions, behaviours and actions. Many factors may influence the credibility of such bodies, not being the least of them the system that is adopted for the selections and appointment of their members, and the accountability

procedures that they have to abide by in virtue of the law. One effective way out may be through the combination of an administrative system with a judicial one, where the resolution of disputes starts at the administrative level, and where parties to a dispute may still have a recourse to an autonomous judicial body if not satisfied with the decisions made at the administrative level. Many newly established electoral laws adopt this system, thus enabling the resolution of a good number of disputes at the administrative level, through enforceable decisions, and reducing the involvement of or the need to seek out for the judiciary.

e. Other Systems

There are a number of other possible EDR systems that, although similar to the judicial or administrative ones, are based on the handling of electoral disputes by bodies that are not part of the judiciary and do not hold administrative responsibilities related to the management of elections.

These are usually *Ad-hoc* or Provisional Bodies or Courts established by law for the exclusive purpose of dealing with electoral disputes. Such bodies are usually temporary and operate independently from the judicial branch or any other authority, during the electoral period. Alternative EDR systems and bodies, that usually use conciliation, mediation and arbitration mechanisms, may also be classified here, whether they are ad-hoc, temporary or permanent.

Ad-hoc EDR bodies may constitute a good way out of a deadlock situation, in transitional processes or in countries emerging from deep conflict, where stakeholders may agree to establish a provisional body to undertake disputes resolution and commit to accept and fulfil its decisions (such as a special body to oversee and enforce codes of conduct subscribed by the different stakeholders in the electoral process). It might also be a system promoted by the international community in certain situations to ensure the smooth development of transitional elections, as was the case in Bosnia Herzegovina, Cambodia or Haiti. Consensus building among stakeholders in such cases is of paramount importance to ensure the effectiveness of the system.

In systems where a judicial body undertakes EDR responsibilities, it is important to consider aspects related to the independence and credibility of the judiciary in general. In emerging democracies this could constitute an important factor to be taken into account, as the lack of credibility of the judicial system, and perceptions of its being subjugated to the executive or ruling party control, may seriously damage the credibility of EDR system.

Examples exist of failing democracies where the judiciary, that is not perceived to be independent and lacks public confidence, is given a role in the supervision of elections and the resolution of related disputes.

IV. Some Basic Guiding Principles

No matter what EDR system is adopted, it is essential that EDR bodies, their members, practices and procedures follow some basic principles to ensure the fairness, equity and effectiveness of the system. Among the most important principles are:

- 1. Independence of EDR Bodies:** Effective legal and other means should be provided for to ensure full independence of action of EDR bodies from any external influence or interference, mainly from the executive. This independence should be guaranteed by constitutional and other legal provisions, and should include both a functional and a regulatory independence to enable the EDR body to have full control of its activities and procedures, within the law. Administrative and, where applicable, financial autonomy may significantly contribute to the independence of EDR bodies.
- 2. Independence and impartiality of members of EDR bodies:** Regardless the mechanisms for their selections and appointment, members of EDR bodies need to fulfil their duties in a strictly autonomous and impartial manner, by vigorously applying the law and relevant procedures, completely free from any external influence or pressures. Members of EDR bodies should treat all parties equally and fairly, as perceptions of a partisan behaviour will undermine the credibility of the system and may lead to rejection of EDR decisions, at times by violent means. In order to ensure members' independence and impartiality, constitutional and/or legal provisions are needed to establish an appropriate framework for them to act in this way. Also important in this regard are the mechanisms for the selections and appointment of members of EDR bodies, in a way that promotes their respect and acceptance, as well as other factors such as the security of tenure for members and the accountability requirements that are imposed on them.

3. **Accountability of EDR bodies and their members:** As public institutions, EDR bodies and, therefore, their members, should be mainly accountable to the public in general, as their role is mainly to contribute to the equity of the electoral process, and to guarantee the free and effective exercise of political-electoral rights. Formal accountability requirements should always be based on this generic accountability of EDR bodies and their members. To achieve this, EDR bodies should make all efforts to commit to and promote transparency in their activities that should be based on clear and unequivocal procedures. Members of EDR bodies should also commit to, and be seen to commit to, the principles of integrity, professionalism, efficiency and service-mindedness.
4. **Other Procedural Principles:** The effectiveness of EDR systems requires that these are also designed and operated in a manner that guarantees due process, based on public hearings and real opportunities for disputing parties to substantiate their claims and provide all possible evidences to defend their positions. In addition, the EDR process should be accessible to all interested parties, without undue or onerous obstacles. It should therefore enable all individuals and institutions to seek out for its protection free of charge, through simple and expedite procedures. Finally it is important to ensure the publicity of the process and all EDR decisions that should be motivated and based on the provisions of the legal framework.

V. Conclusion: Factors that influence the Effectiveness of EDR Systems

The selection of an EDR system may be one of the most important institutional decisions that a country may face when designing or reforming its electoral system. Its establishment and operation will certainly have to overcome many obstacles and challenges to ensure its effectiveness and sustainability. But the design of a new electoral framework, or its reform, will not be complete without an appropriate EDR system that is efficient and strong enough to ensure the peaceful consolidation of democracy. That is why, it is critical to consider, when undertaking the establishment or the reform of an EDR system, many factors that may influence its future effectiveness, including the constitutional/legal framework, the electoral system and its adequacy to the conditions, values and traditions in each case, the electoral management model that is designed for the organisation and conduct of elections, as well as the political and social environments and the legal traditions followed in each country. These and other factors have proven to reflect on the EDR system and

its effectiveness, and lead to the conclusion that the constitutional and institutional design of the electoral framework in a country need to be undertaken with a comprehensive and holistic approach that incorporates EDR as one of its key components.

Finally it is important to stress again that electoral assistance efforts and international electoral observation initiatives and missions, should also pay more attention to the establishment and function of EDR, in order to ensure that such assistance and observation are comprehensive and more effective in the achievement of their highest goals to promote credible elections and support the consolidation of sustained democracy.

ELECTION FRAUD AND ABUSE¹

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Subject of the fraud

The outcome of elections determine the personal circle of those individuals who will exercise constitutional (parliamentary and municipal) power in a state. Admissible, and even inadmissible methods are used by parties, governments or persons in the pursuit of power. Election fraud occurs in every country in the world: there are election abuses irrespective of the number of inhabitants, the geographical size and political system of a country. It happens even in democratic states that the number of votes actually cast by the electorate and those included in the official count, are at variance. Of course, there are more opportunities for election fraud (unfair elections) in dictatorships than under democratic conditions and circumstances. It happens even in democratic states, that power is considered more important than fair play. Democracy does not in and of itself provide guarantees for fair elections. Elections are always threatened by the possibility of abuses, or of fraud being committed. No country in the world is exempt from at least some people intent on perpetrating fraud. The intention to commit a fraud is of subjective origin, so it is not foreign to people. Therefore, a political consensus embodied in constitutional rules and a solid system of rules based on firm guarantees must be established between the governing and the parliamentary opposition parties, in order to ensure that fraud may not influence the result of elections, or, in case it already took place, that the facts be made public. It may happen that a lesser or greater portion of the Members of Parliament attain their position by fraud, however, electoral law should contain guarantees annulling such mandates sooner or later.²

¹ Study published by the The Hungarian Center for Democracy Research Foundation, Budapest in the political annual of Hungary, Volume I, pp. 568 to 578.

² The cases described in the study are from the findings of the Association of Central and Eastern European Election Officers (ACEEEO). As of 1995, ACEEEO has been monitoring elections in twenty countries.

The concept of election fraud

The term “election fraud” is a collective concept in colloquial language, referring to acts that create a difference between the actual and formal election results. Fraud is not simply related to an act deemed legally criminal, but is of a broader concept: it gives rise to a deviation from the will of the electorate regarding the election process and the numerical result of voting, and deflects the result of elections from the will of voters in an unfair or illegal manner.

Who is the offender?

The fundamental question regarding fraud is the identity of the perpetrator. The most serious case is when election fraud is institutionally organised by the government or party in power. In such cases, the election results may not have the legitimising effect, and may also be generally questioned politically by foreign governments as well. Nevertheless, many conditions must be in place to implement institutionalised fraud by governmental authorities; as a result, such activities will become known sooner or later, or, ultimately, before the court of public opinion. The most dangerous form of institutionalised fraud is one committed by an organisation at the apex of the election hierarchy.

A government must be held liable for the transparency of elections, if it ‘tacitly resigns’ to the fact that a ‘narrow circle’ of persons deliberately strive to falsify election results. It is another matter, that the government or the minister accountable for elections should be politically and legally scrutinised if the elections machinery produced ballots not containing the names of legally nominated parties, or questions being put to a referendum. Such problems go beyond constitutional issues, and in general raise the question of the government’s social legitimacy, and as such, have far-reaching effects significantly beyond the eventual legal consequences.

Special attention needs to be paid to situations, when a government fails to provide the legal preconditions required for the conduct and organisation of fair elections. In such cases, there is no question of a wilful fraud, yet, the lack of the necessary conditions make the election results disputable. For example, no centralised state records exist to allow personal identification of the electorate; moreover, no organisational or personnel prerequisites necessary for the public administration side are established; failure to provide sufficient sums to establish the proper material conditions (ballot-boxes, ballot-paper, computerised control, transportation costs, etc.).

From a societal standpoint, a different yardstick is used to measure election fraud if the perpetrator is one, or only a few individuals. In general, such acts do not effect the result of the election since they are based on personal ambition or over-enthusiasm in the interest of a certain party, and do not exert enough power to influence results determined by several million ballots cast. (This differs from a fraud case where hundred inhabitants of a settlement elect their mayor.) Fraud committed by individual persons does not principally threaten the result of an election, but does have an effect on public confidence in law and order. Such fraud may diminish the legitimacy of elections; therefore, it cannot be tolerated, even if resorting to criminal prosecution. Applying the terms used in criminal law, it is important to clarify whether election fraud can be committed only by wilful misconduct, by reckless behaviour, or a mistake committed by the perpetrator. Practical experience shows that election fraud may be committed only wilfully. Citizens and members of election bodies are generally aware of the rules and regulations guiding elections, and should they be violated out of negligence, the actual results can be reconstructed. Obviously, 'negligent election fraud' committed by the individual citizen versus a member of an election body should be adjudged differently. A citizen may not recklessly commit an election fraud, since his/her reckless conduct might not result in influencing the election results. This, however, can only happen as part of the activity of a member of an election body. A mistake (for example, arithmetical error in aggregating the results of election minutes) may by no means point to election fraud as a criminal act, but it is another matter that such a mistake may result in ethical violation or, in the case of employment relationship, disciplinary accountability.

Behaviour, which although is in obvious contravention of provisions of the electoral law but is perpetrated without intention of fraud, even though it may result in the invalidation of elections and necessitate a new election to be held within the framework of legal remedy, should be distinguished from election fraud. For example, if the number of a ballot counting committee drops below a certain level prescribed in electoral law on the day of election, due to illness or the death, and the balloting is continued despite such an event.

Types and methods of frauds at elections

There are several types of election fraud, namely, primitive, intellectual or indirect. Such types and methods become effective or “successful”, if the results of the election among the parties (coalitions) are balanced, that is, they are between forty five and fifty percent. If there are great differences in election results, then the fraud may not be successful since it is unable to influence the outcome of the mandates. Despite of this, fraud is fraud.

Primitive fraud is a method which is directly aimed at falsifying the result of the elections. The simplest election fraud is when the result of the election in a polling station is determined regardless of the number of ballots cast by the electorate; different data is recorded in the minutes than the results shown by the ballot count. For this method to be workable, a precondition is the common conspiracy of all members of the ballot counting committee. Should only one member expose the case (by denouncing others), the fraud can be subsequently expressly proved, since paper ballots must be kept for a definite period of time and the actual results can be reconstructed. Another method of fraud is when the election committee determines – at the time of aggregating the data from the minutes of the polling station – a result different than the result that would be attained by fairly aggregating the results at a given location. This method is also considered primitive, since the minutes taken in a polling station are made out in several copies, and may be used as proof in legal remedy proceedings. Another method also used is the falsification of the minutes containing the correct election results, however, it is also predicated on the ‘consensual conspiracy’ of the members of the ballot counting committee. A statutory guarantee to preclude this type of fraud is the requirement that the ballot counting committee and the election committee be comprised so as to represent adversarial viewpoints. In the event that nominees have their own representative in the ballot counting committee and in other committees, the opportunity to commit fraud may in principle be excluded. In some Western European countries and in the United States, different methods are applied. For example, in some states within the United States and in Great Britain, nominees do not have their own representative in the ballot counting committees, and it happens that the ballot counting tasks are performed by only one (or two) person(s); in spite of this, there is no fraud committed. It is obvious that a different type of political culture exists, and a different level of moral and material appreciation is accorded to public officials in the aforementioned countries. The majority of public officials do not even think of fraud when officially counting the votes since the social status of public officials is attractive, and the consequences of violation are grave.

Furthermore, there are other (not legal) social guarantees to prevent fraud besides the liability of public officials. Such are, social openness and freedom of the press allowing for anyone to be present at ballot counting. Should such right of a person be violated, the social consequences are much graver than any eventual constitutional accountability. That method can, of course, be applied in countries where societal relations and relations with the executive branch are in balance. In countries where there is a lack of public confidence and a keen opposition between political forces exist (for example, Central and Eastern Europe during the 1990's), or as at present in Africa and in some Eastern European countries, you can only resort to ballot counting measures where the representatives of the opposing parties are also present.

The misuse of paper ballots is an obvious method of falsifying voting results. The most primitive form of this type is when one, or several members of the ballot counting committee subsequently invalidate ballots (for example, by placing an additional "x" or "+" mark on the paper ballot). This method is also detectable. It is interesting to note that every lawmaker attributes great importance to the requirement of using a pen, rather than a pencil at polling stations. Such insistence dates back, in all probability to the time when traces of erasure could not be subsequently discovered. Currently, all preconditions exist to detect all such acts of fraud. The replacement or concealment of ballot papers can easily be avoided if paper ballots are official forms subject to strict accounting procedures. The prevention of such type of fraud is not subject to the quality of the paper ballot, but to guarantees embedded into the administrative processes.

To commit fraud by transferring blank paper ballots to the outside and smuggling them back into the polling station requires a high level of organisation. An essential element of this method is the uncertainty of the perpetrators, as to whether the corrupted voter would actually vote for the candidate for whom he received compensation. The organisation of such fraud starts by collecting 'dirty money', and continues in a car or a flat near the polling station. Voters, who are recruited through a whispering campaign, know that they will be granted a certain amount of money (or durable foodstuffs). The first person acting on behalf of the organisers of the fraud places only the envelope without the ballot into the ballot-box at the polling station, and hands over the unfilled ballot to the organisers outside. The organisers then fill in the paper ballot, and the next deceiver takes it in his/her pocket to the polling station, placing it in the ballot-box, pocketing the blank ballot he/she received from the ballot counting committee. Afterwards, he/she

hands it over to the organisers outside. Remuneration is granted only for blank ballot papers.

The misuse of voter registries is another form of election fraud well-known and occasionally used in the United States, Russia and Hungary alike. There is no country in the world where voting is possible without personal identification of a citizen (voter), or where the number of citizens eligible to vote could not be determined. It is well-known from the story of Gogol entitled "Dead Souls" that other citizens cast ballots in place of deceased voters. A more refined method of the misuse voter registries is as follows: voting for a special group of citizens is conducted in secret (for example, in military electoral districts), and the election result of such districts is added to the civilian results only if, it is in the interest of the government. It is a particularly good method to falsify the result of an election if there is no registry of eligible voters (due to a break-up, or separation of a country into several parts), and where the citizenry is allowed to vote on the basis of different registries (for example, bank records kept for exchange transactions when a new currency is introduced). There are actual examples of the number of eligible voters increasing in certain countries by millions on election day.

A well-known method of election fraud is when some of the voters "move" from their own electoral district to another one, in order to be able to cast their vote for the nominee of the other district, or add their voice to a resounding answer to a referendum. An even more refined form of such type of fraud is when after registration in the voter registry of another electoral district (change in home-address) the persons in question do not take part in the election (or in a referendum), so as to invalidate the results by virtue of a low participation threshold. Therefore, it is fundamentally important for the bodies responsible for compiling voter registries to regularly monitor trends in the number of changes in home-addresses in their areas of competence, and to take organisational measures when unnatural trends are identified. In such cases, the existence of fraud is expressly proved, if those voters who moved to another electoral district, "return" to their original place of residence. In Hungary, such fraud is committed in cases of local referenda and not during general elections. Such referenda are usually held to secede from a town or municipality, so that local business taxes could be appropriated by a geographically small and sparsely populated part of it. In such cases, fraud is a means for the unlawful appropriation of a part of the public property.

For lack of appropriate guarantees and organisational measures, voting other than the place of residence of a voter (“blue paper voting”), or voting through mobile ballot-box is an especially good way to commit election fraud. The right to vote is a primary constitutional right, the exercise of which must be ensured even if an elector is not recorded in the voter registry. (being recorded in the registry is a declarative and not a constitutive act). As it is also proved by the “blue paper voting” elections held in Hungary in 1947, the enforcement of such a legal principle – without reasonable guarantees and administrative organisational measures – may give rise to mass election fraud. In 1947, the legal provisions on elections prescribed and allowed that a voter, who was not staying at his/her place of residence on the day of election, could cast his/her vote elsewhere. No statutory provision was at that time in force which could have made it obligatory to control whether a voter casting his/her vote at another settlement, had actually voted at several places or not. Accordingly, administrative bodies failed to control voters who cast their vote twice or several times. Public officials of the time can partly be excused from responsibility because such election fraud was institutionally planned by a party / parties, and, for lack of computers, manual checking would have resulted in an unrealistically heavy work load.

Monitoring multiple voters is not an easy task even today, since all data submitted to the eleven thousand polling places in Hungary by voters providing proof of eligibility must be verified at one central location. Nevertheless, computers significantly reduced the workload. Even though the electorate was informed that voter eligibility would be subject to computerised verification, there were a number of people who cast votes twice, or multiple times during the 1990, 1994 and even in the 1998 elections. Technical developments allow for the detection of such cases, leading to criminal prosecution. However, the low number of offenders does not obviate the need to consistently monitor the situation as it could invite a slackening in strict enforcement.

Voting by means of mobile ballot-box may create similar conditions which might, however, be less important in magnitude. Such conditions may occur if the ballot counting committee does not have enough members to arrange for voting at the home of a voter, or to secure voting in the presence of at least two representatives of opposing parties. Voting by mobile ballot-box may potentially create dangerous conditions since voters requesting it are in general elderly or ill, who, even though are capable of making their will known, can be influenced (by threats or promises) more easily than the average person. Such

conditions can only be avoided if mobile ballot-boxes are jointly delivered by the representatives of opposing parties to the home of ill, or elderly citizens.

It is particularly important that the voter registry be correct and exact, especially in cases where an election is held with the participation of a small number of voters (for example, if 100 inhabitants of a settlement elect their mayor). A voter may pass away on the day of the election, or on the preceding day, thus he/she cannot be deleted from the voter registry and the result of the mayoral election may depend on only a few votes. Taking into consideration the fact that in such a case a mayor may win his/her position depending on the correctness of the voter registry, such instances should be considered where an error in the registry could materially influence the outcome of the election. It may, ad absurdum, occur that the number of the votes cast for and against an issue in a national referendum is the same (such as the referendum held in France on NATO membership, or the US presidential elections). The question is whether the practice in the aforementioned mayoral election example may be applicable at all in cases where several millions of votes are "facing off". The reason such practice would not be applicable is that the errors in the registry of eligible voters statistically balance out one another. An additional question may also be raised, namely, how a town of ten thousand inhabitants should relate to the correctness of the voter registry issue. The cases listed above cannot be categorised as wilful fraud, but at the least they are cases of negligence, or rather a *force majeure*, for which no individual can be held personally responsible.

The abuse of 'nominating coupons' before election day is another form of fraud. The law stipulates that a nominee will have his name on the paper ballot if a certain number of voters support it by their signatures. Signatures may, of course, be falsified. 'Nominating coupons' for this reason should contain an identification code making election fraud considerably more difficult. Such identification code may be a taxation, social security or a personal identification number. These codes are difficult to obtain in large numbers by persons campaigning for signatures, consequently the opportunity for falsification is lessened. It is much easier for those, who in their official capacity have access to such information, to obtain the identification codes illegally (for example, lawyers, physicians, public servants, etc.) Therefore, it is particularly important to record all access to such data. This problem has generally been resolved in big computerised systems (such as, in vital statistics), however, outside the circle of public servants, the monitoring of data protection enforcement is somewhat shallow. There are proposals that no personal identification code or number be inscribed on the 'nomination

coupons'. Should such a proposal be accepted, the collection of 'nomination coupons' for an election would become unnecessary since all data (name and home address) required to obtain 750 nominations for a parliamentary candidacy could be copied from the telephone directory.

An election fraud is deemed to have taken place when a citizen supports by his/her signature more than one candidate. A special problem is to comply with legal provisions relating to the collection of 'nomination coupons' at off-limits locations. Legal provisions describe these locations as follows: public health institutions, workplaces and public transportation venues. Such legal provisions are aimed at protecting citizens, who have limited opportunity to manifest their will from "assertive" party workers. The violation of such provision is sanctioned by law in a manner that all 'nomination coupons' collected in this way are considered null and void. Enforcement of the aforementioned sanctions is limited by the practice of the election authorities, in that the sign-up sheets collected for a referendum in favour of a social group within a pre-defined profession is regarded as collected at the workplace only, if this is confirmed by several witnesses. Sign-up sheets mailed from the workplace of the members of such group to the election committee cannot be regarded as having been collected there.

The collection of 'nomination coupons' for money constitutes obvious election fraud. The only question is: who gets the money? An act by an individual accepting remuneration for making the nomination, has been held clearly illegal, but if the money is received by a natural or legal person, only for collecting supporting sheets, it cannot be considered as election fraud.

It has already happened, that a person who has not been able to collect the appropriate number of 'nomination coupons' was registered as a candidate (and so he/she was listed on the ballot). On the opposite side, it also occurred that a legal candidate has not been listed on the ballot. In such cases, just as in the determination of whether election fraud has taken place or not, the matter of intent is decisive. It is, however, unlawful – regardless of intent – and it implies a repetition of the election, if a candidate is not listed on the ballot owing to for example, a printing error. A similar situation exists, should a candidate not legally qualified, appear on the ballot. The reason for this classification is that the result of the election would have been different if only the legally qualified candidates had been listed. It is yet a different category, when a person not entitled to be a candidate is listed as such on the ballot, however, his name was deleted by the election committee, so the voters were able to cast their ballot having been aware of such deletion.

A person, who prevents other persons from exercising their right to vote at an election, commits election fraud. Such acts can be implemented in various ways, for example, constraints, threats, etc. But it is questionable, whether an election crime can be committed by providing good faith, or bad faith information that results in a voter unable to cast his/her vote (for example, suggesting that the voter should cast his/her vote in another polling place, and not in his/her district, etc.).

Morally, it is an obvious election fraud, if a candidate purchases his/her mandate for money. On the other hand, there is a great variety of such cases and they must be adjudicated on their own merits.

Should a candidate purchase a party's vacant mandate position for money, it is construed to be an obvious election fraud. A question may nevertheless be raised: how can a candidate alone be able to buy such vacancy for money without the cooperation of the party's leaders.

Morally, this behaviour also cannot be considered any less reprehensible.

It is a different issue, when a party asks for pecuniary assistance from candidates before elections are held. This type of behaviour also cannot be supported morally, but at present it does not violate the law.

Campaign financing

The lack of regulations relating to the collection of campaign monies results in more debated cases in regards to equal election opportunities. The relevant legal provisions regulating the management of party funds are insufficient, and do not contain any specific rules besides the limitation of election expenditures to an amount between HUF 1 million to HUF 386 million. It is well-known from history, that in case of victory, the parties frequently reward donors contributing to the election campaign with government positions. (In hotels, reception halls are called lobby because parties in the United States often received money from donors in hotel halls.)

It would not viable, but a legally feasible path to prohibit political parties from recruiting financial donors for their election campaigns. Equal election opportunities are essentially questioned, if the parties secretly receive 'soft' funds for their campaigns. In democracies, one should strive to maintain equal election opportunities even if it cannot be realistically guaranteed, since without it the rich would be able to buy its representatives making the whole

election proceedings unnecessary, even worse, it would make this institution of democracy disingenuous. Campaign financing of parties is a global problem.

The problem is rooted in the general financing system of the parties. If the law contains only provisions on campaign financing, and the parties are able to collect money during the remaining three and a half years of the election cycle virtually without any oversight, then even if the law is “good” for campaign financing, all appeals to fairness will fall on deaf ears.

The electorate has a right to know, both before and after the elections, regarding the source of wealth of its representatives, whether it comes from corporations or private individuals.

Media

Television can be regarded to be the most efficient means in an election campaigns. Due to the influence it exerts on masses of potential voters and the intensity of its message – it has the most vigorous effect on the will of the citizens, and through them, the final outcome of elections. A part of the media is in the public domain, and some of it is privately owned. The Hungarian electoral law strives to create equal opportunities among parties in the realm of public-service television channels (by way of an obligatory introduction of every political party), and parties are allowed to appear on television channels in proportion to their nomination support. The more detailed the relevant regulations are, the more equal opportunities among the parties can be increased, however, the more boring they become from the point of view of television programmers. In 1990, sixty parties in Hungary were given the opportunity to introduce themselves in a five minute spot, however, such programs became the object of cabaret talk shows. But there is another question: how can citizens learn about the details about the parties, if not through easily accessible programs. The use of local television channels in the election campaigns poses a special problem. In addition to national party politicians, local television channels are further influenced by the local powers that may be. It is certainly considered an election fraud if a mayor prescribes which candidates can appear on the local television channel, but it can also be debated, when a certain mayor’s ‘public appearances’ are far more numerous than that of the other mayoral candidates.

In this regard, Hungarian electoral law contains only an insignificant number of legal provisions as to quantity or quality. Pursuant to the electoral law, this issue should be regulated by the law on media, however, media law stipulates that regulations are to be provided for in the electoral law. This is a typical example of a loophole.

In Western Europe, there are special institutions set up for election campaigns measuring the total times of candidate appearances very precisely, regulate program broadcast times (before and after prime time, during daytime, etc.). In Hungary, probably such institutions should also be required to be created.)

Vote by secret ballot

The legal order of elections requires that the conditions of vote by secret ballot in polling stations should be secured. In Hungary, the legal provisions prescribing the same were passed in 1945. The Hungarian electoral law of 1870 contained the following remark: secretiveness is foreign to the spirit of the Hungarian people. The outcome is well-known: the candidates of the government party won in general elections by open voting. At present, laws not only prescribe that voting should be implemented in polling-booths, but the public administration system also guarantees the provisions for their use. (In some Eastern countries a desk along the wall is regarded as an appropriate means for a vote by secret ballot.) But what is to be done if a voter does not intend to cast his ballot in a polling-booth enabling him to vote by secret ballot, but he/she wants to cast his/her ballot in the polling station so that anybody can see him/her voting. It is certainly an election fraud if a voter uses the occasion to vote for influencing other voters present at the polling station. It is an especially grave case when such influence is exercised by a member (members) of the ballot counting committee. The lack of a ballot-box, or its handling in an unlawful manner is almost a call to commit election fraud. This is why the electoral law provides for very precise and detailed rules concerning the mode of storing, handling and counting of paper ballots.

Services provided for voters free of charge nowadays

The electioneering tricks inducing voters to vote for the candidates of the government party are well-known from the novel of Kálmán Mikszáth "Two elections in Hungary". "We have also given them something to eat and drink" Mór Jókai, member of the Parliament for the government party described in one of his novels. Such election fraud was made possible because of two things: on the one hand, there were very small number of voters (only 3% to

8% of the population), and on the other, there was open voting and the costs and expenses of food, drink and transportation could legally be written off (as provided for by law at that time in Hungary). This method could also be used because elections in Hungary in the nineteenth century lasted two or three weeks, or even up to two months, instead of one day.

As suffrage became universal (there were already 8 million voters), the reduction of time for elections to one day, the introduction of the prohibition of alcohol sales on Election Day between the years of 1945-1989, as well as the institution of secret balloting, the number of such type of election abuses decreased radically. Nevertheless, even nowadays it is regularly objected to during mayoral elections that voters were supplied "food and drink", and mayors in office sometimes even promise to grant welfare payments or support to their voters.

Campaign abuses

Campaign abuses comprise the following elements: presenting election programs, making propaganda for a candidate, list or a party, organising election meetings, placing election posters, collecting donations, recruiting party activists, etc. Such large-scale methods seem to be insufficient, and other methods are also used, such as, in particular, using data or facts relating to the private life of the relatives of a candidate; publishing announcement(s) on behalf of another candidate or party without his/her/its knowledge; falsely using the name or symbols of another candidate or party; pasting over a party's election posters on the posters of another party, or repainting, or making fun of the other party's posters. Such acts are generally referred to in the technical literature collectively, as negative campaigning. In some countries, negative campaigns are prohibited by law; nevertheless, they are not penalised even there. In Hungary, negative campaigning is not forbidden.

Hungarian electoral law provides for campaign silence on the day before election day. The violation of such legal provision is, however, penalised only slightly; and election bodies and courts penalise the breaches of the rules of campaign silence only to an insignificant extent. It should, of course, be judged differently, if on the eve of the election leaflets are placed in the mail-boxes of the flats of voters, or if somebody standing at the door of the polling station tried to persuade voters to vote for a certain party. It is, however, promising that a court passed a strict sentence and ordered a repeat of the election when in one of Budapest districts the campaign video of a candidate was broadcast several times "by mistake", on election day on a local cable television station.

Election bodies as well as the courts should strengthen their practice and hand down severe punishment when a mass violation of campaign silence takes place and it is deemed suitable for influencing voters' decisions.

Computers

A part of the general public deems the use of computers as providing opportunities for election fraud. It is, of course, possible to commit fraud either through data recording or software applications, by connecting to a network, or by causing hardware malfunction. (In a Northern European country, according to the computers, an ultra-radical party was in the lead for 30 minutes.) The fear of the unknown and the lack of appropriate guarantees give citizens the impression, for good reason, that computers may be an appropriate means for committing fraud. Serious election fraud can be committed by computers when a person or organisation intending to perpetrate fraud, is willing to make an investment of funds in his/her/its computerised systems equal, or similar to that of the existing official election data processing system. In all probability, computer fraud in such cases could not be prevented. Therefore, for security reasons, it is required that in addition to computerised ballot counting, election results be also counted manually. By consistently implementing such a method, in principle it can be excluded that it would make sense to influence computer system which processes election data, since any attempt at fraud can come to light after manually aggregating the data the day after the election. Therefore, interference with or deceiving the election computer system may lead to deceiving the general public and foreign governments for a few days only after elections.

Computer technology affords good opportunities for detecting computer fraud. The development of satisfactory software and the evaluation of election results after the processing of election data, election fraud can be unequivocally discovered. For example, in a distant country, in fifty percent of the polling stations located in small villages only the ruling party won. Since the voters in such villages constitute only 1 percent of the total population, even this type of election fraud could not influence the countrywide results. However, the fact that fraud has been committed was proved beyond any doubt, since participation in the election in the above polling places was 100%, and every vote cast was for the government party. In the absence of a computer system – through which the results of an individual polling station can be compared with that of all other polling stations in the country –fraudulent acts would never be revealed, or at best only accidentally, due to the impossibility of comparing large volumes of manually processed data. A computer system, by

which the proportion of valid and invalid votes cast could be examined, is of fundamental importance. In another distant country, where the number of invalid votes cast in all polling stations was reviewed, it was easy to screen out a 30% to 40% ratio. Computer systems revealing fraud do not by themselves furnish sufficient evidence that a fraud in fact has been committed. Nevertheless, they direct attention to the fact that by resorting to other legal remedies (such as the questioning of witnesses), specific cases of fraud can be detected and proven. It is particularly important to investigate those cases, when winning a mandate depended only on a few votes. At this moment, international observers can enter...

In principle, one cannot fully exclude the possibility of election fraud. By the provision of statutory guarantees, by the consistent investigation of all legal remedy claims, by ensuring the existence of all requisite personnel, financial and organisational preconditions for the fair conduct of elections, by providing for all public officials taking part in election work to be independent of political parties, by establishing an open and transparent election process, and ensuring easy access to documents in the public interest, and using modern computer systems, election fraud can be prevented, or fraud already perpetrated can be revealed and identified. Nevertheless, in and of itself, electoral law and the fairness of the election process is not enough. It is the stability of the democratic political institutions and the appropriate functioning of governmental authorities that make an election completely fair.

The table below shows the number of crimes committed against the rules of elections (referendum) which have become known. When construing the data below, it should be considered that they show the cases which, after police investigation, are in the phase of action by the public prosecutor's office in respect of criminal proceedings. The data included in the table below are from the Statistics Office of the Central Office of the Ministry of the Interior. For lack of data source, the table does not contain the judicial outcome of crimes committed against the rules of elections.

1. Statistics on election crimes

County	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Budapest	8	3	0	0	9	3	0	0	6	2	0	0
Baranya	0	1	0	0	0	0	0	0	0	0	0	0
Bács	0	0	0	0	0	0	0	0	0	0	0	0
Békés	1	0	0	0	0	0	0	0	0	0	0	0
Borsod	3	4	0	0	0	4	0	0	0	1	0	0
Csongrád	0	0	0	0	0	1	0	0	0	0	0	0
Fejér	0	0	0	0	1	0	0	0	0	0	0	0
Győr	0	0	0	0	2	0	0	0	0	0	0	0
Hajdú	2	0	0	0	392	2	0	0	0	1	0	0
Heves	0	1	0	0	0	0	0	0	0	0	0	0
Komárom	0	0	0	0	1	0	0	0	1	0	0	0
Nógrád	0	0	0	0	1	0	0	0	0	0	0	0
Pest	0	1	0	0	0	1	0	0	1	0	0	0
Somogy	2	0	0	0	0	0	0	0	0	0	0	0
Szabolcs	0	0	0	0	0	2	0	110	0	0	0	0
Szolnok	0	0	0	0	0	0	0	0	1	0	0	10
Tolna	0	0	0	0	1	0	0	0	0	0	0	0
Vas	0	0	0	0	1	0	0	0	0	0	0	0
Veszprém	0	0	0	2	0	0	0	0	0	0	0	0
Zala	1	0	0	0	0	0	0	0	0	0	0	0
In total:	17	10	0	2	408	13	0	110	9	4	0	10

2. Statement on election abuses reported in the period of election of the Members of the Parliament in 2002¹

County	Reports in total	Number of reports to the police															
		Crime										Infringement					
		Damage, theft	Libel, defamation	Vandalism, bodily injury	Use of symbol of despotism	Abuse of document	Incitement against community	Violation of the freedom of conscience and religion	Public menace	Crime against rules of election, referendum, people's initiative	In total	Infringement against property	Threat of endangerment	Disturbance	In total	Other violations of the law	Acts not performing infringement of rights
Budapest	52	0	0	1	0	0	0	0	0	20	21	0	0	0	0	0	31
Baranya	13	5	1		0	1	0	0	0	3	10	2	0	0	2	0	1
Bács	15	2	0	0	1	0	0	0	0	1	5	5	1	2	7	0	3
Békés	8	1	0	1	1	0	0	0	0	0	2	4	0	1	6	0	0
Borsod	12	0	0	0	0	2	0	0	0	2	4	0	0	0	0	0	8
Csongrád	5	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0	4
Fejér	4	0	0	0	0	0	0	0	0	1	3	0	0	0	0	0	1
Győr	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0
Hajdú	29	2	0	0	2	0	0	0	0	9	13	1	0	0	1	12	3
Heves	10	0	0	0	0	0	0	0	0	0	0	3	0	0	3	0	7
Jász-N-Sz.	28	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	12
Komárom	13	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1	0

¹ Data published by ORFK (National Police Headquarters) and the National Elections Office.

County	Reports in total	Number of reports to the police															
		Crime										Infringement					
		Damage, theft	Libel, defamation	Vandalism, bodily injury	Use of symbol of despotism	Abuse of document	Incitement against community	Violation of the freedom of conscience and religion	Public menace	Crime against rules of election, referendum, people's initiative	In total	Infringement against property	Threat of endangerment	Disturbance	In total	Other violations of the law	Acts not performing infringement of rights
Nógrád	1	0	1	0	0	0	0	0	0	1	2	0	0	0	0	0	0
Pest	2	0	0	1	0	0	0	0	0	1	2	2	1	0	3	10	4
Somogy	20	0	0	0	0	0	0	0	0	14	1	0	0	0	0	0	2
Szabolcs	3	0	0	0	0	0	0	0	0	0	14	5	0	0	5	0	9
Tolna	5	0	0	0	0	0	0	1	0	0	1	2	0	0	2	2	0
Vas	3	0	1	0	1	0	0	0	0	0	2	0	0	0	0	0	1
Veszprém	11	0	0	1	1	0	1	0	1	0	4	1	0	0	1	6	0
Zala	7	2	1	1	1	0	0	0	0	0	6	1	0	0	1	0	0
In total:	241	12	4	7	7	3	1	1	2	54	93	26	2	3	31	31	86

The Fourth European Conference of Electoral Management Bodies on “Fighting against electoral fraud - complaints and appeals procedures” was organised by the Venice Commission in Strasbourg, on 20 - 21 September 2007. The issues which were discussed during the conference included the recent elections in Council of Europe Member States (focusing on problems observed during the vote and actions taken to remedy them), as well as fighting against fraud, problems related to financing electoral campaigns and the European Court of Human Rights case-law on violations of electoral rights. This publication includes the reports presented at the conference by the representatives of national electoral management bodies, as well as a number of experts and officials of international organisations operating in the electoral field.



La 4^e conférence européenne des administrations électorales sur « la lutte contre la fraude électorale - le contentieux électoral » a été organisée par la Commission de Venise à Strasbourg du 20 au 21 septembre 2007. Les questions débattues pendant cette conférence incluaient les récentes élections dans les Etats membres du Conseil de l'Europe (plus particulièrement les problèmes rencontrés durant le vote et les actions menées pour y remédier), la lutte contre la fraude électorale, les défis posés par le vote à distance, les problèmes liés au financement des campagnes électorales et la jurisprudence de la Cour européenne des droits de l'homme sur les violations des droits électoraux. Cette publication comprend les rapports présentés lors de la conférence par les représentants des administrations électorales nationales ainsi que les interventions d'experts et d'organisations internationales spécialisés dans le domaine des élections.