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## **ELECTORAL MANAGEMENT BODIES**

**6<sup>th</sup> European Conference**  
**“ENHANCING PARTICIPATION IN ELECTIONS”**  
**The Hague, 30 November – 1 December 2009**

**and**

**7<sup>th</sup> European Conference**  
**“EVERY VOTER COUNTS”**  
**London, 22-23 June 2010**

**SELECTED REPORTS<sup>1</sup>**

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<sup>1</sup> Reports are published in their original languages

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**6<sup>th</sup> EUROPEAN CONFERENCE OF ELECTORAL MANAGEMENT BODIES**

in co-operation with  
The Ministry of the Interior and Kingdom Relations of the Netherlands  
and  
The Electoral Council of the Netherlands

**“ENHANCING PARTICIPATION IN ELECTIONS”**

**The Hague**  
**30 November – 1 December 2009**

and

**7<sup>TH</sup> EUROPEAN CONFERENCE OF ELECTORAL MANAGEMENT BODIES**

in co-operation with  
the Electoral Commission of the United Kingdom

**“EVERY VOTER COUNTS”**

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**“Every voter counts”**

**7<sup>th</sup> European Conference of Electoral Management Bodies**

**London, 22-23 June 2010**

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## PART I

### Enhancing participation in elections

#### SYNOPSIS

The Sixth European Conference of Electoral Management Bodies – “Enhancing participation in elections” was organised by the Venice Commission in co-operation with **the Ministry of the Interior and Kingdom Relations of the Netherlands and the Electoral Council of the Netherlands** on 30 November – 1 December 2009. The issues which were addressed during the conference included the recent elections in Member States, as well as measures aimed at attracting voters to participate in elections, organisation of the information campaigns before the vote and the problem of criteria for disenfranchising voters.

Around 75 participants from national electoral management bodies of the following countries attended the conference: Albania, Austria, Belgium, Finland, Georgia, Germany, Kyrgyzstan, Latvia, Malta, Mexico, Netherlands, Norway, Portugal, Russian Federation, Spain, Sweden, Ukraine and United Kingdom as well as representatives of the Parliamentary Assembly of the Council of Europe and the Directorate General of Democracy and Political Affairs.

Representatives of the following international and regional organisations also attended this event: the Association of European Election Officials (ACEEEO), the Organisation for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the European Commission and the European Parliament.

The Conference was opened by Ms A. Bijleveld, State Secretary of the Ministry of the Interior and Kingdom Relations of the Netherlands, Mr H. Kummeling, Chairman of the Electoral Council of the Netherlands and Ms M. Stavnichuk, Deputy Head of the Presidential Secretariat of Ukraine, Member of the Venice Commission. The Conference was also addressed by Ms M. Alanis Figueroa, President of the Electoral Tribunal of Mexico.

Reports were presented by Mr E. Tanchev, President of the Constitutional Court of Bulgaria, Member of the Venice Commission, Ms M. van den Broeke, Deputy Spokesperson and Head of the Press Unit at the European Parliament, Mr E. Abrahamson, Solicitor, London, United Kingdom and Mr G. Golosov, Professor at the University of St Petersburg, Russian Federation.

Three workshops were organised on measures aimed at attracting voters to participate in elections, organisation of the information campaigns before the vote and the problem of criteria for disenfranchising of voters.

The Conference:

- 1) Took note of the information provided by participants about different elections organised in their respective countries in 2009.
- 2) Underlined the importance of the existing commitments:
  - a. to ensure the implementation of the rights enshrined in Article 3 Protocol 1 of the 'European Convention on Human Rights' and the applicable case-law of the European Court of Human Rights;
  - b. to implement the obligations and commitments of other respective international instruments – including the Copenhagen Document of the OSCE.
- 3) Invited the Member States of the Venice Commission to ensure that all principles for free and fair elections as enshrined in the 'Code of Good Practice in Electoral matters' adopted by the 'Venice Commission' in October 2002 are respected, both with regard to voters' participation in elections in general and to limitations to the right to participate in elections in particular.
- 4) Underlined the importance of specific measures focused on attracting electors to participate in elections, notably:
  - a. making electoral systems reflect as much as possible the choice of the electorate;
  - b. using more new technologies facilitating the access of voters to any information concerning any given election and creating safe and reliable mechanisms of alternative ways of voting;



- c. conducting educational and general information campaigns about different elections.
- 5) Pointed out that in the field of disenfranchisement of voters the States should ensure that:
  - a. Conditions (including legal conditions) for recognition of political parties, and for access to the ballot for political parties and candidates competing for an election, are not unreasonably restrictive;
  - b. Requirements, for example, concerning minimum age, residence, and also provisions relating to incompatibility of offices are based on reasonable and justifiable criteria,
  - c. Deprivation of the right to vote and to be elected should take place in conformity with the Code of Good Practice in Electoral Matters.
- 6) The three workshops held on attracting electors to participate in elections, on information campaigns on specific elections and on criteria for disenfranchising electors concluded that:
  - a. Political parties could play an important role in increasing voters' turnout during the elections;
  - b. The way pre-electoral campaigns are conducted has an important impact on the knowledge of the process by the electorate;
  - c. Electoral management bodies should pay particular attention to the way the information about past and future elections is presented to voters and to different general voter-information campaigns;
  - d. Co-operation between different public bodies responsible for organising and conducting elections as well as with the civil society should be encouraged,
  - e. EMBs should consider how to ensure the minimum procedural guarantees for the exercise of the right to vote by special groups of voters.
- 7) Invited the Electoral Management Bodies to provide the Secretariat of the Venice Commission with their current electoral legislation if possible in one of the official languages of the Council of Europe.

- 8) Requested the Secretariat of the Venice Commission to continue to provide the secretariat of the European Conferences of Election Management Bodies.
- 9) Welcomed the information about the request of México to become a full Member of the Venice Commission.

The 7<sup>th</sup> European Conference of Electoral Management Bodies will take place in London in June 2010. The representative of Austria informed the participants that his country intended to host the 8<sup>th</sup> conference in 2011.

# Information about recent elections in Germany

Christiane EGERT-WIENSS<sup>2</sup>

## Introduction

2009 was a very busy year for electoral management bodies in Germany as there were two national elections – the European election on 7 June 2009 and the Bundestag election on 27 September 2009 – in addition to six Landtag elections in January, August and September as well as municipal elections in eight Länder in June and August.

## Organisational structure of national elections in Germany

Both European and Bundestag elections are organised within the framework of the federal structure of the Federal Republic of Germany consisting of 16 Länder. According to German electoral law, elections are organised by independent electoral organs in a four-tier self-organisation of the electorate. On the national level, the Federal Returning Officer is responsible for organising and conducting European and Bundestag elections. By tradition, the President of the Federal Statistical Office of Germany is appointed Federal Returning Officer by the Federal Minister of the Interior. The Federal Returning Officer also chairs the Federal Electoral Committee. The electoral organs on the Land level are the Land Returning officer and the Land Electoral Committee.

On district level, European elections – held on the basis of proportional representation by the use of a list system – are organised within 430 administrative districts by District Returning Officers and District Electoral

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<sup>2</sup> Member of the Academic Staff Federal Statistical Office/Federal Returning Officer of Germany

Committees for each administrative district or Town Returning Officers and Town Electoral Committees for each urban district. In contrast to this, the members of the Bundestag are elected according to the rules of the 'personalised proportional system' which combines the principles of proportional representation with uninominal voting. Hence, 299 of the members are elected from single-seat electoral districts through a first-past-the-post system. Bundestag elections are therefore organised within 299 constituencies by District Returning Officers and District Electoral Committees. For each polling district containing one polling station or designated for postal voting, there is an Electoral Officer and an Electoral Board.

For European elections, an important task of the Federal Electoral Committee is to decide on the admission of political parties and other political associations with joint lists for all Länder while the Land Electoral Committees admit political parties and other political associations with lists for one land. At Bundestag elections, the Federal Electoral Committee has to acknowledge political associations as political parties for the upcoming Bundestag election before they are allowed to hand in their nominations as Land lists or direct candidates in the constituencies. The Land lists are admitted by the Land Electoral Committees, the direct candidates by the respective District Electoral Committees. About two weeks after election day, the Federal Electoral Committee also establishes the final official result based on the final results determined by the Land and District Electoral Committees.

### **Legal changes concerning the 2009 European and Bundestag elections**

Before the European election and the Bundestag election in 2009, some legal changes were introduced to both the European Elections Act and the European Electoral Regulations governing the European election in Germany as well as the Federal Elections Act and the Federal Electoral Regulations concerning Bundestag elections. A major change concerned the method for the allocation of seats. The Hare-Niemeyer-method (the largest remainder method) used on the federal level until the 2005 Bundestag election has now been replaced by the Sainte-Laguë/Schepers method in the form of the divisor method with standard rounding.

In addition, the amendments established reduced conditions for German voters living abroad as well as for postal voters. According to the new legal provisions, Germans living outside the Member States of the European Council for more than 25 years no longer lose their right to vote. As far as postal voting is concerned, it is no longer required to state a reason such as illness or a business trip in order to apply for a polling card.

According to a decision by the Federal Constitutional Court of Germany in March 2009, the specific type of electronic voting machines used for instance during the 2005 Bundestag election were no longer allowed as their use was not compatible with the principle of the public nature of elections emerging from Article 38 in conjunction with Article 20 para. 1 and 2 of the Grundgesetz (Basic Constitutional Law) which requires that all essential steps in the elections are subject to public examinability unless other constitutional interests justify an exception. According to this decision, when electronic voting machines are deployed, it must be possible for the citizen to check the essential steps in the election act and in the ascertainment of the results reliably and without special expert knowledge.

### **OSCE/ODIHR Election Assessment Mission**

The 2009 Bundestag election was the first election to be monitored by the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), thereby following a long-standing invitation from the Federal Government of Germany. In the meantime, the report has been published on 14 December 2009 with notable recommendations regarding some aspects of the legislation concerning the organisation of elections or the further enhancement of the transparency of party financing. The recommendations will be considered in the course of an amendment of electoral law due to another decision by the Federal Constitutional Court of July 2008 concerning the effect of 'votes with negative weight'. Overall, the report found that the 2009 Bundestag election demonstrated an open, pluralistic and competitive process, founded on the respect for fundamental freedoms, equitable conditions for all contestants, the efficiency and professionalism of the election administration as well as a high level of public confidence in the overall integrity of the electoral process.

# Attracting Electoral Participation through Establishing International and European Legal Standards of Democratic Elections

Evgeni TANCHEV<sup>1</sup>

## Introduction

Contemporary representative government evolved from three ideas and social processes - limitation of absolutism, legitimation of government by popular sovereignty and delegation of power for a limited periods of time by the people to legislative assemblies to be checked by regular, free, fair and democratic elections.

Today not a single politician or scholar would contest that any democratic representative government should be founded on elections.<sup>2</sup> The triumph of democracy made elected representation as undeniable and irreversible constellation as the axiom that there can be no taxation without representation which laid foundations of parliaments and posed limitation on monarchical sovereignty and *raison d'état* during the middle ages.

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<sup>1</sup> Judge at the Constitutional Court of Republic of Bulgaria, Jean Monnet Chair in EU Law at New Bulgarian University, Member of the Venice Commission

<sup>2</sup> "It is often assumed, either through bad faith or inattention, that only a mandatory can be a representative. This is an error. Children, fools and absentees are represented every day in the courts by men who hold their mandate from the law only, moreover the people eminently combine these three characteristics, for they are always *childish*, always *foolish*, and always *absent*. So why should their *tutors* not dispense with their mandates.", **J. De Maistre**, *Considerations on France*, Montreal, 1974, 70.

It took centuries in human civilization to arrive to these axiomatic constitutional principles and by filling them with democratic content to transform the elections into cornerstone of procedural legitimation of democratic government.

Democracy, human rights and the rule of law<sup>3</sup> have been treated as the three main pillars of European constitutional heritage.<sup>4</sup>

Introduction of international standards in the elections is an important democratic safeguard aimed at preserving the genuine democratic character of representative government. Enforcing the standards rules out partisan temptation to distort the popular vote, which has been present since earliest and most primitive forms of franchise and electoral procedures. Simultaneously introduction of international standards in the elections plays the important function to legitimate voters willingness to cast their ballot since by establishing fair and democratic electoral competition it firmly entrenches the perception that every vote counts.

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<sup>3</sup> For difference between the principles of rule of law and rechtsstaat see **F. Neuman**, *The Rule of Law*, Berg, 1986, 179 -187; **F. Neuman**, *Democratic and Authoritarian State*, 1957, Free Press, 43-47; *The Rule of Law*, ed. A. Hutchinson, P. Monahan, Toronto, 1987; **E-W. Bockenforde**, *State, Society and Liberty*, Oxford, 1991, 47-70; For international standards of the rule of law see *The Rule of Law and Human Rights, Principles and Definitions*, International Commission of Jurists, Geneva, 1966; **R. Grote**, *Rule of Law, Rechtsstaat and Etat de Droit*, in *Constitutionalism, Universalism and Democracy*, ed. C. Staarck, Nomos, Baden – Baden, 1999, 269-365; For different approach of the scandinavian jurisprudence see **K. Olivecrona**, *Law as a Fact*, Oxford , 1939, 28 – 49.

<sup>4</sup> See Explanatory Report, adopted by the Venice Commission at its 52 Plenary Session, Venice, 18-19 October 2002, I, 3 and 4, in *Code of Good Practice in Electoral Matters, Science and Technique of Democracy*, N 34, European Commission for Democracy through Law, Council of Europe, Strasbourg, 2003, 19; See also **D. Rousseau**, *The Concept of European Constitutional Heritage*, in *The Constitutional Heritage of Europe, Science and Technique of Democracy* N 18, European Commission for Democracy through Law, Council of Europe, Strasbourg, 1997, 16-35, 21-24.

Ever since antiquity rulers were tempted to take advantage and by electoral abuse to distort the true reflection of voters preferences in order to ascend to or to prolong their stay in government.<sup>5</sup> Although deformations went hand in hand even with the most primitive modes of magistrates selection, the rules that determine the vote cannot in principle decide the outcome of the election alone and should not be over-exaggerated. Moreover, the adequate reflection of popular will in the outcome of elections, exclusion of subversion of majority preferences to minority of representation in the composition of parliament or in presidential elections should become an exponent in the history of governmental institutions museum.

Elections have been treated as an instrument constituting political institutions, particularly, the Parliament and the Presidents when they are elected by the people and/or as direct participation of the people in government. If the first – instrumental meaning is overexposed - the elections are interpreted in pure technical way.<sup>6</sup> The principal merit of this approach is the emphasis of the linkage between the nature of elections and the essence of the institutions brought in existence by the elections. The composition of representative assemblies has depended to some extent to the type of the electoral system. Political parties in power have been tempted to adopt an electoral system which

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<sup>5</sup> The more primitive the electoral systems, the more primitive the distortions were. Maybe the most amusing story from the antiquity of the election malpractice is described by Herodotus when the Persian king was to be selected among seven of the nobility members. They decided to ride on their horses through the city and to consider elected the rider of the horse that will neigh after dawn when reaching a certain place. Darius groom was a sly (cunning) person. He hid the Darius horse favorite mare near the place where race was to be decided. The only horse that neighed when the seven nobles were passing the place was Darius' one, Herodotus, *The Histories*, New York, 1977, Book III, 240-241.

<sup>6</sup> The elections are but another technique like the appointment, drawing a lot, competition etc. in the democratic constitutional systems and usurpation, heredity or inheritance of power in a despotic regime. If we start speculating on a value neutral ground all these methods of forming the institutions have something in common and *diferentio specifica* as well. Using one of them one could reformulate the others by the chosen one using it as a matrix and adding *diferentio specifica*.



might increase their representation in the political institutions. However, one should not rely on the electoral system to shape the electoral preferences and translate them into parliamentary seats. For the mechanism of the elections might distort the measuring of public preferences and bring a partisan bias to the allocation of parliamentary seats, but no electoral law based on democratic principles can make a party running low in the public opinion polls winner of the elections.

Casting the ballots or standing in elections has been treated as modes of direct participation in government by the people's voting rights. Free, democratic, pluralistic and competitive elections are foundation of modern constitutional regime where government is legitimated by the consent of the majority of governed. In this train of thought elections channel people's preferences like the other modes of direct democracy - imperative referendum, consultative referendum, popular initiative, plebiscite, recall, popular veto or ratificatory referendum.

Under the instrumental approach voting rights have been labeled as a public function or a duty performed by the voters in order to establish the representative government. Within the context of the second approach voters are holders of their sovereign rights in the elections and they are free in the way they might exercise them or abstain from exercising.

In political theory and legislative practice the active voting (casting of a ballot) and passive franchise (standing in elections) has been interpreted as:

- fundamental political right channeling citizens direct participation in government,
- public function founding mode of constituting representative government on the public good and by being a duty citizens should not refrain from,
- sui generis political right combining the freedom to take part in government and the obligation to form the representative institutions.<sup>7</sup>

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<sup>7</sup> С.Баламезов, Конституционно право, София, 1940, т.II, 86-90; Е.Друмева, Конституционно право, София, 1998, 219-221.

## I. Restatement of Factors Shaping Voter Turnout and Electors Activity

Most often analysis of voter turnout has been associated with several groups of factors. Since there has been a widespread agreement within the academia and political community on the causes. Without going in a detailed overview or doctrinal speculation on these factors which affect voters participation in elections I consider that a brief recapitulation would be beneficial to the present report. This restatement heavily relies on couple of publications which have been extremely helpful.<sup>8</sup> To summarize in brief:

First – **the mechanical factors**. These can include:

- availability of alternative voting procedures (advance voting, proxy voting, postal voting etc.) which allow voters who may be unable to participate on election day still to cast a ballot;
- physical access to the polls. If access is difficult, some would be voters – for example the disabled - may be deterred from participating;
- whether elections take place on a workday or a rest day: does holding elections on holidays or weekends makes participation more convenient? Studies have reached differing conclusions as to whether rest day voting makes any difference in practice, but it certainly does not have a negative effect; and
- the use of new technologies, such as electronic voting, to complement conventional processes. Some assessments of pilot projects, however, indicate that e-voting may be more effective in providing more convenient channels for regular voters than it is in engaging new voters.

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<sup>8</sup> This part of the report is a periphrase with some additions of mine of a report of Andrew Ellis , Tuning in to Democracy: Challenges of Young People Participation, IDEA, Washington DC, 2007,3-8, [www.idea.int/elections/upload/ae\\_geo\\_participation\\_070327.pdf](http://www.idea.int/elections/upload/ae_geo_participation_070327.pdf), and the book published by several authors Andrew Ellis, Maria Gratschew, Jon H. Pammett, Erin Thiessen, Ivo Balinov, Sean W. Burges, Laura Chrabolowsky, David McGrane, Juraj Hocman, Kristina Lemyn, Svitozar Omelko, Engaging the Electorate: Initiatives to Promote Voter Turnout from Around the World International Institute for Democracy and Electoral Assistance 2006, [www.idea.int/publications/vt\\_ee/index.cfm](http://www.idea.int/publications/vt_ee/index.cfm).

Second, there are **political context factors** at each individual election or referendum which combine to make participation more or less attractive. The context can vary, sometimes greatly, from one election to the next. Examples include:

- perceptions of the effectiveness of political competition or the degree to which citizens believe that different election outcomes will lead to significant differences in the direction and impact of government. Turnout is generally lower when the results of elections are seen to make little difference to the subsequent form of the executive.<sup>9</sup> The grand coalition model used in Switzerland has led to continuity of government over a long period whatever the results of individual elections – and is accompanied by one of the lowest turnout rates in elections of any established democracy;
- the competitiveness and salience of the electoral event at both national and local levels: if voters believe that the electoral contest will be close, they are more likely to ensure that they take part. Those people who are going to vote are more likely to vote in elections where they think it may matter, and more likely to stay at home when they think the result is a foregone conclusion – either nationally or, under a majoritarian electoral system, in their own area. One of the most persistent reasons for voter abstention has been their perception that casting of their ballot does not affect the final result in the elections;
- strategic voting: people may be more willing to turn out to vote when they see a particular electoral outcome to be strongly undesirable;
- the type of the electoral event: elections other than national elections, such as municipal elections or European Parliament elections, often see lower turnouts - as do elections to the legislature in presidential systems where they do not synchronise with presidential elections. In general participation diminishes as we go

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<sup>9</sup> The grand coalition model used in Switzerland has led to continuity of government over a long period whatever the results of individual elections – and is accompanied by one of the lowest turnout rates in elections of any established democracy.

from presidential to parliamentary to municipal or supranational elections;

- campaign spending, which may raise the profile of an election and lead to a wider distribution of political information;
- party identification: which appears to play a role in keeping turnout up in 'less relevant' elections - but it is itself on the decline;<sup>10</sup> and
- length of time between elections: when elections are held with great frequency, it has generally been found that voter turnout suffers.

Third, there are **systemic or institutional factors**. These usually require considerable legislative and/or administrative effort to change. Examples are:

- the nature of the party system: where political choice is restricted, those who cannot see an option which reflects their views are likely to stay at home. More electoral participants may provide more varied options for the voters – although when the political system is perceived as too fragmented, turnout drops, with voters confused or unclear as to the effect that their vote may have. Outside microstates, it is thus desirable for some major parties or coalitions to emerge which give coherence to the political system. This has implications for institutional and electoral system design, especially when it is to be considered alongside factors such as the desirability of inclusion of all groups in an elected legislature. During transition and subsequent democratic consolidation, it opens the question of how far it is desirable to see the institutions adopted as themselves transitional. On the one hand, inclusion during the transition may lead to fragmentation later. On the other hand, if rules are continuously altered, it may be that no stable electoral and institutional system can emerge in which parties and voters know how to respond to the incentives built into the system. It may not be

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<sup>10</sup> In Sweden, the proportion of the electorate with a strong party identification fell by a third from 1968 to 2002. Among those who also have little interest in politics, it fell by more than half. Nor is party identification necessarily higher in newer democracies: in Indonesia in 2003, approaching a major series of elections after fundamental institutional changes, only 34% were prepared to express a party identification.

desirable to keep pulling up the plant by the roots to see if it is growing – but it may be just as undesirable to grow a giant weed;

- the choice of electoral system: almost all electoral systems can be categorized as plurality/majority, proportional representation (PR), or mixed systems. The more responsive the electoral system is in representing the choices made by the electorate, the higher voter turnout will be. PR tends to be linked with higher turnout. Plurality systems are linked with lower turnout: mixed systems, unsurprisingly, are likely to produce results in the middle. In majoritarian systems, turnout tends to be higher in districts with closer results. This means that boundary delimitation methods matter. Politicians have an understandable urge to design systems which keep their bottoms on their seats – look at the US House of Representatives – but there is a price to pay in terms of popular engagement in elections;
- trend of party identification decline while the personification in the elections begins to prevail;
- voter registration as a state or individual responsibility;
- electoral barriers have had some ambivalent effect on voter participation: in some cases they have mobilized voters participation and in others especially when they are quite high they have discouraged participation in the elections;
- compulsory versus voluntary voting: it is not surprising that institutionalised compulsory voting is linked with high turnout, although this only appears to be true in practice where the compulsion is backed by effective sanctions for not voting . But many people make arguments of principle against compulsory voting, and it is slowly on the decline worldwide. Besides voters right is transformed into voters duty and has been backed doctrinally since the time of Leon Duguit and his followers by the idea of public functions and public duty;<sup>11</sup>

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<sup>11</sup> Since compulsory voting has been considered a universal prescription, panacea or cure all to electoral participation and increased voter turnout I am attaching a short review on compulsory voting from idea's site.

- the existence and role of direct democracy instruments;<sup>12</sup>
- presidential or parliamentary democracy: it has been suggested that in the US, separation of powers has in itself an effect on turnout, because it makes the link between voting and the outcome of the election on the executive weaker. But we simply don't know whether this can be established as a general effect in presidential systems. Does it imply that any country with a presidential system will find lower turnout levels an associated phenomenon, with possible consequences for legitimacy? Changing from presidentialism to parliamentarism is rarely an option – so even if it does imply this, the emphasis may need to be on strategies which ask 'how do we make presidentialism work'? Does this mean that the existence of compulsory voting, however weakly enforced, in much of Latin America is actually an important structural feature in maintaining the legitimacy of its democracies? Are there implications for the Philippines or Indonesia in their current debates on democratic development and institution building?; and
- the voting age: the widespread introduction of votes at 18 has diminished turnout in developed democracies. The brave and adventurous response is to propose the further reduction of the voting age to 16. The pathfinders of this approach are as diverse as Brazil, Nicaragua and the Isle of Man. Its proponents suggest that in a wide range of societies, 18 or just older is about the worst age for people to become politically engaged – they may have lost many of their close links with family or school, and they are likely to be mobile and not yet fully established into another community. Would lowering the voting age further enable schools to be agencies of democracy education and engagement, or would it make things even worse? The danger is that it is a political one-way street: just as

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<sup>12</sup> For example the turnout in individual Swiss referendums on initiatives is low, it is said that a high proportion of the Swiss electorate participates in initiative votes when all the referendums in, say, a given year are taken together. Referendums have generally lower turnout than general elections worldwide, but there is more variation in turnout. However, there are some referendums – for example those on Norwegian EU accession or the independence of Québec – where turnout has been higher than in the preceding general election;

raising the voting age from 18 to 21 is politically impossible, so would raising the voting age back from 16 to 18 be politically impossible.

Fourth, there are **demographic factors** – which are very long term. For example, the gender balance of the electorate matters, and the difference in turnout between men and women has shrunk since 1945. When all or nearly all women gained the right to vote at the same age as men, the turnout of women matches or slightly exceeds that of men. To summarise, there are some factors affecting electoral participation which require major institutional or systemic change. This is an important part of wider debate about the state of democracy and about reforms to the institutions and practices of democracy. This does not however mean that there is nothing for individual electoral management bodies, education ministries or civic education CSOs to do.

A formula indicating and measuring electors willingness to cast their vote in the elections has been worked out half a century ago.<sup>13</sup>

### “PB + D > C”

Here, P is the [probability](#) that an individual's vote will affect the outcome of an election, and B is the perceived benefit of that person's favored [political party](#) or candidate being elected. D originally stood for democracy or [civic duty](#), but today represents any social or personal [gratification](#) an individual gets from voting. C is the time, effort, and financial cost involved in voting. Since P is virtually zero in most elections, PB is also near zero, and D is thus the most important element in motivating people to vote. For a person to vote, these factors must outweigh C.

Riker and Ordeshook developed the modern understanding of D. They listed five major forms of gratification that people receive for voting: complying

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<sup>13</sup> The basic idea behind this formula was developed by [Anthony Downs](#) in *An Economic Theory of Democracy*, published in 1957. The formula itself was developed by [William H. Riker](#) and [Peter Ordeshook](#) and published in "A Theory of the Calculus of Voting." *American Political Science Review*. 1968. 62:25-42.

with the social obligation to vote; affirming one's allegiance to the political system; affirming a partisan preference (also known as expressive voting, or voting for a candidate to express support, not to achieve any outcome); affirming one's importance to the political system; and, for those who find politics interesting and entertaining, researching and making a decision. Other political scientists have since added other motivators and questioned some of Riker and Ordeshook's assumptions.<sup>1</sup> All of these concepts are inherently imprecise, making it difficult to discover exactly why people choose to vote.

Recently, several scholars have considered the possibility that B includes not only a personal interest in the outcome, but also a concern for the welfare of others in the society (or at least other members of one's favorite group or party). In particular, experiments in which subject [altruism](#) was measured using a [dictator game](#) showed that concern for the well-being of others is a major factor in predicting turnout and political participation. Note that this motivation is distinct from D, because voters must think others benefit from the outcome of the election, not their act of voting in and of itself.<sup>14</sup>

## **II. The Essence and Meaning of International and European Standards in the area of Elections**

The term standard has been understood as “guide for behaviour and for judging behaviour”. Standards have been established by authority or gradually have evolved by custom or consensus. The concept of international

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<sup>14</sup> Jankowski, Richard. 2002. "Buying a Lottery Ticket to Help the Poor: Altruism, Civic Duty, and Self-Interest in the Decision to Vote." *Rationality and Society* 14(1): 55–77. [Edlin, Aaron](#), Andrew Gelman, and Noah Kaplan. 2007. "Voting as a Rational Choice: Why and How People Vote to Improve the Well-Being of Others." *Rationality and Society*. [Fowler, James H.](#) "Altruism and Turnout," *Journal of Politics* 68 (3): 674–683 (August 2006) [Fowler, James H.](#), Kam CD "Beyond the Self: Altruism, Social Identity, and Political Participation," *Journal of Politics* 69 (3): 811–825 (August 2007).



standards connotes some universally, generally accepted canons of behaviour for states, corporations and individuals.<sup>15</sup>

However paradoxical it might seem at first glance, the genesis of international standards is to be found in the constitutional values and principles of the democratic nation state. All of the standards have roots in the democratic constitutional development and European standards emanate from the common European heritage. By consenting to the values and principles that have evolved in the old western democracies they have become element of the international treaty law. By applying *pacta sunt servanda* rule the emerging democracies in the member states of the Council of Europe transplant these standards in their national constitutional order and accelerate national democratic institution building and development.

International standards belong to the area and can be found in the soft law or non-treaty agreements. In this case they have been characterized as non-binding commitments which are instrumental on the way of “hardening” of international law or precursors of international treaties to full fledged legalization.<sup>16</sup> The legal instruments can be classified according to their legal binding or non binding effect from one side, and according to their normative or promotional inspiration effect, from the other, when law and non-law are regarded as opposing ends of commitment continuum.<sup>17</sup> It is generally agreed

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<sup>15</sup> **H. Morais**, Symposium: Globalization and Sovereignty: The Quest for International Standards: Global Governance vs. Sovereignty, 50 Kansas Law Review 2002, 779, 780.

<sup>16</sup> **D. Shelton**, Commitment and Compliance: What Role for International Soft Law? [www.ceip.org/programs/global/semshelton.html](http://www.ceip.org/programs/global/semshelton.html); **H. Hillgenberg**, A Fresh Look at Soft Law, European Journal of International Law, 1999, vol.10 N.3, 499-515; Soft law might be treated as a product of changing patterns of globalization which transform the state pushing towards emergence of regulatory standards that go beyond national boundaries see **K. Jayasuriya**, Globalization, International standards and the Rule of Law: A New Symbolic Politics, WP N 24, March 2002, 5.

<sup>17</sup> See D. Shelton matrix of legally binding and non legally binding instruments where law is defined as a binding legal act and in non compliance legal action will take place, hortatory – law with normative elements but very weak obligations, commitment

that in spite of the opinion that treaties are classic binding international law instruments, legal standards and soft law might have certain advantages and is to be preferred in some areas and in certain moments to hard law.<sup>18</sup>

The most typical method of tackling the issue of the international legal standards is approaching them from international and comparative law perspective. The fourth generation national constitutions<sup>19</sup> have been drafted in a globalized world in which primacy of international law has become an

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being a political or moral obligation that is not legally binding and freedom of action where no commitment is present, *ibid*, 2.

<sup>18</sup> Among the merits of soft law one certainly should not fail to mention:

- effectiveness in dealing with new legal standards or norms;
- the need to stimulate consensus building and content of the international standards which is still in flux;
- making of preliminary flexible regime for still developing standards and norms;
- efforts to coordinate and unify the standards created by different international actors proposing different systems of international standards;
- simplification of procedures to facilitate rapid finalization;
- avoidance of cumbersome domestic procedures for treaty approving and implementation of international standards and norms in national legislation and maintaining low costs of their implementation in the municipal law;
- easing inclusion by securing openness to non state partners to join the non treaty agreement or parties which are not recognized by the original parties establishing the non-treaty agreement. See **H. Hillgenberg**, A Fresh Look at Soft Law, *European Journal of International Law*, 1999, vol.10 N.3, 499-515, at 501-502.

<sup>19</sup> See **S.E. Finer**, Notes Towards a History of Constitutions, in *Constitutions in Democratic Politics*, ed. V. Bogdanor, Aldershot, 1988, 17-32; also *Constitutions and Constitutional Trends Since World War II*, ed. A. Zurcher, Greenwood Press, 1955.

element of the rule of law. The constitutions of the emerging democracies adopted after the fall of Berlin wall reflect the international standards and include special provisions on supremacy of international law. If these international standards especially in the area of elections are integral part of the treaties they are transplanted in the national legal orders after states adhere to the treaties.

The systems of implementing the treaty obligations however are different due to the choice of monistic or dualistic system in the national constitutions.<sup>20</sup> Incorporation of the treaties provisions and international standards provided in the treaties follows two types of procedures.<sup>21</sup>

According to the dominant in Europe monistic system the international treaty becomes an integral part of the national law after having been ratified. When a country has adopted dualism implementation of treaty obligation can take place not by ratification but by drafting a special law or including a provision in the existing national legislation.

Comparative analysis of European systems demonstrates another type of difference due to the position of the international treaties in the national legal order.

In some countries like Belgium, Luxembourg and Netherlands the international treaties provisions have supranational effect and stand above the legal system superseding the authority of constitutional norms.

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<sup>20</sup> See for different legal orders in dualistic system and integrating the both legal orders in monism **M. Kumm**, Towards a Constitutional Theory of the Relationship between National and International Law International Law Part I and II, National Courts and the Arguments from Democracy, p. 1-2,

[www.law.nyu.edu/clppt/program2003/readings/kumm1and2.pdf](http://www.law.nyu.edu/clppt/program2003/readings/kumm1and2.pdf);

**L. Wildhaber**, Treaty-Making Power and the Constitution, Bazel, 1971, 152-153.

<sup>21</sup> **P. van Dijk, G., J. H. van Hoof**, Theory and Practice of the European Convention on Human Rights, Boston, 1990, 11-12; **A. Drzemczewski**, European Human Rights Convention in Domestic Law, Oxford, 1985, 33-35.

According to the constitutional practice of other countries like Austria, Italy and Finland the treaties having been ratified with parliamentary supermajority vote have the same legal binding effect as constitutional provisions.

The third type of implementation of treaties obligations under the monistic system in Europe places them above the ordinary parliamentary legislation but under the national constitutions according to their legally binding effect. This is the current practice in Bulgaria, Germany, France, Greece, Cyprus, Portugal, Spain and others.

In Czech Republic, Lichtenstein, Romania, Russia, Slovak republic only the treaties relating to human rights stand above the ordinary legislation.<sup>22</sup>

The primacy of international law standards should always be regarded as a minimum, and if especially in the area of human rights and the electoral law national constitutions establish more democratic standards the national provisions should be preferred and would not be considered as a breach of treaties.

The primacy of international law has complied with the requirements of art 2 of the UN Charter respecting the nation state sovereignty. Of course supranational, direct, immediate and horizontal effect of EU law will require introduction of EU clause in the Constitution providing for transfer of sovereign powers to the EU and its institutions.

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<sup>22</sup> **C. Economides**, The Elaboration of Model Clauses on the Relationship between International and Domestic Law, The European Commission for Democracy Through Law, Council of Europe, 1994, 91-113, 101-102 ; **L. Erades**, Interactions between International and Municipal Law, T.M.C. Asser Institute – The Hague, 1993; The French Legal System: An Introduction, 1992,45; ., Вж **Й.Фровайн**, Европейската конвенция за правата на човека като обществен ред в Европа,София,1994, 32; Вж също така **Л.Кулишев**, Прилагането на Европейската конвенция за правата на човека в българския правен ред, сп.Закон, бр.2,1994, 3-25.

The process of implementing treaty establishing international standards in the national legal system is different from interaction between EU legal order and EU member state legal orders. If an European standard is provided by EU constitution or primary law, due to the transfer of sovereignty it prevails over the national constitutional norms and has legal binding effect after the EU member states have been notified. That is why implementing of the international legal standards bears no similarity to obligation to comply with *acquis communautaire* in adapting the national constitutions and approximation of legislation in order to provide supranational direct immediate and horizontal effect of primary and institutional EU law. This follows from EU law supranational, direct, immediate and universal effect on all national legal subjects within the territory of European Union member states.<sup>23</sup>

Last but not least the establishment of international standards might be approached within the context of emerging global and societal constitutionalism. In order to estimate the significance of international legal standards in the area of human rights and particularly in the electoral law within the context of global and societal constitutionalism the essence of these new phenomena should be clarified in advance.

The term global constitutionalism has received wide range of connotations.

It has been approached from comparative prospective as an instrument of analysis of constitutionalism within the different national models of constitutional government in the world and within the symbiosis of

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<sup>23</sup> These undoubted characteristics of the European law are formulated by the Court as early as the beginning of the 60s, *N.V. Algemene Transport - en Expeditie Onderneming van Gend & Loos, v. Netherlands Fiscal Administration*; Case 26/62; *Costa v. ENEL*; Case 6/ 64. See in a detail **E. Stein**, *Lawyers, Judges and the Making of a Transnational Constitution*, *American Journal of International Law*, vol.75, January 1975, N 1, 1-27; **P. Pescatore**, *The Doctrine of Direct Effect*, *European Law Review*, 8, 1983, 155-157 ; **J. Weiler**, *The Community System: the Dual Character of Supranationalism*, *Yearbook of European Law* 1, 1981; **A. Easson**, *Legal Approaches to European Integration in Constitutional Law of the European Union*, F. Snyder, EUI , Florence, 1994-1995.

constitutionalisation of power relationships in contemporary globalization process.<sup>24</sup>

Globalization of constitutionalism and adopting a constitution for a non state entity has been treated in the context of unwritten constitution within the founding treaties and in the context of the written constitution drafted by the EU convention. Another glimpse at the standards of elections concerns the relationship between EU constitution and adapting of the national constitutions of EU member states i.e. the constitutional *acquis*.

Recently during the last decade scholars have made attempts to describe a new phenomenon or a new stage in the development of constitutionalism emerging on a global level.<sup>25</sup> They have treated the global as but another form of governance where the power in order to meet benchmarks of democracy has to be framed with constitutional restraints.<sup>26</sup> Supremacy of international law, the increasing role of many international organizations like WTO, development of human rights legal instruments at supranational level might be considered as different streams forming the fabric of global constitutional beginnings posing limitations on the actors of the emerging global governance. However, it would be exaggeration and oversimplification to look for supremacy of the global rule of law moreover for an emerging

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<sup>24</sup> See for the best papers in this field with analysis of post World War II trends in **T. Fleiner**, Five Decades of Constitutionalism, in Publications de l'Institute de Federalisme Fribourg, Suisse vol .5, 1999, 315 – 344; also his Ageing Constitution, paper to the Conference The Australian Constitution in Retrospect and Prospect, Perth, 21-23 September 2001; **B. Ackerman's** seminal article The Rise of World Constitutionalism, Virginia Law Review, May 1977, N.83, 771-798.

<sup>25</sup> Л.Ферайоли, Отвъд суверенитета и гражданството. За един световен конституционализъм, Съвременно право, 1995, кн.4,70-78.

<sup>26</sup> One of the best liberal definitions of constitutionalism emphasizing the constitutions role as frame of government was offered in the second half of the 19 century in the US by John Potter Stockton "The constitutions are chains with which men bind themselves in heir sane moments that they may not die by a suicidal hand in the day of their frenzy.", **J.E. Finn**, Constitutions in Crisis,1991, 5.

unwritten constitution. International legal standards are within this context a linkage between national and global constitutionalism. They provide compliance of different legal orders of contemporary constitutional pluralism. The intensity of legal binding is strongest within national constitutionalism, it is present in federalist context and it has been in the process of affirming in the relationship between EU constitution and the constitutions of the member states. Following M. Maduro's recent piece where he offers three pillar construct of constitutions in a national and global context we can look at the international standards as a fourth pillar through which the emerging global restraints on governance are transposed to national constitutionalism as universal criteria to the constitutional governance.<sup>27</sup>

It is well known that in the past any attempt to propose international standards especially in the area of elections would have met the counter argument as being an intrusion to state and national sovereignty having been the heart of state power and citizen's rights attributed to the nationals, which are to be arranged only by the national constitutions and legislation.

### **III. Brief Survey of the Emerging System of Supranational and European Standards on the Principles of Democratic Elections**

The process of evolution and introduction of common European standards in elections can be observed through the lenses of two adversary trends.

In the international community efforts to propose coherent system of standards of democratic elections at supranational level began during the second half of the 20 century. The importance of free, fair and competitive

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<sup>27</sup> Maduro's three pillars in which national constitutions are affected by the emerging global constitutionalism are challenging the role of nation state constitutions as utmost expression of sovereignty and as criterion of ultimate validity of the legal system, national constitutional self-determination in the idea of self-government, the form of participation, power distribution and representation is also influenced by global governance., **M. Maduro**, From Constitutions to Constitutionalism: A Constitutional Approach for Global Governance, Lead Paper to the Workshop Changing Patterns of Rights Politics: A Challenge to a Stateness?, Hamnse Institute for Advanced Studies, Delmenhorst, Germany, June, 2003, 9-12.

elections to sustainable democratic government and human rights in the World and on the European continent has been firmly acknowledged. However, the process of consensus building on drafting, proposing and implementing instruments on International and European standards in the area of elections has not been fast and easy for they are related to the constitutional framework and institution building traditionally considered to be among the core issues of the nation state sovereignty.

The International and European standards have been drafted by different actors in the international lawmaking arena – universal, regional and non-governmental organizations. They have proposed and some of them have adopted provisions in the international treaties or soft law relating to the supranational standards of elections which are different in scope, parties which are members of the relevant organization and their legal binding effect.

The short list of International and European acting instruments, draft treaties and soft law containing provisions on supranational standards on the principles of democratic elections belong to several groups according to the legal binding effect they have.<sup>28</sup>

### **Hard Core International rules**

The hard core of International rules consists of provisions of International treaties adopted by UN, First Protocol to the European Convention on Human Rights and the relevant jurisprudence of ECHR.

Universal international standards concerning the principles of democratic elections consist in the UN treaty law provisions:

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<sup>28</sup> This division of the survey is built on the conclusion that there is certain “hard core” of the principles of democratic elections which has been defined at in the explanatory report to the Guidelines on Election, see Explanatory Report, adopted by the Venice Commission at its 52 Plenary Session, Venice, 18-19 October 2002, I, 3 and 4, in Code of Good Practice in Electoral Matters, Science and Technique of Democracy, N 34, European Commission for Democracy through Law, Council of Europe, Strasbourg, 2003, 19-20.



- Rights
1. Art.21 of 1948 Universal Declaration of Human Rights
  2. Art.25 (b) of 1966 International Covenant on Civil and Political Rights
  3. Art.1 of 1952 Convention on the Political Rights of Women
  4. Art.5 of 1965 (c), (d) Convention on the Elimination of All Forms of Racial Discrimination
  5. Art.7 of 1979 Convention on Elimination of All Forms of Discrimination against Women.

### **Hardcore European rules**

1. European Convention on Human Rights, Protocol I, art. 3 stating that “ The High contracting Parties undertake to hold free elections at reasonable intervals by secret ballot under conditions which will ensure the free expression of opinion of the people in the choice of legislature”.
2. Convention on the Participation of Foreigners in Public Life at Local Level, (art. 6 in relation to the right to vote in municipal elections).
3. Jurisprudence of ECHR on European Convention on Human Rights, Protocol I, art. 3.<sup>29</sup>

In December 2002 a Draft Convention on the Election Standards, Electoral Rights and Freedoms has been prepared and submitted by IFES to be debated and adopted by the Council of Europe with the aim to summarize the legally binding international law instrument. The Draft Convention is based on the experience of legal regulation and administration of democratic elections accumulated by the Council of Europe and member states. The ambition of the drafters has been to codify various rules and if adopted to convert European standards into binding hard law for the countries which are members of the Council of Europe.

### **Soft Law International and European rules**

1. 2002 Guidelines on Elections adopted by Venice Commission,<sup>30</sup>

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<sup>29</sup> P. van Dijk, G. , J. H. van Hoof, Theory and Practice of the European Convention on Human Rights, Boston.

2. 2003 Existing Commitments for Democratic Elections in OSCE Participating States,<sup>31</sup>

3. 1994 Declaration on Criteria for Free and Fair Elections adopted by the Inter-Parliamentary Council at its 154<sup>th</sup> session (Paris, 26 March 1994).<sup>32</sup>

### **European Union law on Elections**

Within the EU a body of community law has evolved since the treaty of Maastricht has established citizenship and voting rights of EU citizens in local and EU parliament elections.

Beyond any doubt implementation of the international and European legal standards in the area of elections bears no similarity with the supranational and, direct, immediate and horizontal effect of community law, with countries like Netherlands that have opted the pure monistic system of transplanting international provisions in the municipal law, being an exception. Any comparison between these two phenomena is might relative and might be valid only for the 25 EU member states which are simultaneously with no exception members of the Council of Europe.

The list of EU law relating to elections consists of primary law - art. 8 b (1) of TEU,<sup>33</sup> Council directive 93/109/EC,<sup>34</sup> Council directive 94/80/EC,<sup>35</sup> Order of

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<sup>30</sup> Code of Good Practice in Electoral Matters, Science and Technique of Democracy, N 34, European Commission for Democracy through Law, Council of Europe, Strasbourg, 2003, 7-18.

<sup>31</sup> Existing Commitments for Democratic Elections in OSCE Participating States, OSCE, ODIHR, Warsaw, October, 2003.

<sup>32</sup> **G.S Goodwin –Gill**, Free and Fair Elections, International Law and Practice, Inter-Parliamentary Union, Geneva, 1994, X-XIV.

<sup>33</sup> Official Journal of the European Communities C 325/5 24.12.2002.

<sup>34</sup> Official Journal L 329 , 30/12/1993 P. 0034 – 0038.

<sup>35</sup> Official Journal L 368 , 31/12/1994 P. 0038 – 0047.

the Court of 10 June 1993, *The Liberal Democrats v European Parliament*,<sup>36</sup> Case C-41/92. These provisions and the relevant amendments in the national constitutions and electoral legislation introduced of the rights of voting and standing in the municipal elections and in the elections for European parliament of EU citizens having member state of residence different from their home member state. Participation of EU citizens in the local and European parliament elections in the EU member states of residence has broadened the principles of universal and equal franchise bringing to solidarity and has been an important step in the process of creating ever closer union among the peoples of Europe. The draft Constitution of EU has reaffirmed the passive and active voting rights of EU citizens in municipal and European parliament elections went their EU member state of residence is different from their home EU member state.<sup>37</sup>

The brief survey of supranational and European instruments containing international legal standards on elections stimulates several speculations which need further discussion and analysis.

Proliferation of international standards is indicative to the progress in the peaceful cooperation, democratization and rule of law building in the international community. It is instrumental to the harmonization, unification, convergence and transplantation of the best values, principles, practices and techniques in the democratic elections legitimizing constitutional government. At the same time proliferation of the international standards on

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<sup>36</sup> Actions against Community institutions for failure to act - Act of the Parliament - Uniform electoral procedure - No need to give a decision. Case C-41/92., European Court reports 1993 Page I-03153., Action in respect of failure to act - decision unnecessary **D. Simon**,: *Journal du droit international* 1994, p.473-477.

<sup>37</sup> According to art. 8, 2, 2 of EU draft Constitution, citizens of the Union shall enjoy the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State, Treaty Establishing a **Constitution for Europe**, adopted by consensus by the European Convention on 13 June and 10 July 2003, Submitted to the President of the European Council in Rome 18 July 2003, 2003/C 169/01) *Official Journal of the European Union* EN 18.7.2003 C 169/3.

elections has been in compliance with the need to respect the national tradition. International treaties and soft law have been carefully creating unity by protecting diversity. No doubt that the process of increasing of the international standards should be preferred to the lack of international instruments on elections.

However, proliferation of international and European standards on elections has side effects that need to be solved.

Under the assumptions that a nation state is simultaneously a member of several international organizations and all of them have adopted different instruments in the area of elections the issue of compatibility between the provisions of the international organizations from one side and the multiple international instruments and domestic legislation arises. The ideal situation is when ambiguities can be resolved through the existing clear hierarchy of sources between and within the standards proposed by the international organizations.

Difference in the scope, in the detail of the standards and of the countries which they address is normal and will not raise any serious problems during the process of implementation of international obligations. EU law has stronger binding effect for the EU member states. Based on the community method however EU law has not the same intensively binding effect as the federal law. The conflicts between some of the treaty and soft law arrangements will not be contra productive, since hard law always prevails. However conflicting provisions from one and the same legal order might be an obstacle to the implementation of different standards in the municipal legal system.

Successful solution of ambiguity between provisions of EU law, hard and soft European law by applying the hierarchy in the area of supranational law to be transplanted in the municipal legal order might be illustrated by the new election act of Grand Duchy of Luxembourg. Adopted in February 2004 the act entitles non-Luxembourg nationals that have residency in the Luxembourg to vote and stand as candidates in the local elections taking place in 2005, regardless of whether they are EU citizens or not, without losing their voting

rights in their country of origin.<sup>38</sup> Non-Luxembourg nationals entitled to active and passive voting rights in the local elections must be at least 18 years old on the date of elections, having their civil rights and must have been domiciled in the Grand Duchy of Luxembourg and have lived there for a period of 5 years when applying to be included on the roll. Under the Council directive 93/109/EC there the period of living of the EU citizens in the country of residence different from their home country has not been limited. According to the Convention on the Participation of Foreigners in Public Life at Local Level, art. 6 relating to the right to vote in municipal elections, foreign residents are granted the right to vote and to stand in local authority elections, provided they fulfil the same legal requirements as apply to nationals and furthermore have been lawful and habitual resident in the state for the 5 years preceding the elections. Art. 1 on the Universal suffrage from the Guidelines on elections pointing the exceptions provide that nationality of the state is a requirement, but it would be advisable for foreigners to be allowed to vote in local elections after a certain period of residence. While not specifying the length of this period for foreigners the Guidelines have set the time limit of the residence requirement for nationals not to exceed six months before the local or regional elections take place. Though Duchy of Luxembourg has not ratified the Convention on the Participation of Foreigners in Public Life at Local Level in order to protect the national's interests in the local elections and to comply with of art. 8 b (1) of TEU and the Council directive 93/109/EC as EU member state, it has opted for foreigner's residence requirement of five years.

In conclusion looking at the system of the emerging supranational standards in the area of elections it seems International organizations, Council of Europe and European Commission have been concentrating on promoting the macro conditions as values, principles safeguarding the genuine democratic content of free and fair elections. Only the most fundamental of micro conditions were treated by the European soft law. Detailed regulation of the election organization and choice of the electoral system have remained traditional competence of the nation states. Concrete techniques of election

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<sup>38</sup> Voting rights of non-Luxembourg nationals in local elections held in October 2005, [http://www.gouvernement.lu/dossiers/elections/elections\\_communes\\_2005/dossier\\_en](http://www.gouvernement.lu/dossiers/elections/elections_communes_2005/dossier_en).

monitoring have also been developed and successfully applied within OSCE.<sup>39</sup> However, adopting Convention on the Election Standards, Electoral Rights and Freedoms by the Council of Europe will convert substantial part of the soft law in the Guidelines on Elections into treaty hard law and will be important stage in the harmonization process of the European standards in the area of democratic elections.

### **Concluding Remark**

It seems the shortest expression of linkage between international standards of democratic elections and active voter participation is that the international standards are instrumental and stimulate increasing voter turn out. They legitimize the willingness to cast ballots by expectation that electors vote counts. Since free and fair democratic elections are one of the sine qua non tools to the ascending, procedural, input legitimacy to the constitutional government establishing international democratic standards in the area of elections stimulates active voter participation and in this way serves as legitimation to the legitimation of democratic political regimes.

### **Compulsory Voting**

#### ***What is compulsory voting?***

Most democratic governments consider participating in national elections a right of citizenship. Some consider that participation at elections is also a citizen's civic responsibility. In some countries, where voting is considered a duty, voting at elections has been made compulsory and has been regulated in the national constitutions and electoral laws. Some countries go as far as to impose sanctions on non-voters.

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<sup>39</sup> Existing Commitments for Democratic Elections in OSCE Participating States, OSCE, ODIHR, Warsaw, October, 2003, 24-25; Proceedings of the 2001 Symposium: International Elections Monitoring: Should Democracy is a Right? Election Monitoring, Technology and the Promotion of Democracy: A Case for International Standards, 19 Wisconsin International Law Journal, Fall,2001, 353-367.

Compulsory voting is not a new concept. Some of the first countries that introduced mandatory voting laws were [Belgium](#) in 1892, [Argentina](#) in 1914 and [Australia](#) in 1924. There are also examples of countries such as [Venezuela](#) and the [Netherlands](#) which at one time in their history practiced compulsory voting but have since abolished it.

Advocates of compulsory voting argue that decisions made by democratically elected governments are more legitimate when higher proportions of the population participate. They argue further that voting, voluntarily or otherwise, has an educational effect upon the citizens. Political parties can derive financial benefits from compulsory voting, since they do not have to spend resources convincing the electorate that it should in general turn out to vote. Lastly, if democracy is government by the people, presumably this includes all people, then it is every citizen's responsibility to elect their representatives.

The leading argument against compulsory voting is that it is not consistent with the freedom associated with democracy. Voting is not an intrinsic obligation and the enforcement of the law would be an infringement of the citizens' freedom associated with democratic elections. It may discourage the political education of the electorate because people forced to participate will react against the perceived source of oppression. Is a government really more legitimate if the high voter turnout is against the will of the voters? Many countries with limited financial capacity may not be able to justify the expenditures of maintaining and enforcing compulsory voting laws. It has been proved that forcing the population to vote results in an increased number of invalid and blank votes compared to countries that have no compulsory voting laws.

Another consequence of mandatory voting is the possible high number of "random votes". Voters who are voting against their free will may check off a candidate at random, particularly the top candidate on the ballot. The voter does not care whom they vote for as long as the government is satisfied that they fulfilled their civic duty. What effect does this immeasurable category of random votes have on the legitimacy of the democratically elected government?

A figure depicting the exact number of countries that practice compulsory voting is quite arbitrary. The simple presence or absence of mandatory voting laws in a constitution is far too simplistic. It is more constructive to analyze compulsory voting as a spectrum ranging from a symbolic, but basically impotent, law to a government which systematic follow-up of each non-voting citizen and implement sanctions against them.

This spectrum implies that some countries formally have compulsory voting laws but do not, and have no intention to, enforce them. There are a variety of possible reasons for this.

Not all laws are created to be enforced. Some laws are created to merely state the government's position regarding what the citizen's responsibility should be. Mandatory voting laws that do not include sanctions may fall into this category. Although a government may not enforce mandatory voting laws or even have formal sanctions in law for failing to vote, the law may have some effect upon the citizens. For example, in [Austria](#) voting is compulsory in only two regions, with sanctions being weakly enforced. However, these regions tend to have a higher turnout average than the national average.

Other possible reasons for not enforcing the laws could be complexity and resources required for enforcement. Countries with limited budgets may not place the enforcement of mandatory voting laws as a high priority still they hope that the presence of the law will encourage the citizens to participate.

Can a country be considered to practice compulsory voting if the mandatory voting laws are ignored and irrelevant to the voting habits of the electorate? Is a country practicing compulsory voting if there are no penalties for not voting? What if there are penalties for failing to vote but they are never or are scarcely enforced? Or if the penalty is negligible?

Many countries offer loopholes, intentionally and otherwise, which allow non-voters to go unpunished. For example, in many countries it is required to vote only if you are a registered voter, but it is not compulsory to register. People might then have incentives not to register. In many cases, like [Australia](#), an acceptable excuse for absence on Election Day will avoid sanctions.



The diverse forms compulsory voting has taken in different countries refocuses the perception of it away from an either present or absent practice of countries to a study of the degree and manner in which the government forces its citizens to participate.

### ***Which countries practice compulsory voting?***

#### *Laws, Sanctions & Enforcement*

Below is a table containing all the countries that have a law that provides for compulsory voting<sup>40</sup>. The first column lists the name of the country, the second column the type of sanctions that the relevant country imposes against non-voters and the third column contains the information on to what extent the compulsory voting laws are enforced in practice.

<b>Country</b>	<b><a href="#">Type of Sanction</a></b>	<b>Enforced</b>	<b>Year Introduced</b>	<b>Comments</b>
Argentina	1, 2, 4	Yes	1912	-
Australia	1, 2	Yes	1924	-
Austria (Tyrol)	1, 2	Yes	Practiced from 1929 to 2004	The region of Tyrol.
Austria (Vorarlberg)	2, 3	Yes	Practiced from 1929 to 1992	The region of Vorarlberg.
Austria (Styria)	N/A	Yes	Practiced from 1929 to 1992	The region of Styria.
Belgium	1, 2, 4, 5	Yes	1919 (men)	Women in 1949.
Bolivia	None/4	No	1952	18 years of age(married); 21 years of age (single)

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<sup>40</sup> Table updated March 2009

Brazil	2	Yes	N/A	Voluntary for illiterates and those over 70. Military conscripts cannot vote.
Chile	1, 2, 3	Yes	1925(?)	-
Congo, Democratic Republic of the	N/A	N/A	N/A	
Costa Rica	None	No	N/A	-
Cyprus	1, 2	Yes	1960	-
Dominican Republic	None	No	N/A	18 years of age, married persons regardless of age; Members of the military and national police cannot vote.
Ecuador	2	Yes	1936	Compulsory for literate persons ages 18-65, optional for other eligible voters.
Egypt	1, 2, 3	No	1956	This is the year from which we have found the earliest law. (Only men are allowed to vote)
Fiji	1, 2, 3	Yes	N/A	*Presumably strict prior to the coup d'état
France (Senate only)	2	No	1950's or 60's	-
Gabon	N/A	No	N/A	-
Greece	None	No	1926	Administrative sanctions, including prohibition to issue a passport, a driving license or an occupational license, were officially lifted in year 2000

Guatemala	None	No	N/A	Military personnel cannot vote.
Honduras	None	No	N/A	-
Italy	5	No	Practised from 1945 to 1993	-
Lebanon	N/A	N/A	N/A	21 years of age; compulsory for all males; authorized for women at age 21 with elementary education; excludes military personnel
Liechtenstein	1, 2	Yes	N/A	-
Luxembourg	1, 2	Yes	N/A	Voluntary for those over 70.
Mexico	None / 5	No	N/A	-
Nauru	1, 2	Yes	1965	-
Netherlands	-	No	Practised from 1917 to 1967	-
Panama	N/A	N/A	N/A	-
Paraguay	2	No	N/A	Up to age 75
Peru	2, 4	Yes	1933	Until the age of 75.
Philippines	None	No	Attempt to practice 1972-1986 under martial law.	-
Spain	N/A	No	Practiced from 1907 to 1923	-
Singapore	4	Yes	N/A	The non-voter is removed from the voter register

				until he/she reapplies and provides a reason.
Switzerland (Schaffhausen)	2	Yes	1904	Practised in only one canton. Abolished in other cantons in 1974
Thailand	None	No	N/A	-
Turkey	1, 2	Yes	N/A	-
Uruguay	2, 4	Yes	1934	Law not in practice until 1970.
U.S.A (Georgia)	N/A	No		Stated in 1777 Constitution of Georgia.
Venezuela	N/A	N/A		Practiced until 1993

The numbers listed in the column for Type of Sanction stands for different types of sanctions. These are as follows:

1. **Explanation.** The non-voter has to provide a legitimate reason for his/her abstention to avoid further sanctions, if any exist.

2. **Fine.** The non-voter faces a fine sanction. The amount varies between the countries, for example 3 Swiss Francs in Switzerland, between 300 and 3 000 ATS in Austria, 200 Cyprus Pounds in Cyprus, 10-20 Argentinean Pesos in Argentina, 20 Soles in Peru etc.

3. **Possible imprisonment.** The non-voter may face imprisonment as a sanction, however, we do not know of any documented cases. This can also happen in countries such as Australia where a fine sanction is common. In cases where the non-voter does not pay the fines after being reminded or after refusing several times, the courts may impose a prison sentence. This is usually classified as imprisonment for failure to pay the fine, not imprisonment for failure to vote.

4. **Infringements of civil rights or disenfranchisement.** It is for example possible that the non-voter, after not voting in at least four elections within

15 years will be disenfranchised in Belgium. In Peru the voter has to carry a stamped voting card for a number of months after the election as a proof of having voted. This stamp is required in order to obtain some services and goods from some public offices. In Singapore the voter is removed from the voter register until he/she reapplies to be included and submits a legitimate reason for not having voted. In Bolivia the voter is given a card when he/she has voted so that he/she can proof the participation. The voter would not be able to receive his/her salary from the bank if he/she can not show the proof of voting during three months after the election.

**5. Other.** For example in Belgium it might be difficult getting a job within the public sector if you are non-voter. There are no formal sanctions in Mexico or Italy but possible arbitrary or social sanctions. This is called the "innocuous sanction" in Italy, where it might for example be difficult to get a day-care place for your child or similar but this is not formalised in any way at all.

# Voter participation: the UK experience<sup>43</sup>

Peter WARDLE<sup>44</sup>

## Governance of the UK

- Constitutional monarchy; Parliamentary democracy; bicameral legislature
- Powers devolved from the UK Parliament:
  - Scottish Parliament
  - National Assembly for Wales
  - Northern Ireland Assembly
- Elected local authorities (some directly-elected mayors)
- London - directly elected Mayor and Assembly
- Constitutional monarchy; Parliamentary democracy; bicameral legislature
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<sup>43</sup> Powerpoint presentation

<sup>44</sup> Chief Executive, UK Electoral Commission

## UK Electoral Systems – National

Institution	Members	System
House of Commons	650 MPs	"First past the post"
European Parliament	72 UK MEPs	PR (D'Hondt GB; STV Northern Ireland)
Scottish Parliament	129 MSPs	AMS
National Assembly for Wales	60 AMs	AMS
Northern Ireland Assembly	108 MLAs	STV

## UK Electoral Systems – Local

Area	System
England & Wales	First Past the Post
Scotland	PR - Single Transferable Vote
Northern Ireland	PR - Single Transferable Vote

<b>Greater London Assembly</b>	<b>PR - Additional Member System (with modified D'Hondt formula)</b>
<b>Mayor of London</b>	<b>PR – Supplementary Vote</b>

**Responsibilities**

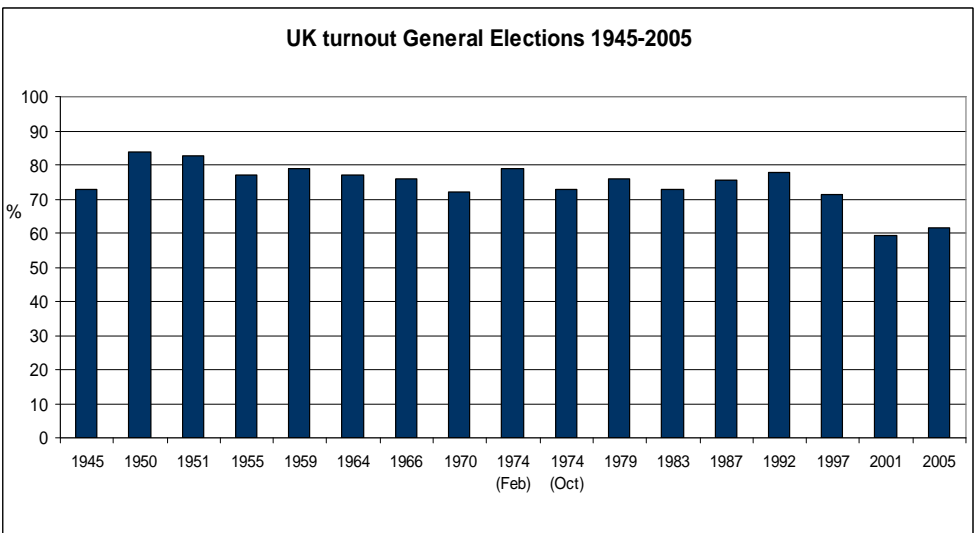
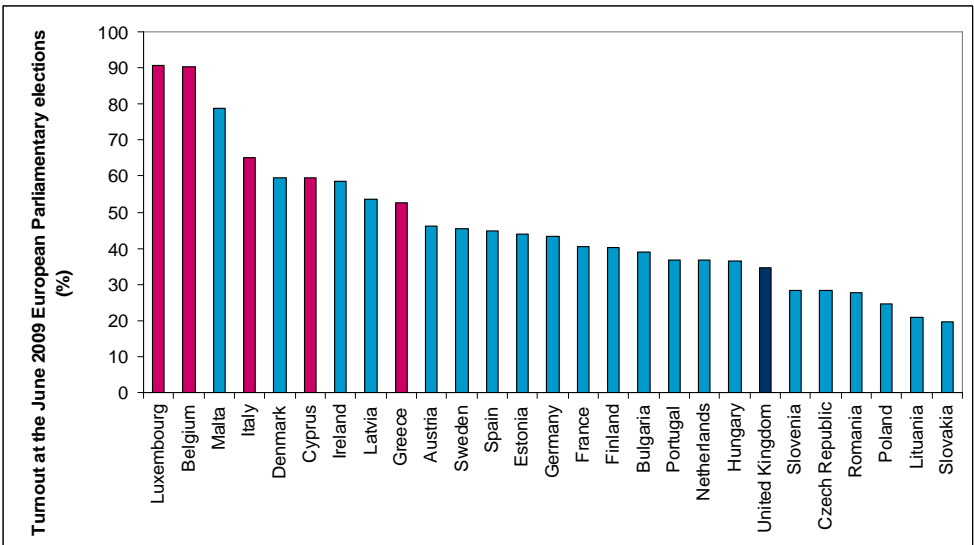
- Government & Parliament responsible for legislation
- Independent local officials (Registration Officers & Returning Officers) maintain electoral roll and run elections
- Electoral Commission responsible for ensuring electoral process is well-run– that is, Government & Parliament get the framework and resources right, and local officials deliver the process successfully (eg by setting performance standards). (EC also has major role enforcing party and election laws.)

**Electoral Roll**

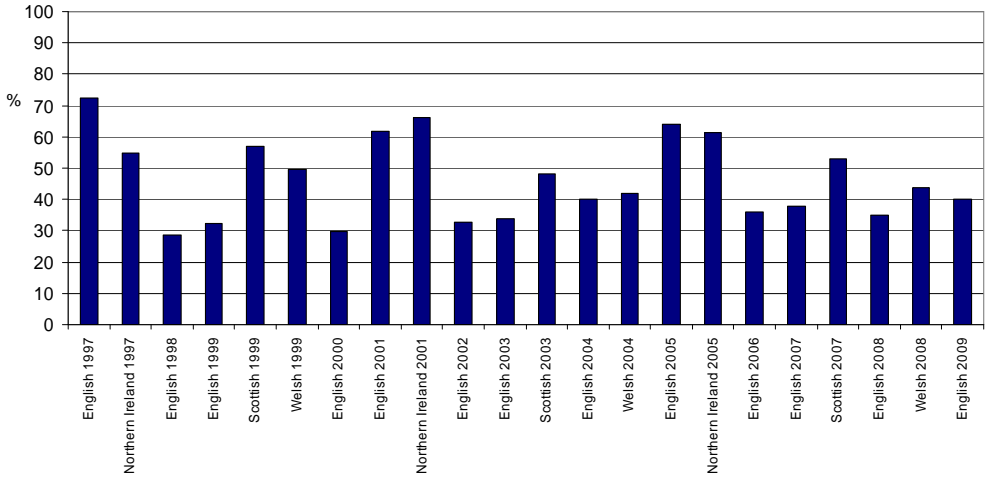
- Over 46 million registered voters
- Current estimate is that around 8-9% people may not be registered
- Electoral Commission and local officials both work to ensure electoral roll is complete - EC undertakes extensive work to encourage registration, especially among “hard-to-reach” groups
- UK now planning move from current registration by household to registration on individual basis



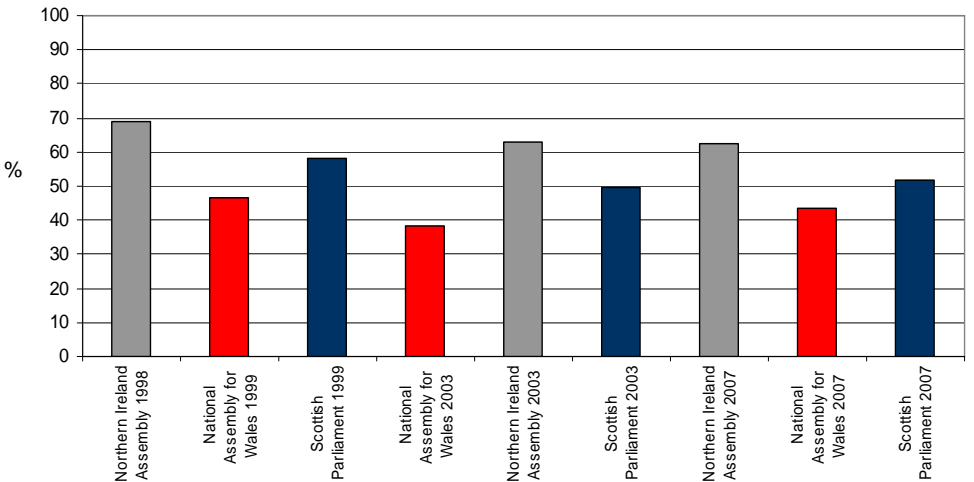
## Turnout in the UK



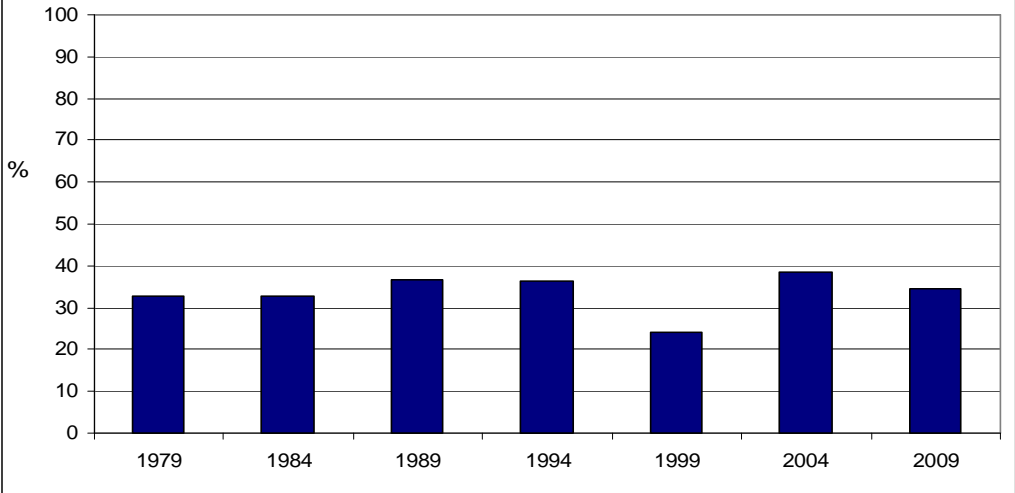
### Turnout local elections 1997-2009



### Devolved elections turnout



### UK Turnout at European Parliament Elections 1979-2009



### Turnout in the UK

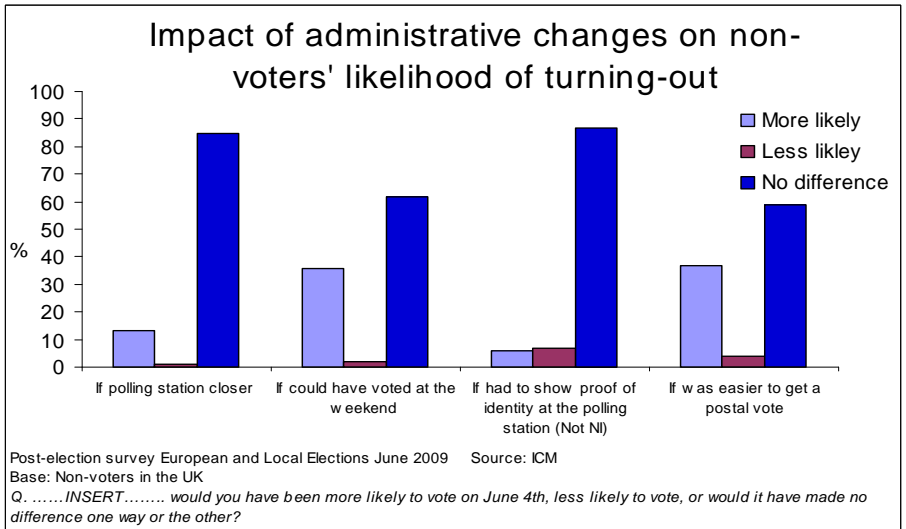
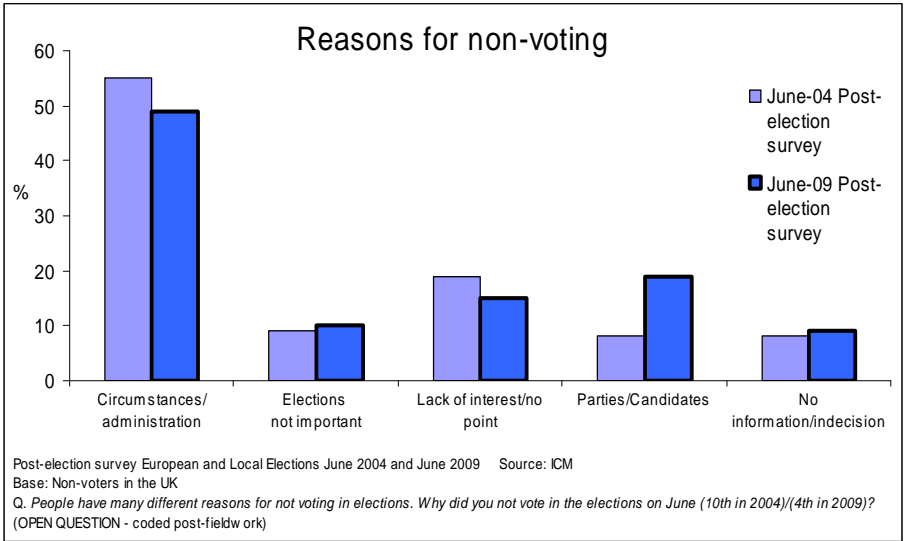
- General Elections 70% or above from 1945 to 1997; fell to nearer 60% in 2001 and 2005
- European Parliament elections around 30-40%
- Local elections range from 28-40% when stand alone; but nearer 70% when on the same day as a General election

### Why people do not vote in the UK

#### General observations in the UK

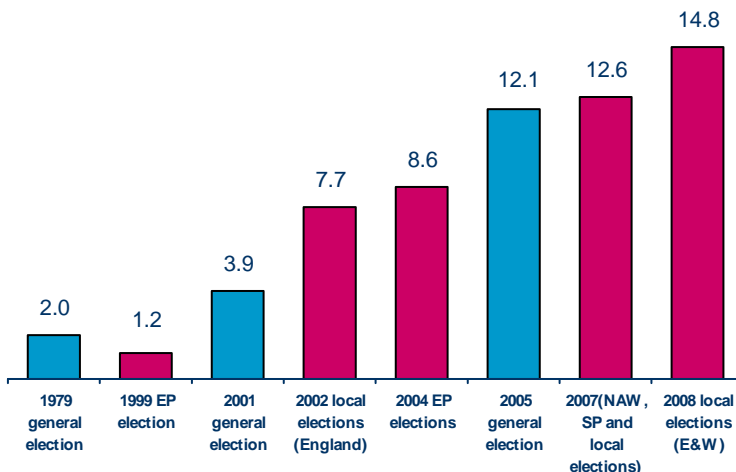
- Voting is not compulsory
- Various factors affect failure to vote:
  - Age
  - Social class
  - Gender
  - Voter's own identification with a party
  - Perceived differences between candidates/parties

- How close the contest is
- Interest in the campaign
- Impact of electoral systems



## Measures to increase turnout in the UK

### Postal voting “on demand”



Source: 2001 and 2004 - 2008 - The Electoral Commission; 2002 - LGC Local Elections Centre; 1979 and 1999 - C. Rallings and M. Thrasher 'British Electoral Facts 1832-1999'

N.B. excludes N Ireland where arrangements are different. Also excludes all-postal pilot areas in 2004

### “Pilots” of different forms of voting

- Projects to assess possible future reforms
- Notably, using e-voting and e-counting – Scottish elections in 2007, and London elections in 2008
- Electoral Commission is independent evaluator of pilots
- One-off, rushed, trials are at best of limited learning value
- First need clearer strategy for future development of electoral system – pilots could be useful in that context

## Key lessons learned from e-voting pilot schemes in England

- E-voting alone is unlikely to increase turnout
- It may improve convenience for voters
- Cost likely to be prohibitive in the short-term
- Confidence is fragile, and trust must be built and sustained
- 

## Increased effort at local level

- 2007 - new duty on local elections officers to encourage electoral participation. Commission monitors through performance standards for local officers
- Too early to point to definite impact on turnout

## Public awareness campaigns



- Electoral Commission campaigns to:
  - encourage voter registration
  - ensure people understand how to vote
  - TV, press, online and posters
  - PR and media

- Key targets - 'under-registered' audiences including:
  - 18-24 year-olds
  - Chinese, Black African and other BME groups
  - Specialist audiences – overseas, service voters
- 2009 EP campaign – second best public sector campaign for cost-effectiveness

## **Future priorities**

- Advanced voting
- Ballot paper design
- Individual Electoral Registration
- More consistency & co-ordination for local officers' work
- Simplify the legal framework for elections
- Secure funding

## **Discussion themes**

### **Questions**

- How far can the electoral system and EMBs influence turnout? How far do political parties and candidates influence turnout?
- How do EMBs balance the drive for greater accessibility with the need for a secure system of voting?
- Could you introduce compulsory voting if you haven't already got it?

## **The 2009 European Elections: an Evaluation<sup>45</sup>**

**Marjory VAN DEN BROEKE<sup>46</sup>**

- Main campaign tools
- Main campaign results
- Turnout
- Awareness of the European election campaign
- Lessons learned
- Inter-institutional co-operation
- Proactive press relations: reaching out to voters through the media
- Media-friendly tools:
  - 3-dimensional installations
  - Interactive multimedia studios (Choice Box)
  - Celebrity endorsements
- On-line activities: going on social networking sites
- TV and Radio adverts: reaching the general public
- Going local: complementary activities in the Member States

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<sup>45</sup> Powerpoint presentation

<sup>46</sup> Head of Press Unit, DG COMM, November 2009





**Press coverage:**

- Never before did the European Parliament get so many media coverage of the elections as in 2009.
- In the week up to the elections alone, about 1000 reports about the upcoming elections appeared every day in German media, more than 700 in Greek media
- 2200 journalists took part in 145 election workshops in Brussels and the Member States
- Over 8000 printed press kits distributed, from February 2009

**TV and radio adverts:**

- Free air time for TV advert on 220 TV channels (all EU countries except UK) worth over €4 million
- TV advert aired in over 1000 cinemas in 19 EU countries (UGC alone – 2.2 million people)
- Investment of € 2.2 million in radio airtime was a key instrument for raising the campaign awareness

**On line:**

2.5 million visits to the Election pages

8.2 million page views

Facebook: 50,356 fans

Viral videos: 465.000 views\*

MySpace: 2,875 friends

Flickr: 170,000 views (3,000 v/day)

\*plus millions through media reports on the virals

The screenshot shows the YouTube channel for the European Parliament. At the top, there are navigation links for 'Inscription', 'Paramètres', 'Aide', and 'Connexion'. The channel name 'EUROPEAN PARLIAMENT' is prominently displayed in the center, with a 'back to EU Tube' link on the left. Below the channel name, there is a video player showing a man speaking into a microphone, with a timestamp of 00:27:36. To the right of the video player, there are links for 'Videos', 'Playlists', and 'Aims'. Below the video player, there is a section titled 'Videos (8)' with a grid of video thumbnails. The thumbnails include titles such as 'Almost Frank De Waele calls on EU citizens to vote', 'At the polling station #102', 'President Pöhlberg's message to...', 'Sport celebrations on European et...', and 'European elections TV Spot with...'. The page also features a 'Commentaires sur la chaîne (6)' section at the bottom, with a comment from 'HappyHany' dated 17 June 2009.

## Election night:

- Almost 1000 journalists present in the EP
- 350 live TV transmissions and 150 live radio transmissions – twice as many as for European summits
- Heavy traffic on the election results web site: 4.8 million page views in 24 hours

2004/2007

44,4%



2009

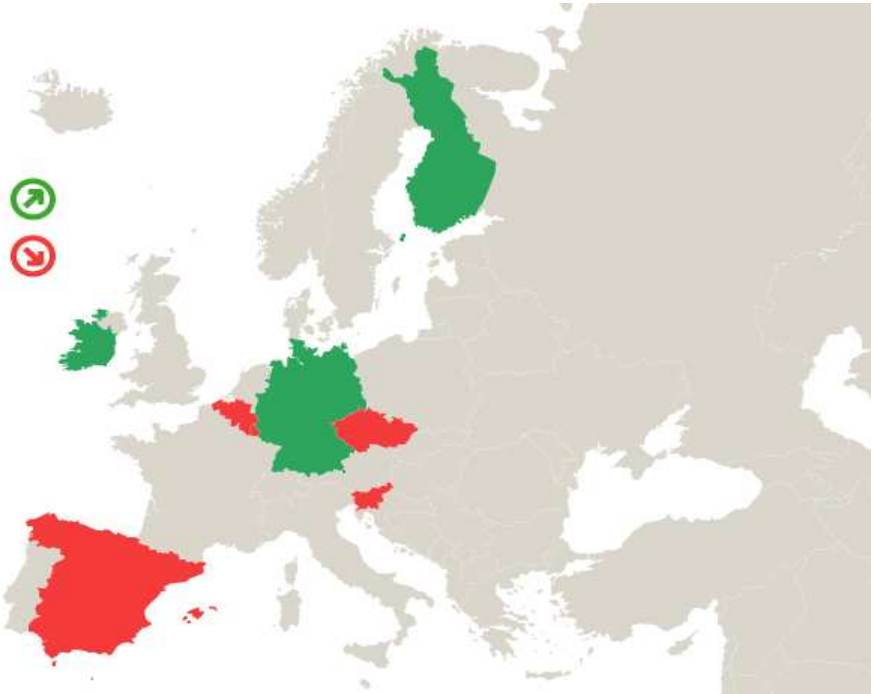
43%

### EU 27 average turn-out - not the whole story:

- A notable increase in turnout in 8 countries,
- little change in 15 others, and
- a sharp fall in turnout in 4 Member States.



Significant turnout increase in 8 Member States (% increase of over 2.5 percentage point): Estonia (+17.07), Latvia (+12.36), Denmark (+11.65), Bulgaria (+9.77), Sweden (+7.68), Poland (+3.66), Austria (+3.54) and Slovakia (+2.67).



Minor turnout variation in 8 Member States (less than one percentage point):  
Increase: Finland (+0.87), Germany (+0.30) and Ireland (+0.06).  
Decrease: Luxembourg (-0.59), Belgium (-0.42), Spain (-0.27), Czech Republic (-0.10), Slovenia (-0.02).



4 countries experienced a sharp fall in turnout:

Lithuania (-27.40), Cyprus (-13.10), Greece (-10.61), Italy (-6.67),

7 countries, a slight fall in turnout (less than 4 percentage points):

UK (-3.82), Malta (-3.60), The Netherlands (-2.51), Hungary (-2.19), France (-2.13), Portugal (-1.82), Romania (-1.80).

### **Genuine divisions between different types of voter profiles:**

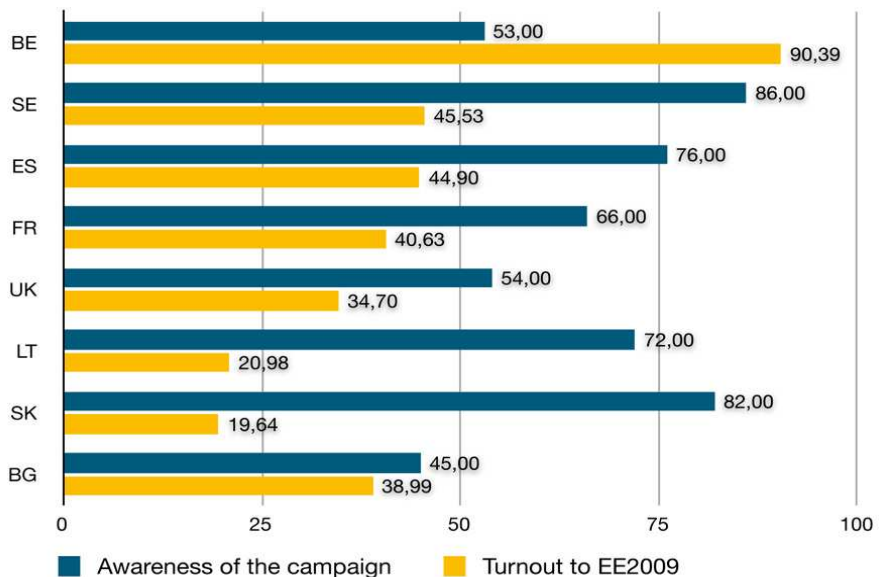
- fewer young voters than elderly voters,
- fewer unemployed voters than senior management voters,
- fewer voters who had left school early than voters who had continued an education program,
- slightly fewer women voters than male voters, and
- slightly fewer voters in big cities than in rural areas.

2009 Post election survey, EU 27 (26 830 European citizens), Fieldwork: 12 June - 6 July 2009, TNS opinion

- The majority of non-voters said that lack of trust in or dissatisfaction with politics in general was the reason for abstaining.
- Only 4% non-voters abstained because they were opposed to the EU, 8% - because they were dissatisfied with the European Parliament, 9% - not interested in EU matters and 10% - do not know much about the EU or the EP elections.
- 51% of non-voters said that they were emotionally attached to Europe.

2009 Post election survey, EU 27, Fieldwork: 12 June - 6 July 2009, TNS opinion

In June 2009, 67% of Europeans said that they remembered seeing or reading about the campaign calling on them to vote in the European elections (against 36% in 2004)





- Clear gap between awareness of the campaign/elections and voter turnout. High level of information does not necessarily lead to a high turnout.
- Elections are a political process: in the end it's political parties who mobilise voters with their programmes, candidates and campaigns.
- One third of non-voters decide not to vote just before the elections: institutional communication activities should be reinforced in a week before the elections if allowed under national election legislation.
- Making it easier to cast a ballot can have a significant impact on voter turnout (Estonia)
- The day chosen for voting has an impact on voter turnout. The difference between a holiday (10%) and working day (10%) had more impact on the abstention rate than opposition to the EU (4%).
- The pan-European dimension of our institutional campaign was crucial for reinforcing Parliament's visibility and message.
- Activating press contacts well ahead of the electoral year is a key to generating massive media coverage.
- Future campaigns should comprise media-friendly tools to attract journalists through their visual appearance, novelty or human interest.
- Communicating on-line is a must for any contemporary campaign, including Web 2.0 tools.
- Radio and TV still play a major role in reaching out to the general public.
- Priority target groups should be addressed throughout the legislative term\*:
  - young people (18 – 24 year olds),
  - early school leavers,
  - unemployed,
  - women.

\* 2009 Post election survey, EU 27, Fieldwork: 12 June - 6 July 2009, TNS opinion

- Cooperation with the European Commission was very helpful
- Good examples of cooperation with Member States were Romania, Czech Republic, Greece, Cyprus, Hungary, Malta, Austria, Portugal, Slovakia, Finland, Sweden and others

- Regional and local governments helped by reinforcing election activities in the field (Spain, Bulgaria, France, Italy, Lithuania and others)

# Information campaigns in Swedish national elections<sup>47</sup>

Kristina LEMON<sup>48</sup>

## Campaign framework

- Responsibility areas
- Objectives
- Methods / channels
- Follow-up
- Challenges

## Responsibility areas

- By law: when, where and how to vote - NOT why
- Division of responsibilities the same in all elections
- Central EMB has national focus
- Local EMBs inform of local matters

## Objectives

- Overall aim: to make sure that abstention is NOT due to lack of info about the voting procedure
- To inform about the voting procedure
- Communicate general and special provisions

## Methods & channels

- Information strategy; how, to whom, what and why?
- TV, radio, movie, web, ads – and the voting card

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<sup>47</sup> Powerpoint presentation

<sup>48</sup> Senior Advisor, Election Authority, Sweden

- General public, young people, immigrants, expat:s, persons with visual & hearing impairments and other minor groups facing special conditions
- Preparatory work: Research and evaluations – what do people need to know?

## **THE BUDGET!**

### **A positive spin-off effect!**

- Introduced training dvd:s for electoral officers in 2009 EP election
- Published on the web
- Enhanced also the general public's understanding of the voting process

### **Follow-up**

- Survey on knowledge about the voting procedure
- Survey on how our messages were understood

### **Serve as backbone for next-coming elections**

### **Challenges**

- Increased awareness of what other actors are doing
- Voter information in-between elections (budget!)
- Who is doing what?
- Problems reaching target groups

# Dutch election campaigns: Results of campaign effect research<sup>49</sup>

Charlotte WENNEKERS<sup>50</sup>

## Outline

- Dutch election campaigns in general
- Campaign effect research: why and how
- Research results 2009 European Parliament elections
- Comparing local, national and European elections

## Dutch election campaigns in general

*Organisation and responsibility:* Ministry of the Interior and Kingdom Relations

*Infrastructure:* Common infrastructure for government campaigns under the logo P.O.Box 51 (coordinated by Public Information and Communication Office)

*Issues:* Factual information concerning the voting process (when to vote, where to vote, what to bring, etc.)

*Not:* Political themes! (responsibility of the political parties)

*Aim:* informing the Dutch public about the voting process in order to facilitate a highest possible voter turnout

## Campaign effect research: why and how

Public Information and Communication Office carries out campaign effect research for all government campaigns.

## Why?

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<sup>49</sup> Powerpoint presentation

<sup>50</sup> Public Information and Communication Office

1. **Accountability:**

is public money well spent?

yearly campaign evaluation report in Parliament

2. **Learning and improving:**

since 1999 tracking survey for all campaigns;

benchmarking, build up of knowledge (database):

- application of results
- Main goal: "Better campaigns for less money"

**Research design: how?**

- Campaign period
- Pre measurement: 4 weeks
- Campaign measurement: 6 weeks
- Post measurement: 4 weeks
- Effects : knowledge, attitudes, behaviour, background

**Communication:**

- Campaign recall
- Campaign recognition
- Message transfer
- Likeability
- aspect of appreciation

**Effects: knowledge, attitudes, behaviour, background**

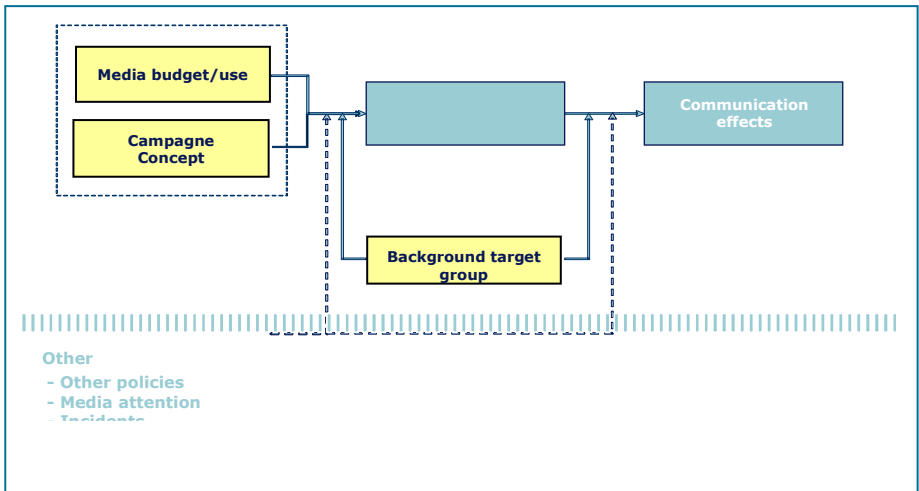
Effect: increase in knowledge, attitudes, behaviour?

**2009 European Parliament Elections**

- Campaign goals:
- 80% of the target group is aware of the date the elections take place (June 4th 2009)

- 80% of the target group knows that you have to bring your voter card and your ID in order to be able to vote in a random voting office within your city of residence
- Target groups: general public, “doubters” (people who vote sometimes).
- Media use: TV, preroll (internet), radio, print, advertisements and online bannerings.
- Campaign message: European Parliament elections take place on June 4, 2009. Go to [www.uheefthetvorhetzeggen.nl](http://www.uheefthetvorhetzeggen.nl) for more information and don't forget your voter card and ID.

### Communication model



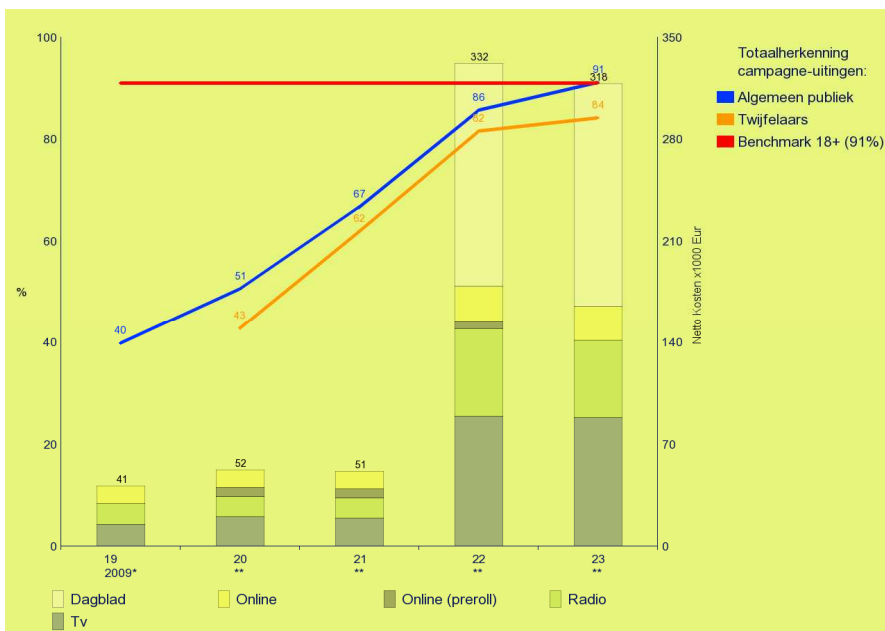
### Target group characteristics (before campaign)

- Presumed knowledge about EP elections: very low among both the general public (2%) and "doubters" (0%) (benchmark 24%).

- Interest: among the general public 20% is (very) interested in EP elections, among "doubters" 5%. This is far below the benchmark (45%).
- Social relevance: 34% among the general public, even lower among "doubters" (19%) (benchmark 79%).
- Personal relevance: Personal relevance of EP elections low among general public (29%), and again even lower among "doubters" (7%) (benchmark 56%).

## Total campaign reach

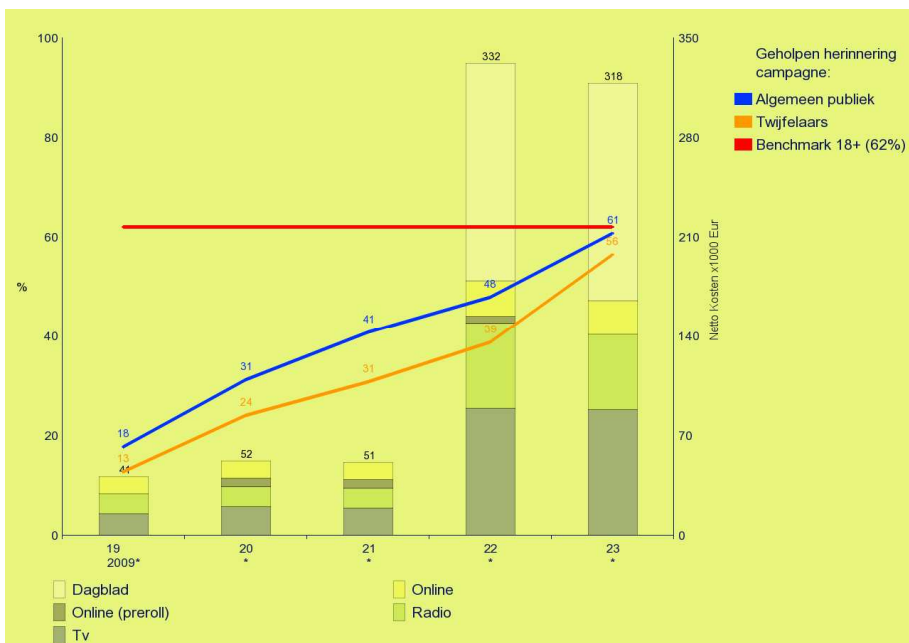
- 91% of the general public has been reached by the campaign. This is average (compared to other government campaigns).
- Among "doubters", total campaign reach is 84%.





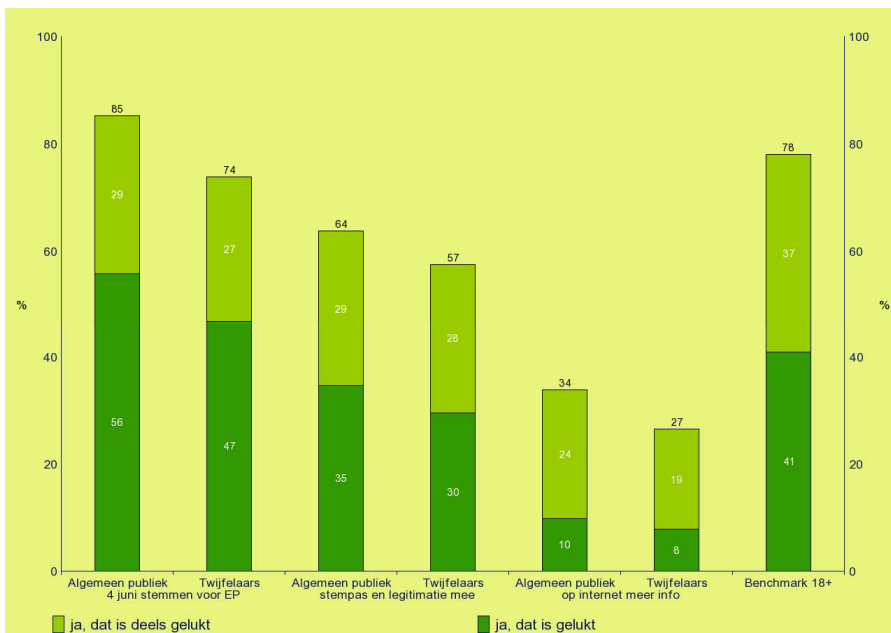
## Impact

- Total campaign recall among general public is 61% (benchmark: 62%).
- Campaign recall among “doubters” 56%.



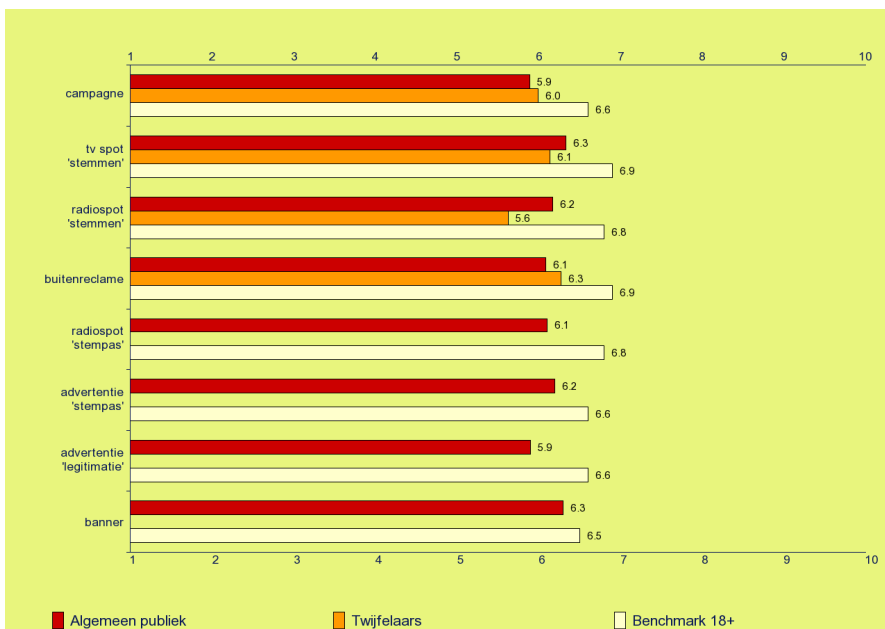
## Message transfer

- Transfer of message “you can vote for the European Parliament on June 4” good (better than benchmark)
- Transfer of 2 more specific messages is below benchmark
- Message transfer better among general public than among “doubters”



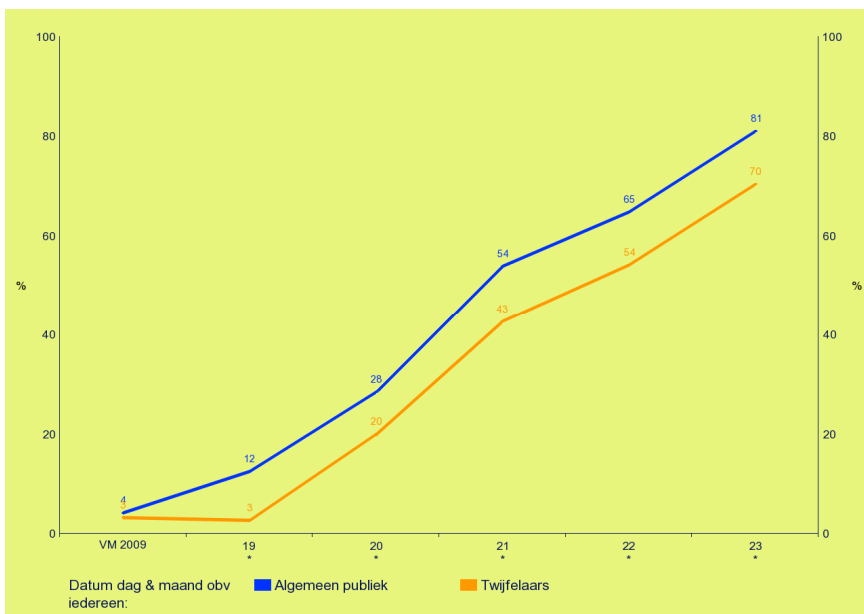
## Appreciation

- Campaign appreciation far below benchmark (5,9 versus benchmark: 6,6).
- Appreciation for different medium types also below benchmark.

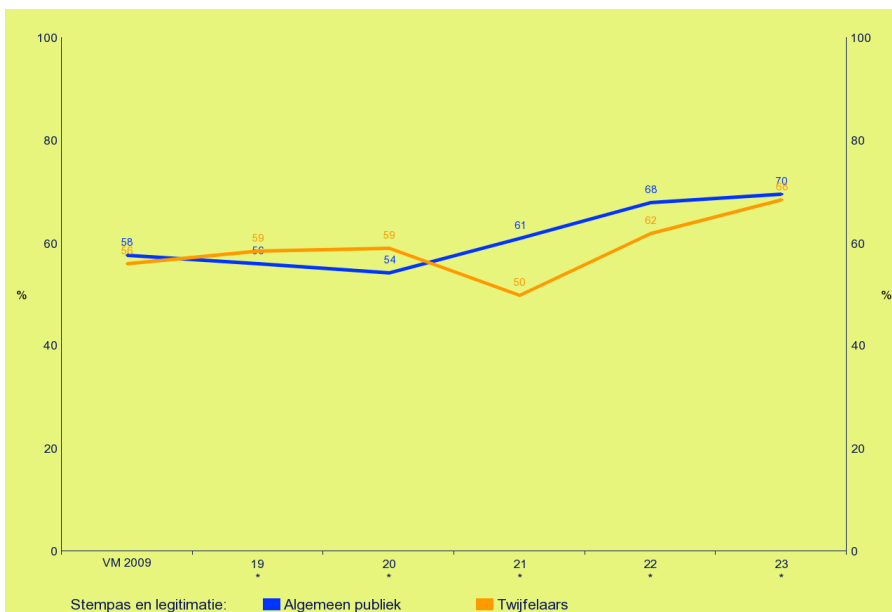


## Campaign effects

- At the end of the campaign, 81% of the general public knows the correct election date. Campaign goal (80%) is reached.
- Among “doubters”, 70% knows the correct election date at the end of the campaign.



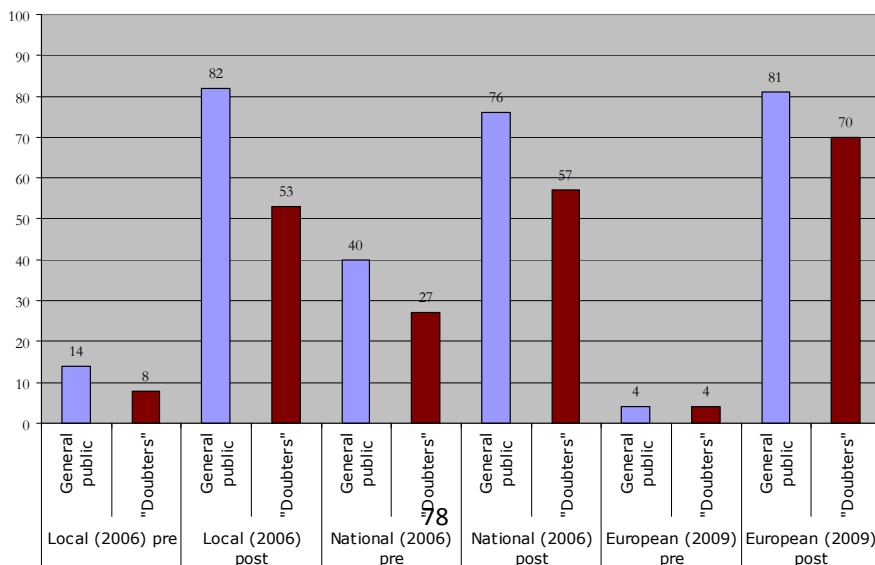
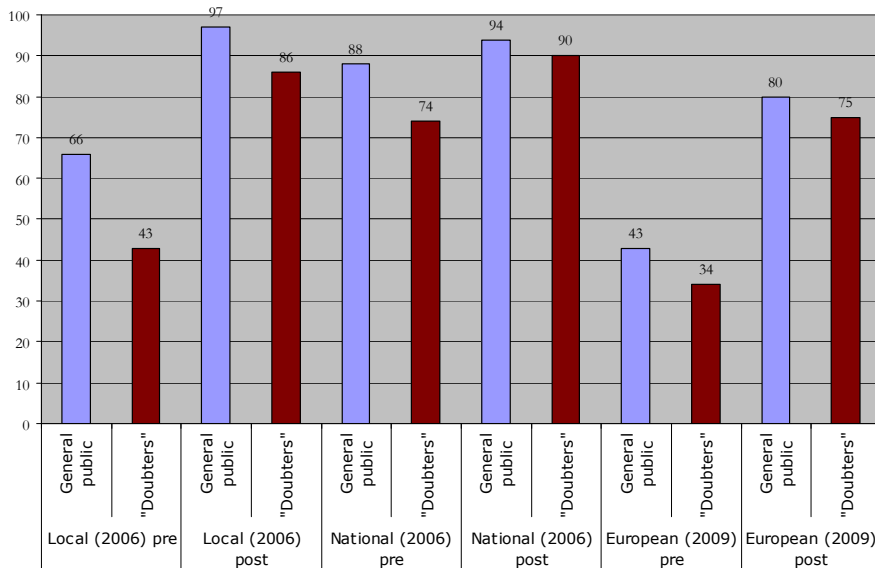
- Beforehand, 58% of the general public knows they have to show their voter card and ID. During the campaign this rose to 70%. However, the campaign goal (80%) isn't reached.
- "Doubters": 56% to 69%.



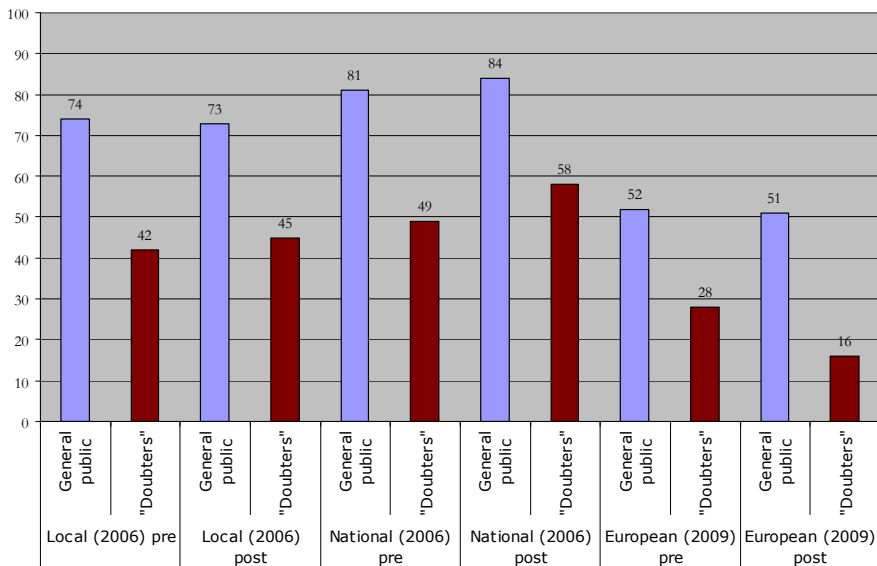
## Comparing local, national and EP elections

- Awareness of first elections
- Spontaneous awareness of election date
- Importance of voting
- Reach and appreciation

## Awareness of next elections



## Importance of voting



## Reach and appreciation

	Bench- mark	National elections	Local elections	Bench- mark	European elections
	2006	2006	2006	2009	2009
Reach	89%	88%	91%	91%	91%
Recall	54%	80%	61%	62%	61%
Appreciation (1-10)	6,9	6,4	6,4	6,6	5,9

## General conclusions

Election campaigns in general: high reach/recall, usually effective in reaching knowledge goals, however: low appreciation.

Why?

1) External factors:

- a lot of other media attention
- political parties campaigning
- the “umfeld”: politics in general and the European Parliament in specific

2) Lack of “political content” (more important when presumed knowledge about elections is low, e.g. European elections) -> however, this is the responsibility/field of the political parties.

3) Lowest appreciation for European elections: probably correlated to low interest, involvement, social en personal relevance -> difficult (impossible?) starting point for communication.



**Disenfranchisement of prisoners with particular reference to  
*Hirst v. The United Kingdom (NO 2)*,  
ECHR application 74025/01**

**Elkan ABRAHAMSON<sup>51</sup>**

**Section 1 – Introduction**

Good Morning. I appreciate the irony of participating in a conference on enhancing voter participation and addressing you on the topic of disenfranchisement. However, it is perhaps useful to look at categories of citizens prevented from voting in order to see if some members of those categories can be both entitled and encouraged to vote. I was advocate in the case of *Hirst v U.K.* and hope to give you a summary of that case and my thoughts on it.

**Section 2 – The Case of *Hirst v U.K.***

John Hirst was sent to prison for life for killing his landlady. He pleaded guilty to manslaughter on the ground of diminished responsibility in February 1980, and he was held to have diminished responsibility (in other words not able to form the full intent for murder) on the basis that he had a severe personality disorder.

He was given a minimum term, also known as a tariff, which expired in June 1994. That formed the punitive part of his sentence. He remained in prison afterwards because under the UK legislation someone who is serving a life sentence, even when their tariff has expired, remains in custody until they

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can satisfy the Parole Board that it is safe to release them. In other words he was being kept in custody, not as a punishment, but to protect the public.

John Hirst wanted to vote in general elections in the UK. He found that the Representation of the People Act 1983, Section 3, prohibits prisoners from voting in parliamentary (or local) elections. That section states at Section 3(1):

“A convicted person during the time that he is detained in a penal institution in pursuance of his sentence....is legally incapable of voting at any parliamentary or local election.”

It does not appear that any considerable thought was given to the position of prisoners or indeed to the fact that they were only prohibited from voting while detained in a penal institution at the time the Act was passed.

A little more thought was given to the situation in 2000, when the Representation of the People Act 2000 was considered. At that time England had in force the Human Rights Act 1998 (which allows for direct applicability of the European Convention on Human Rights in England) and consideration was given to whether the new Act (which allowed remand prisoners and unconvicted mental patients to vote but still prohibited convicted prisoners from voting while detained in prison).

A Statement of Compatibility was issued by the government confirming that in their view the 2000 Act was compatible with the Human Rights Act.

The clear view of the government at the time was that it should be part of a convicted prisoner's punishment that he lose his rights, one of which is the right to vote.

Mr Hirst, having unsuccessfully applied to the English courts for relief, took his case to the European Court of Human Rights. The European Court has a 2-tier system; most cases which go to an oral hearing are heard by a Chamber; under limited circumstances the cases considered most important can be reheard by a Grand Chamber. This case was heard both by a Court Chamber and, the government appealing the decision of the Court Chamber, by the Grand Chamber. A total of 21 judges therefore considered the matter.

We relied largely on Article 3 of Protocol 1 of the Convention.

Article 3 reads as follows:-

“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

The question which the Court had to consider was in essence whether a “blanket ban” prohibiting all convicted people in custody and serving a sentence of criminal imprisonment (but not applying to those on remand – i.e. unconvicted prisoners – or those serving a sentence for contempt or those imprisoned for default for, for example, not paying a fine), which was imposed with (arguably) little consideration by the UK Parliament, was lawful under the Convention and its protocol.

The decision of the Court Chamber (seven judges) was unanimous and was handed down on the 30<sup>th</sup> March 2004. The court decided that there had been a violation of Article 3 of Protocol Number 1 to the European Convention.

The court considered a number of international materials including the following:

The International Covenant on Civil and Political Rights, Article 25 of which states that:-

“Every citizen shall have the right and the opportunity...and without unreasonable restrictions....to vote.”

Article 10 of that Covenant also provides for prisoners to be treated with humanity and with respect for their inherent dignity and for the penitentiary system to comprise, “Treatment of prisoners, the essential aim of which shall be their reform and social rehabilitation.”

Rule 64 of the European Prison Rules states clearly that, “Imprisonment is by the deprivation of liberty a punishment in itself. The conditions of imprisonment and the prison regimes shall not, therefore, accept as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in this.”

The court also took into account a Canadian case, *Sauvé –v- The Attorney General of Canada* (No 2).

The Canada Elections Act 1985 Section 51(E) denied the right to vote to every person imprisoned in a correctional institution serving a sentence of two years or more. The Supreme Court of Canada held that this was unconstitutional as it infringed Articles 1 and 3 of the Canadian Charter of Rights and Freedoms:-

“1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or other legislative assembly and to be qualified for membership therein.”

The Canadian Court held by a narrow majority of five to four that the government had failed to identify the particular problems that required denying the right to vote and that the measure did not satisfy the proportionality test, in particular as the government had failed to establish a rational connection between the denial of the right to vote and its stated objectives.

Having considered the above, and the situation in other countries both parties to the European Convention and others, the conclusion of the court was as follows:-

1. It was prepared to look afresh at the issues arising from an automatic statutory bar on voting imposed on convicted prisoners.
2. It noted the varying position within contracting states, saying that there were 18 countries in which no restrictions were imposed on prisoners’ right to vote, 13 countries where prisoners are not able to vote due either to legal restrictions or practical restrictions (e.g. there was no facility in place to enable them to vote). Between those two extremes, in the other contracting states, loss of voting rights was either limited to specific offences or categories of offences or

the court was left with a discretion. The court accepted that the lack of any clear “standard” meant that the margin of appreciation was an important factor – in other words significant latitude should be allowed to each contracting state.

However the Court also maintained that the right to vote for elective representatives was “the indispensable foundation of a democratic system”. The court then referred to the aim expressed by the UK government for its prohibition – the government was relying on two aims, one being to prevent crime and punish offenders and the other to enhance civil responsibility and respect for the rule of law. The Court pointed out that the loss of liberty does not automatically mean the loss of any other fundamental Convention rights and that the loss of the right to vote is not a part of the sentencing process (in that the judge has no say in it). They also referred to the *Sauvé* case where the majority of the Canadian Supreme Court found no evidence to support the claim that disenfranchisement deterred crime.

As to enhancing civil responsibility and respect for the rule of law the Court found no clear logical link between the loss of vote and the imposition of a prison sentence and indeed suggested that it is arguable that removing the vote runs counter to the rehabilitation of the offender and undermines the authority of the law. However the Court declined to say that the aims expressed by the UK government were not legitimate, taking account of the fact that there were a number of different philosophies and view points.

The Court did hold that depriving convicted prisoners of the right to vote automatically, irrespective of the length of their sentence and irrespective of the nature or gravity of their offence, was a breach of Article 3 of Protocol 1. It pointed out that the effect of the imposition was arbitrary (depending on whether the prisoner happens to be in prison on election day – given that elections in the UK are at least every five years, it would be possible to serve a ten year sentence (since U.K. prisoners only serve half the sentence) and still not miss an election; alternatively it would be possible to serve one day and miss an election). The Court also considered that in the case of prisoners such as Mr Hirst, where they had served that part of their sentence relating to punishment and were only continuing to be detained on grounds of safety, it was hard to understand the argument that removal of the vote was part of a punitive sanction. The court did also not accept the argument of the

government that such prisoners could be denied a vote while they remain detained because of their risk to the public. The Court concluded by saying that it could not accept that an absolute bar on voting by any serving prisoner in any circumstances fell within an acceptable margin of appreciation.

Following this unanimous decision the UK government asked for the Grand Chamber to hear the case. The Grand Chamber held by 12 votes to 5 that there had been a violation of Article 3 of Protocol 1 – so the overall “score” was 19 judges to 5 (bear in mind that the UK judge, Sir Nicholas Bratza, sat in both chambers and therefore had two votes).

The decision of the Grand Chamber was handed down on 6<sup>th</sup> October 2005 (adopted 29<sup>th</sup> August 2005).

The Grand Chamber accepted that, while there is a basic principle of universal suffrage, there is room for limitations and referred to criteria such as residence. The Court however did point out that any departure from the principle of universal suffrage risks undermining the democratic validity of the legislature thus elected and the laws it promulgates. The Court considered its earlier case law and noted that this was the first time that they had to consider a general and automatic disenfranchisement of convicted prisoners. The court noted the recommendation of the Venice Commission (the European Commission for Democracy through law) at its planning session in 2002 that while provision may be made for depriving individuals of their right to vote it should only be under four conditions, all of which should apply:-

- i. It must be provided for by law;
- ii. The proportionality principle must be observed;
- iii. The deprivation must be based on mental incapacity or a criminal conviction for a serious offence;
- iv. The withdrawal of political rights or finding a mental incapacity may only be imposed by express decision of a court of law.

The fourth principle is perhaps the most interesting as it requires a judicial decision before political rights can be withdrawn. The court noted that:-

“An independent court, applying an adversarial procedure, provides a strong safeguard against arbitrariness.”

The Grand Chamber did not find that the aims expressed by the government were untenable or incompatible with the right under Article 3 (the aims proposed by the government have been mentioned above – preventing crime and enhancing civic responsibility).

However, the Grand Chamber, in common with the Chamber of the Court, found that the Act was not proportional. The Grand Chamber took into account the fact that it was a blanket ban, that there was no evidence that the UK parliament had ever properly considered the matter and there was no evidence that the UK Divisional Court (which had heard an initial Judicial Review by Mr Hirst), had properly considered the matter either. The Grand Chamber concluded that the blanket ban fell outside any acceptable margin of appreciation. Unfortunately the Court declined to lay down any further guidelines saying that where different states have adopted a number of different ways of dealing with the issue, the Court could only consider whether the particular restriction in a particular case exceeded the margin of appreciation.

Judge Caflisch, who supported the conclusions of the majority, added the view that disenfranchisement was not in harmony with the objectives of preventing crime and punishing offenders; his view was that participation in the democratic process may serve as a first step towards reintegrating offenders into society. He also expressed his view as to the criteria which should apply to any disenfranchisement – the measures should be prescribed by law, a blanket law would not be appropriate but should be restricted to major crimes (as proposed by the Venice Commission), disenfranchisement should be decided by the Judge not the Executive and must remain confined to the punitive part of the sentence and not extended beyond it.

Dissenting opinions were filed by six judges, effectively holding that a blanket ban on prisoners voting falls within the margin of appreciation. The pointed to four countries who disenfranchised prisoners on the basis of their recently adopted constitutions (Russia, Armenia, Hungary and Georgia) and another four countries where there were restrictions on prisoners' rights to vote based on their constitutions (Luxembourg, Austria, Turkey and Malta) – as the judges pointed out the decision of the Court will create legislative problems not only for states with a general ban as exists in the UK. They regretted that

the case gave states little or no guidance as to what would in fact be compatible with the Convention.

### **Section 3 - The response of the United Kingdom**

The Committee of Ministers receives final judgements of the court and monitors the execution of those judgements. The Committee can take measures to help with the execution of the judgments such as adopting interim resolutions and setting their provisional calendar for the reforms to be undertaken or ultimately to insist that the respondent takes the measures needed to comply with the judgment. It is a requirement for members of the European Convention of Human Rights that they abide by the judgements of the court. The Committee can refer back to the Court a case where the Government has failed to comply with a judgment against them (Rule 11 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements). Ultimately it is possible to use sanctions provided for by the Statute of the Council of Europe.

Having said this, it is difficult to imagine circumstances under which a state would be “expelled” as a member state of the Convention.

With regards to Mr Hirst himself, he was released on licence between the decision of the Chamber and the Grand Chamber (and was in fact able to come to the hearing before the Grand Chamber).

With regards to general measures, at the time of the judgment there were, the government said, about 48,000 convicted and detained prisoners in England and Wales affected by the legislation. The government’s own figure, given in its latest consultation paper, is that about 63,600 prisoners are affected as at February 2009. The next general election in England (the first since the judgment of the Grand Chamber) must be held by June 2010 at the latest. Latest figures indicate that there are currently, as at 20<sup>th</sup> November, 85,663 prisoners in England and Wales. After deducting remand prisoners and those too young to vote there are potentially 82000 unlawfully deprived of the vote in England and Wales alone. Some of these are overseas nationals so the true figure is probably 65,000 – 70,000



In April 2006 the UK authorities presented an action plan for the execution of the case. They committed to undertaking a consultation to determine the measures required to implement the judgement. A revised action plan was then produced with a revised timetable by which draft legislation was to be introduced by May 2008. That plan envisaged a two stage consultation. The first stage consultation paper was published on the 1<sup>st</sup> December 2006. The government expressed its opposition to allowing all prisoners to vote and discussed various ways of restricting the vote. The first stage of consultation ended on 7<sup>th</sup> March 2007. The second stage consultation paper was not published for over a year and a half – 8<sup>th</sup> April 2009. It refers to the responses of the first stage consultation and consults on proposals to enfranchise prisoners sentenced to four years or less. That consultation closed on the 29<sup>th</sup> September 2009. Following that consultation the UK authorities said they would consider the next steps to implement the judgement through legislation.

Interestingly, the response to the first consultation was that 47% favoured full enfranchisement of prisoners and only 4 out of 88 respondents favoured a system of enfranchisement based on sentence length.

The United Kingdom Parliament's Joint Committee of Human Rights in its annual report in 2008 criticised the delay in implementing the case. The Committee said that any further delay may result in the next election taking place in a way that fails to comply with the Convention.

In fact the Secretary of State for Justice in January 2009 stated that Members of Parliament were not willing to accept the judgement of the European Court (this was referred to in the report of the Joint Committee). The government has, despite suggesting that it would have a proper debate, ruled out from the start a full enfranchisement. Indeed it left in as an option retaining the blanket ban even though this has been ruled unlawful. The government did however accept that retaining the total ban was outside the margin of appreciation and was not "an actual proposal". Submissions have been made to the Committee of Ministers, after the second stage consultation, from Mr Hirst himself, the writer on his behalf, the Howard League for Penal Reform, UNLOCK, Penal Reform International, the National Council of Civil Liberties and the Prison Reform Trust. All those submissions state that the United Kingdom has not yet taken any concrete steps to

implement the judgement and all stress the concern of imminent similar violations if legislation is not passed before the 2010 general elections. Indeed the Secretary of State for Justice, Jack Straw, has been reported as stating that no legislation will be passed before the next general election. The Deputies of the Council of Ministers in their meeting in June 2009 expressed concern about the significant delay and recognised the pressing need to take concrete steps to implement the judgement, noted that the second stage of the consultation was to close in September 2009 and stressed the need to take the procedural steps following consultation without delay, decided to resume consideration of the case at the latest at their December 2009 meeting.

On the 8<sup>th</sup> October 2009 they received information concerning general measures – since then the Queen’s Speech (which is a speech made by the Queen on behalf of the UK government saying what legislation the Government hopes to pass in the forthcoming parliament – in this case the last before the next election) makes no mention whatsoever of prisoners’ voting rights.

The Government’s latest thinking is set out in the Consultation Document CP 6/09, the second consultation document on Voting Rights of Convicted Prisoners Detained within the United Kingdom. Their view is that no prisoner sentenced to 4 years or more should be allowed to vote; they set out various options for other prisoners including disenfranchising those sentenced to 1,2 or more than 2 years. They also said that they do not intend to allow life sentence prisoners whose tariff has expired to vote – so Mr Hirst, if still in prison, would still not be able to vote.

#### **Section 4 – The implications for other countries**

This has been referred to above. There are a number of countries, members of the Council of Europe and signatories to the European Convention on Human Rights, whose arrangements may fall foul of the ruling in the case of Hirst. Some of those countries may have to re-examine their primary legislation; other countries may need to re-examine constitutional legislation.

While it is not perhaps common for a state party to the European Convention to examine its own statutory provisions if it has not been party to a particular case, it is something that good governance requires should follow.

It also presents States with an opportunity to re-examine their attitude towards both voters on the one hand and prisoners on the other and perhaps an opportunity to re-examine the framework for enfranchising its citizens.

The government of Hong Kong in February 2009 (following a judicial review of the voting arrangements for prisoners – Hung v Secretary of State for Justice and Electoral Affairs Commission) issued a consultation document inviting views on removing the existing disqualification of prisoners from applying to register as electors – it suggested three options – one to remove it entirely, one to disqualify prisoners from voting if they are serving a sentence of ten years or more and one to disqualify prisoners from voting if they are serving a sentence of ten years or more but enabling them to resume the right to vote in the last few years of their imprisonment.

Following a period of consultation (lasting six weeks), the Hong Kong government decided to remove the existing disqualification of prisoners from being registered as electors and from voting.

### **Section 5 – Disenfranchisement issues not covered by *Hirst v U.K.***

In the U.K., since the Representation of the People Act 2000, remand prisoners (who were prior to that qualified to vote but who in practice would have found it impossible to do so) were given a practical entitlement to vote; those hospitalised under Mental Health legislation following committal of a Criminal offence (even without a criminal conviction) remain disenfranchised. By contrast, the Act made arrangements to allow civil detainees under the Mental Health legislation to vote by giving their hospital address as the registered address for voting. A mental health condition is not itself considered a legal incapacity to vote. The current guidance to electoral commissioners states that only the following lack legal capacity to vote:

- certain members of the House of Lords
- detained convicted persons
- those found guilty of certain corrupt or illegal practices (pertaining to elections)
- offenders detained in a mental hospital.

The guidance specifically states that neither a lack of mental capacity nor a mental health condition leads to a legal incapacity to vote.

Compare the situation of non-resident British citizens; they lose their right to vote in UK elections 15 years after their last registration as an elector, despite the fact that they may have strong links with the country and may be affected by, for instance, social security legislation, reciprocal arrangements, and taxation and may still be a British passport holder. This was raised in Hilbe v Lichtenstein in 1999 Mr Hilbe was a Lichtenstein national living in Switzerland. In order to vote in Lichtenstein he was required to have his ordinary abode there one month before the relevant election. The Court upheld the restriction as valid commenting that the reasons for it were:

- A non-resident is less concerned with the day to day problems of his country and has less knowledge of them;
- It is impracticable for parliamentary candidate to present different electoral issues to citizens abroad;
- Non-residents have no influence on the selection of candidates or the formulation of their electoral programmes;
- The close connection between the right to vote and being affected by the outcome;
- The legitimate concern the legislature may have to limit the influence of citizens living abroad on issues mainly affecting its residents.

We are 10 years on from that judgment yet how things have changed—we are able via the internet to be intimately involved in and influence the daily affairs of people on the other side of the world; indeed there may be some among us who followed the last U.S. Election more closely than we did our own! The time may have come to re-examine the position of British Nationals who have chosen to relocate to countries in the EU of which they are not citizens

## **Section 6 - Conclusion**

Opinions vary over the correct approach to the voting rights of prisoners.

There is undoubtedly an argument that allowing prisoners to vote increases their stake in society and increases the chances of reintegrating a prisoner, on release, into society.

It is inevitable that most people currently serving sentences of imprisonment, whether in the UK or elsewhere, are likely to be released and it is in the interests of society that, when those prisoners are released, the chances of their being law abiding and responsible members of society are maximised.

However, it is equally arguable that there is no point giving prisoners the right to vote without also taking steps to ensure that they understand the nature of the responsibility that comes with that right. There is no reason why, for instance, civics classes can not be presented to prisoners in which their responsibilities as citizens could be discussed.

It also cannot be denied that there is a valid school of thought which argues that it is legitimate, as part of a punitive exercise, to disenfranchise a prisoner. This was considered most recently in Hong Kong. It does seem that there is a trend embracing many countries of increasing the access of prisoners to voting rights.

The question which faces the UK, and no doubt other countries, is firstly the extent to which prisoners should be enfranchised and secondly how this enfranchisement can be used to maximise the reintegration of prisoners into society.

# Criteria for disenfranchising electors<sup>52</sup>: the Austrian perspective

Gregor WENDA<sup>53</sup>

## Introduction to Austria's Electoral System

### Republic of Austria

- democratic republic (Federal President is head of state)
- 9 autonomous provinces ("states")
- approx. 84.000 km<sup>2</sup>
- about 8,000.000 inhabitants.

### Provinces

- specific executive powers
- provincial parliaments with select legislative powers
- own provincial electoral authorities and electoral legislation (for elections on provincial level)

### Federal Parliament:

- bi-cameral (National Council & Federal Council)

### Legal basis for nation-wide elections:

- Constitution & various federal acts

### Nation-wide elections:

- National Council Elections
- Presidential Elections

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<sup>52</sup> Powerpoint presentation

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- EP Elections

### **Disenfranchisement: Definition (1)**

#### **Merriam-Webster's Online Dictionary:**

*to disenfranchise - to deprive of a franchise, of a legal right, or of some privilege or immunity; especially: to deprive of the right to vote*

Wikipedia Online Dictionary:

*Disfranchisement (also called disenfranchisement) is the revocation of the right of suffrage (the right to vote) to a person or group of people, or rendering a person's vote less effective, or ineffective. Disfranchisement might occur explicitly through law, or implicitly by intimidation. Indirectly, it may occur when certain groups are not properly registered to vote, either on purpose or because of serious technical (computer) problems. These people are willing to vote, but can not exercise their right, due to registration.*

### **Disenfranchisement through law -**

#### **Reasons for Exclusion from Suffrage:**

- Nationality/Naturalization
- Age
- Criminal Conviction
- Legal Capability/Guardianship
- Residence
- Disabilities/Special Needs
- ...

General (permanent) exclusion  
(e.g. nationality, age,...)

*versus*

Temporary exclusion (revocation)/  
exclusion from a certain point

Focus:

Temporary exclusion („revocation“)/  
exclusion from a certain point:

*A person generally has the right to vote but, from a certain point, is excluded from suffrage - for a certain period of time or permanently*

→ e.g. conviction, change of residence,...

### **Who can vote in Austria?**

Article 26 para. 1 of the Federal Constitution (“B-VG”):

*“The National Council is elected by the nation in accordance with the principles of proportional representation on the basis of equal, direct, personal, free, and secret vote for men and women, who have completed their 16th year of life on election day.”*

### **Who can stand in an Austria election?**

Article 26 para. 4 of the Federal Constitution (“B-VG”):

*“Eligible are all men and women who are in possession of Austrian nationality and have completed their 18th year of life on election day.”*

Article 26 para. 5 of the Federal Constitution (“B-VG”):

*“Exclusion from the right to vote and from eligibility can only ensue from a court sentence.”*

§ 22 of the National Council Elections Act (“NRWO”):

### **Reasons for exclusion from suffrage**

#### **Due to legal conviction**

*§ 22. (1) All persons who have been convicted of a crime committed with intent by an Austrian Court and who are to be imprisoned for a period longer*



*than one year are excluded from suffrage. In this case the right to vote is returned after six months. The time period in question begins as soon as the sentence has been served and any precautions connected to the imprisonment have been executed or lifted. If the sentence has only been counted as time served in police custody, the time period begins with the sentence becoming effective.*

*(2) When, on the basis of other legal regulations, no legal consequences are to come into force, when these become invalid or when all such consequences or the withdrawal of the right to vote have been pardoned, the person concerned is not to be deprived of the right to vote. The right to vote is also not withdrawn when a suspended sentence (probation) was imposed by the court. When the suspense has been lifted, the withdrawal of the right to vote becomes effective on the day the respective decision becomes enforceable.*

### **When does an exclusion from suffrage take place?**

- *Convicted of one/more crime/s committed with intent (no negligence)*
- *Sentenced by an Austrian Court*
- *Sentence exceeding 1 year of imprisonment*
- *Sentence has become effective (“duly sentenced”, no probation)*

No exclusion when...

- no intentional crime
- no sentence by an Austrian Court
- less than 1 year of imprisonment
- legal remedy pending (not enforceable)
- probation/suspended sentence
- exclusion from suffrage has been pardoned by Court (§ 44 para. 2 of the Penal Code)

History: National Council Elections Act of 1918

Exclusion from suffrage due to:

- Crimes (rich list)
- Incapacitation

- „bawdiness“ committed by female persons
- Police detention, forced labour
- withdrawal of a father’s custodianship
- sentenced for drunkenness more than twice

(...)

National Council Elections Act 1971

Exclusion from suffrage due to:

- Certain crimes
- Incapacitation

National Council Elections Act 1971

- until 1983: Incapacitation
- since 1983: when legal procurator appointed by court according to § 273 of the Civil Code („ABGB“)
- 1987: Constitutional Court overturned the provision regarding legal procurator
- no change in National Council Elections Act 1992

Mentally abnormal delinquents (§ 21 of Criminal Code)

- crime exceeding 1 year of imprisonment
- no sentence due to mental or psychic abnormalities
- special detention facilities
- right to vote

Pending Case before ECHR (1)

Application no. 20201/04

“Helmut FRODL against Austria”

- Facts
- Austrian Position

## **Legal and Effective Disenfranchising: Historical and Contemporary Perspectives**

**Grigorii V. Golosov<sup>54</sup>**

The need for and struggle to achieve equal voting rights has often been examined in the context of democratic theory. This occurs because the ability to vote in free and open elections is often viewed as a defining component of a democracy. At its core, democratic theory posits that participation in the decision-making process by the mass public is essential to the well being of a society. Such activity serves as a channel through which the needs and preferences of communities can be communicated to political decision-makers. Further, it provides a means for citizens to pressure a response.

The expansion of suffrage to all sectors of the population is one of the democracy's most important political triumphs. Once the privilege of wealthy men, the vote is now a basic right held as well by the poor and working classes, racial minorities, women and young adults. Today, in the vast majority of countries all mentally competent adults have the right to vote with only one exception: convicted criminal offenders. The so called felony, or criminal, disenfranchising in the US has reached rather significant levels: an estimated 3.9 million U.S. citizens are disenfranchised, including over one million who have fully completed their sentences. It is not surprising, then, that this situation is politically controversial. There are also significant debates on criminal disenfranchising in several other countries. In this paper, I will not go far into debate on this controversial issue, letting the other speakers to comment on it at length. Rather, as a political scientist, I will present a brief exposition of different historical forms of legal disenfranchising, and then move to the problem of effective disenfranchising which, in my view, becomes increasingly important in many contemporary settings. I believe that the problem of effective disenfranchising is pending, and it is to be addressed to a

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greater extent than it is usually done. I will do that, first, by referring to the historical practice of effective disenfranchising, and then, by extending the argument to the contemporary conditions.

Historically, the most common ground for legal disenfranchising was religion. In the aftermath of the Reformation, it was rather common in for people of disfavored religious denominations to be denied certain civil and political rights, often including the right to vote. In the UK and Ireland, Roman Catholics were denied the right to vote from 1728 to 1793. The anti-Catholic policy was justified on the grounds that the loyalty of Catholics supposedly lay with the Catholic Church rather than the national polity. In England and Ireland, several Acts practically disenfranchised non-Anglicans or non-Protestants by imposing an oath before admission to vote or to run for office. In some of the British North American colonies, even after the Declaration of Independence, Jews, Quakers or Catholics were denied voting rights and/or forbidden to run for office. In Maryland, voting rights and eligibility were extended to Jews only in 1828. In Canada, several religious groups (Mennonites, Hutterites, Doukhobors) were disenfranchised by the war-time Elections Act of 1917, mainly because they opposed military service. This disenfranchisement ended with the end of the First World War, but was renewed for Doukhobors from 1934 (Dominion Elections Act) to 1955.

Now the practices of disenfranchising on the basis of religion became almost universally extinct. As a notable exception, it can be mentioned that in the Republic of Maldives, only Muslim Maldivian citizens have voting rights and are eligible for parliamentary elections.

The second most important historical basis for legal disenfranchising was wealth, or property qualifications. Until the 19th century many Western societies allowed only landowners to vote. Alternatively, voting rights were weighed according to the amount of tax paid, as in Prussia. Property qualifications tended to disqualify non-Whites because tribally-owned property was not allowed to be taken into consideration. In the US, wealth remained a valid basis for disenfranchising throughout the 19<sup>th</sup> century, and in Canada, such restrictions persisted even in the first half of the 20<sup>th</sup> century. In France, for example, between 1815 and 1830 franchise was granted only to males above 30 years who paid at least 300 francs in direct taxes. This narrow definition of the “French people” meant that only 80,000-100,000 people out

of a total 32 million (that is, 0.25% - 0.3%) of the population) could vote. Between 1830-1848, there was some relaxation of franchise requirements, but still only 0.6% of French people were allowed to vote. In contrast, in some of the Communist regimes the representatives of the proprietary classes were often disenfranchised.

Close to these two kinds of legal disenfranchising mechanisms were always literacy qualifications, when the right to vote has been limited to people who had achieved a certain level of education or passed a certain test, e.g. "literacy tests" in some states of the US. In practice, the composition and application of these tests were frequently manipulated to functionally limit the electorate on the basis of other characteristics like wealth or race. In Brazil (till 1965) and in many southern regions of the United States (till this practice was invalidated by the courts) voters had to pass a literacy test. Indirectly this disenfranchised the poor and the colored citizens. In Lebanon, female voters must possess elementary education to qualify for a vote.

Speaking of other relatively minor mechanisms of legal disenfranchisement, it has to be mentioned that in some countries (especially but not exclusively in Latin America) the military and the police were at times prohibited from voting.

Of course, the most massive practice of legal disenfranchising has always been connected to gender. In early democratic history, women had no right to vote. Britain gave women an equal right to vote only in 1928, the United States in 1920, France in 1944 and Switzerland in 1971. This topic, however, is too well covered in the literature to be extensively treated here.

With the exception of criminal disenfranchisement, these legal means of disenfranchisement are largely the things of the past. In the contemporary world, few countries formally disenfranchise large portions of the population. Does it really mean that the problem is mostly exhausted?

In my belief, it is not. Taken substantively, enfranchisement can be in peril – and indeed it is in peril – not only by the legal means of the past, but also by some of the contemporary political practices. These practices, however, also had their historical predecessors, and this is what I will start with. In fact, there is ample evidence that the techniques of the direct disenfranchisement are

about as old as democracy itself. This can be illustrated with some evidence from the world's oldest inclusive democracy, the US.

"Direct" disenfranchisement refers to actions that explicitly prevent people from voting or having their votes counted, as opposed to "indirect" techniques, which attempt to prevent people's votes from having an impact on political outcomes (e.g., gerrymandering, ballot box stuffing, stripping elected officials of their powers).

The 15th Amendment to the US Constitution prohibited explicit disenfranchisement on the basis of race or prior enslavement. So Southern states devised an array of alternative techniques designed to disenfranchise blacks and, to a lesser extent, poor whites. There were three broad, overlapping phases of the disenfranchisement process. From 1868-1888, the principal techniques of disenfranchisement were illegal, based on violence and massive fraud in the vote counting process. Starting in 1877, when Georgia passed the cumulative poll tax, states implemented statutory methods of disenfranchisement. From 1888-1908, states entrenched these legal techniques in their constitutions. Here we explore the principal means of direct disenfranchisement, and the attempts to use Federal law to prevent disenfranchisement, through 1965, when the Voting Rights Act was passed. For the most part, until the advent of the Civil Rights Movement in the 20th c., the Supreme Court acquiesced in the methods used to disenfranchise blacks by gutting the Federal laws enacted to protect blacks. Whenever it resisted, the Southern states followed the motto "if at first you don't succeed. . . ."

## **Violence**

Violence was a principal means of direct disenfranchisement in the South before Redemption. In 1873, a band of whites murdered over 100 blacks who were assembled to defend Republican officeholders against attack in Colfax, Louisiana. Federal prosecutors indicted 3 of them under the Enforcement Act of 1870, which prohibited individuals from conspiring "to injure, oppress, threaten, or intimidate any citizen with intent to prevent or hinder his free exercise and enjoyment of any right or privilege granted or secured to him by the constitution or laws of the United States." The Supreme Court dismissed the indictments in *U.S. v. Cruikshank*, 92 U.S. 542 (1875), faulting them for

failure to identify a right guaranteed by the federal government that had been violated in the slaughter: (1) Conceding that the right to assemble for the purpose of petitioning Congress or vote in federal elections was derived from the federal government, the Court argued that the right to participate in state politics was derived from the states, so individuals could look only to the states for protection of this right. (2) Conceding an exception, that the U.S. Constitution grants individuals the right against racial discrimination in the exercise of their rights to participate in state politics, the Court faulted the indictment for failure to charge a racial motivation for interference in the victims' right to vote (even though the racial motive was obvious). (3) In any event, the Court ruled that this federal right against racial discrimination was enforceable against the states only, not against individuals. (4) Other rights violated in the slaughter, such as the rights to life and against false imprisonment, were not derived from the federal government, so individuals had to resort to the states for protection of these rights. Cruikshank "rendered national prosecution of crimes against blacks virtually impossible, and gave a green light to acts of terror where local officials either could not or would not enforce the law." (Eric Foner, *Reconstruction*, 1989, 531).

## **Fraud**

Electoral fraud by ballot box stuffing, throwing out non-Democratic votes, or counting them for the Democrats even when cast for the opposition, was the norm in the Southern states before legal means of disenfranchisement were entrenched. Between 1880 and 1901, Congress seated 26 Republican or Populist congressional candidates who had been "defeated" through electoral fraud. (Kousser, *Shaping of Southern Politics*, 263). In a key test of federal power to prohibit fraud in state elections, prosecutors brought indictments, under the Enforcement Act of 1870, against two inspectors of elections in Kentucky, for their refusal to receive and count the vote of a black elector in a city election. The Supreme Court dismissed the indictments in *U.S. v. Reese*, 92 U.S. 214 (1875). It eviscerated the Enforcement Act by throwing out its provisions for punishing election officials for depriving citizens of their voting rights, on the ground that they exceeded Congress' power to regulate elections. (The provisions stated that officials shall be punished for failure to count the votes of eligible electors, when the 15th Amendment granted Congress only the power to punish officials for depriving electors of the right

to vote on account of race.) Although electoral fraud remained common in the South, it brought its practitioners under the glare of unfavorable publicity. This motivated a turn to legal means of disenfranchisement.

### **Restrictive and Arbitrary Registraton Practices**

Southern states made registration difficult, by requiring frequent re-registration, long terms of residence in a district, registration at inconvenient times (e.g., planting season), provision of information unavailable to many blacks (e.g. street addresses, when black neighborhoods lacked street names and numbers), and so forth. When blacks managed to qualify for the vote even under these measures, registrars would use their discretion to deny them the vote anyway. Alabama's constitution of 1901 was explicitly designed to disenfranchise blacks by such restrictive and fraudulent means. Despite this, Jackson Giles, a black janitor, qualified for the vote under Alabama's constitution. He brought suit against Alabama on behalf of himself and 75,000 similarly qualified blacks who had been arbitrarily denied the right to register. The Supreme Court rejected his claim in *Giles v. Harris*, 189 U.S. 475 (1903). In the most disingenuous reasoning since *Plessy v. Ferguson*, 163 U.S. 537 (1896) (rejecting a challenge to state-mandated racial segregation of railroad cars, on the ground that blacks' claims that segregation was intended to relegate them to inferior status was a figment of their imaginations), Justice Oliver Wendell Holmes put Giles in a catch-22: if the Alabama constitution did indeed violate the 15th Amendment guarantee against racial discrimination in voting, then it is void and Giles cannot be legally registered to vote under it. But if it did not, then Giles' rights were not violated. But, in the face of Giles' evidence of fraud, the Court cannot assume that the constitution is valid and thereby order his registration in accordance with its provisions. Holmes also held that Federal courts had no jurisdiction over state electoral practices, and no power to enforce their judgments against states. Undaunted, Giles filed suit for damages against the registrars in state court, and also petitioned the court to order the registrars to register him. The state court dismissed his complaints and the Alabama Supreme Court affirmed, offering another catch-22: if Alabama's voting laws violated the 14th and 15th Amendments as Giles alleged, then the registrars had no valid laws under which they could register him. But if the laws were valid, then the registrars enjoyed immunity from



damages for the ways they interpreted them. The Supreme Court affirmed this decision in *Giles v. Teasley*, 193 U.S. 146 (1904).

Today, almost all governments in the world – save a few “worst of the worst” deeply authoritarian regimes – are legitimated through electoral processes. Elections pose distinct opportunities and challenges in the context of “fragile states” – war-prone or war-approach the ideal of a “free and fair” process, they provide legitimacy through direct popular participation, and, in turn, legitimacy creates capacity for effective governance. Hence, in democratizing environments or post-war settlement contexts, elections offer a unique opportunity to create legitimate governments following authoritarian rule or to validate negotiated pacts that end bitter internecine strife. On the other hand, precisely because election processes are vehicles through which political power is retained or pursued, and social differences are highlighted by candidates and parties in campaigns for popular support, they tap deep vulnerabilities for violent interactions. Election processes have, in recent years, catalyzed conflict as some candidates mobilize extremist elements of the population to win office, rival factions vie for votes and to secure turf, parties or factions seek to weaken or even eliminate opponents, or where mass mobilization in events such as campaign rallies may set the stage for seemingly spontaneous social clashes among rival supporters. In recent times, Afghanistan, Bangladesh, Cambodia, Colombia, Guyana, Egypt, Ethiopia, Iraq, Kenya, Nigeria, Pakistan, the Philippines, and Zimbabwe all witnessed endemic violence with widespread consequences and in the worst cases, state failure.

When successful, electoral processes offer a means of channeling social conflict into debate, persuasion and common rules for choosing authoritative representatives of the people who can serve in executive, legislative, and other institutions; elections are in this sense a critical means of social conflict management through peaceful deliberations and decision-making processes, in which “winners” carry out promised platforms and “losers” are given the opportunity to either be represented as a loyal opposition in government or to try again in future competitions. Election processes offer safe, predictable, rule-bound method for arbitrating social conflicts through the selection of representatives or the definitive resolution of questions before the community (as in referenda). When elections are putatively free and fair, they imbue the government with legitimacy garnered by the consent of the people, improving the capacity of the state to ensure human security through legitimate

authority under the rule of law, and to improve levels of human development through effective service delivery.

Procedurally fair elections create legitimate governments that enjoy popular support for programs and policies (although there are also cases in which the electoral process can be procedurally fair, however the election can be violence-inducing as a function of the stakes of electoral competition, as described below).

When citizens are provided a direct “voice” in political life; society’s trust of and willingness to cooperate with the state in achieving development is strengthened. As such, electoral processes are very much about the peaceful management of social conflict through public dialogue, vigorous debate, and the authoritative selection of leaders through electoral rules. That is, a good electoral process will allow society on its own to determine the nature of its similarities and differences; representation may be geographic, ideological, identity based (religion, ethnicity, or gender) or along other lines. In some situations, it is true that ethnicity or religion may be a salient basis of representation, whereas in other situations issues such as the alleviation of poverty, gender equality, geographic representation, or economic/class interests may be more important.

Whether any given electoral process fulfills the functions of voice and decision is a consequence of its overall quality, often described in terms of an election being either “free and fair,” or not. The greatest failing of election assessment to date has been the tendency to see election quality in bimodal terms. The election is either good or it is bad, or when a fudge qualification is required, it is ‘substantially free and fair. But there is no doubt that that the quality of elections across cases and across time can be seen as existing on a continuum. In essence, one needs to look at the process and outcome to gauge a full picture of election quality. Clearly those elections that are substantially free and fair, and that imbue new coalitions with legitimacy and a mandate to act, democracy takes a step closer toward consolidation.

At least one detrimental aspect of electoral processes in fragile states is the accompaniment of voting with violence. The focus on election-related violence stems from an appreciation that electoral processes are inherently conflict-inducing; Ethiopia, Burundi, Guyana, Haiti, Kenya, Sri Lanka, and Zimbabwe are

oft-cited examples of countries where electoral processes have been chronically violence ridden. Many observers argue that such processes introduce new uncertainties and that they make countries in transition or war-torn, fragile societies deeply vulnerable to new tensions and ultimately in the worst-case scenario to the escalation of civil war. The expansion of political participation in democratization processes, especially where state institutions are weak, give opportunities for elites to appeal to exclusionary nationalism and the concomitant identification of internal or external enemies in order to gain or retain power.

Thus, violence persists as a means of effective disenfranchisement.

The term electoral fraud is intended to refer to situations in which electoral results were knowingly tampered with in an effort to advantage one candidate (or set of candidates) over another. One can conceive of two different types of fraud: minor electoral fraud, where results were tampered with but in which the tampering is perceived to have had little effect on the overall outcome of the election, or major electoral fraud, cases in which electoral fraud is suspected to have influenced the overall outcome of an election. This would imply a belief that either a different candidate would have been elected president or a different party would have controlled the parliament if the fraud had not occurred.

I believe that while minor electoral fraud is largely a technical issue, major electoral fraud is a means of effective disenfranchisement. If the fraud is corrected, there is a strong chance that a different group of political forces would come to power.

Ballot stuffing occurs when a person casts more votes than they are entitled to. In its simplest form, ballot stuffing literally involves 'stuffing' multiple ballot papers into the ballot box. Another method is for voters to cast votes at multiple booths, on each occasion claiming that it is their only vote. In some countries such as El Salvador, Namibia or Afghanistan voters get a finger marked with election ink to prevent multiple votes. In Afghanistan's elections of 2005, this method failed as the ink used could easily be removed.

A more subtle technique is personation, in which a person pretends to be someone else. The person whose vote is being used may be legitimately

enrolled but absent, a real but deceased person, or entirely fictitious. A particularly unsubtle form of ballot stuffing, known as booth capturing, sometimes occurs in India. In these cases a gang of thugs will 'capture' a polling place and cast votes in the names of legitimate voters, who are prevented from voting themselves.

In jurisdictions with absentee balloting, an individual or a campaign may fill in and forge a signature on an absentee ballot intended for a voter in that jurisdiction, thus passing off the ballot as having been filled out by that voter. Such cases of voter fraud have resulted in criminal charges in the past.

Many elections feature multiple opportunities for unscrupulous officials or 'helpers' to record an elector's vote differently from their intentions. Voters who require assistance to cast their votes are particularly vulnerable to having their votes stolen in this way. For example a blind person or one who cannot read the language of the ballot paper may be told that they have voted for one party when in fact they have been led to vote for another. This is similar to the misuse of proxy votes, however in this case the voter will be under the impression that they have voted with the assistance of the other person, rather than having the other person voting on their behalf. Where votes are recorded through electronic or mechanical means, the voting machinery may be altered so that a vote intended for one candidate is recorded for another.

My major point here is not to overview the methods of election fraud, but rather to show that these techniques of effective disenfranchisement successfully survive well into our days. One more major method of effective disenfranchisement is political exclusion by manipulating the field of political alternatives.

A good example of how a large section of the electorate can be effectively disenfranchised can be derived from the experience of Mexico before it entered its democratic reforms in the 1990s. To keep the more extreme parties and the less predictable opponents out of the electoral process, the ruling PRI's monopoly deputation in congress passed an electoral law in 1946 that made it difficult for opposition parties to operate legally: any party had to have at least 30,000 members, 1,000 or more distributed in at least two-thirds of the federal entities (states and territories) at any time. This law threatened parties of the far right and the far left because it required that individuals in

their ranks be listed on party roles so that the party could maintain the minimum membership. It forced the Communist party (Partido Comunista Mexicano, or PCM) underground because it could not meet these requirements nor provisions of the law which prohibited parties from entering into accords with international organizations or affiliations with foreign political parties. This law also forced an opposition party to be a national opposition or an illegal opposition; regional parties could not meet legal requirements.

Excessive narrowing of the electoral arena and huge margins of victory create their own challenges to authoritarian rulers. On the one hand, easy victories can create overconfidence and discourage the mobilizational efforts of the government party. Competition keeps the official party from becoming flaccid and thereby encourages local operatives to make those contacts with the electorate that ensure that the voters are not out of reach, uncontrollable. On the other hand, huge victories are suspect and are apt to lead many to label the "democracy" of the system as chimerical. For elections to serve their legitimation function, the contest must seem real and the results must be believable. For party systems to channel the political involvement of the population, thereby enhancing the degree of control exercised by the government, the opponents of the regime must feel there is a purpose to their electoral activity, that they can occasionally win. By the mid 1970s, elections had begun to fail to serve these functions.

To give up such control, however, has been too threatening to the PRI, and it has thus fought to avoid making real reforms at almost every juncture. When reforms were made in 1977 and 1986, the concessions made to the opposition principally came in the realm of representation, and even then the increased representation was to be largely token in character. Only unexpected setbacks, such as the 1988 debacle, put the PRI in danger of losing control of the congress. As could be expected, the government's response was to reinforce governability provisions in the constitution so that a loss at the polls did not have to be a loss of the society's representative institutions. Where the PRI knew its greatest advantages lay, in the organization of the electoral process and in access to campaign resources, reforms came slowly and only when absolutely necessary in order to insure a credible electoral process—in 1994 and 1996. Likewise, governability provisions have only been pared back

when the government felt that the opposition had to be mollified by such changes.

Yet, reform has come to Mexico. The narrow openings made available to the opposition parties have allowed them to build their strength. The PAN has grown slowly in electoral support, taking advantage of the society's rejection of the populist measures of the López Portillo government (especially the 1982 nationalization of the banks) to build its middle-class base, especially in the north and in the Bajío in the center-west. The PRD has similarly found itself able to capitalize on discontent with the social consequences of the Salinas and Zedillo governments' neoliberal economic policies to find voters in Mexico's popular classes, including the peasantry, and especially in the south and the Mexico City area. The obviously growing number of Mexicans willing to defect from the PRI has forced the Salinas and Zedillo governments to offer more genuine political reforms because to fail to do so would discredit the electoral process, threatening to send more Mexicans into the arms of guerrilla insurgents.

The lesson that can be learned from the experience of Mexico is that the principle of inclusiveness applies to those who seek to exercise their right to be elected. Legal recognition of political parties must not be unreasonably restrictive, nor may access to the ballot be unreasonably restricted for political parties and candidates competing for election. Candidature requirements, for example, concerning minimum age or educational levels, residence, descent or criminal record must be based on reasonable and justifiable criteria, as should provisions relating to the doctrine of incompatibility of offices. Requirements for collection of signatures for legal recognition or ballot qualification, deposits or fees and the timing of filing deadlines for qualifying for inclusion on the ballot must not be overly burdensome or discriminatory. Likewise, the application of acceptable requirements for legal recognition, access to the ballot and other rules may not be enforced by election authorities in a manner that is arbitrary or discriminatory or that creates barriers to inclusiveness of those seeking to be elected. A failure to apply the principle of inclusiveness to those seeking to be elected not only abridges the rights of would-be candidates. The right to vote includes the right to choose among those who seek to represent the electors. Elections in which voters go to the polls, even in large numbers, when candidates and political parties have been unjustly denied the opportunity to appear on the ballot or where they are denied a full

opportunity to appeal for votes may be electoral exercises, but they are not genuine, democratic elections.

## **Disenfranchising voters and some ways to avoid it**

**Yuriy Kliuchkovskyi<sup>1</sup>**

Democracy means simply the power of the people; thus a wide participation of citizens in the formation of government and political decision-making process is indispensable for democracy to be valuable.

The Council of Europe Forum «For the Future of Democracy» held a month ago in Kyiv was devoted to the problem of strengthening of the democracy in 21<sup>st</sup> century through improving electoral systems and electoral legislation in general. It was recognized that now the most important problems are how to turn the tendency of turnout decline, how to strengthen democratic practices to enhance inclusiveness of people and increase credibility to the institutions of representative democracy.

Elections are crucial to democracy. Democracy is inconceivable without elections held in accordance with certain principles that give them their democratic status. The principles of European electoral heritage are given in the Venice Commission's Code of Good Practice in Electoral Matters. The principle of universal suffrage is the most well-known and recognised. Nevertheless the aim to enhance participation forces us to look once more at this principle and the procedural guarantees of its implementation.

I'd like to stress that this is not a problem of voluntary illegal deprivation of the right to vote typical for non-democratic regimes as well as of participation in decorative voting without real choice so acquainted to the half of Europe since time of totalitarianism. The problem consists in disenfranchising (legal or de facto) of citizens of democratic state, depriving them of the possibility (or of incentive) to participate in democratic formation of government through real democratic elections.

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Before speaking on the problem of deprivation of the right to vote let's look who has that right.

In political science R. Dahl's inclusion criterion is well known: «Δεμος (which is the carrier of the power in the democracy) must include all adult members of the community excepting those who belongs to the community temporarily or are recognized as mentally incapable». In the legal terms it means that demos (electorate) includes all persons fulfilling three demands:

- they are citizens of the state;
- they are adults;
- they are not recognized as being incapable.

This is the set of persons who have the right to vote; further it could be spoken on restriction (or maybe, extension) of this category.

Depriving or restrictions of the right to vote may take place on different levels. I'd like to propose to distinguish four such levels.

The **first level** which could be called **constitutional** establishes the exact legal meaning of the Dahl's criterion. In fact it's the level of empowerment of the right to vote. It should be considered carefully whether this empowerment is too restrictive which in turn could deprive to vote some social groups of potential voters.

The **second (statutory) level** could set up any additional restrictions of the general category of voters. Here we can meet restrictions of the right to vote for persons who belong to some special groups engaged into some activity (e.g. military personnel), or are in some special conditions (e.g. are imprisoned), as well as temporary restrictions posed by the court as a punishment for some crimes in the form of prohibition of exercising public functions.

The **third (procedural) level** could produce difficulties in exercising legally available right to vote due to established procedures and mechanisms of its realization which for some reasons could be inaccessible for some voters or even some groups of voters. As it was stressed in 2006 Venice Commission Report on Electoral Law and Electoral Administration in Europe, "the electoral legislation may de facto disenfranchise a substantial part of the electorate

due to a lack of special voting provisions for voters who are hospitalised, homebound, imprisoned or temporarily away from their homes”.

The **fourth (social or political) level** is the level of abstention, i.e. non-participation in elections of those voters who has both the right to vote and procedural possibility to realize this right.

The first two are the levels of possible **legal deprivation** of the right to vote. The solution of this problem should be looked for in the international standards of electoral law and European electoral heritage established in the Council of Europe reference documents, especially Venice Commission, as well as in the case law of the European Court of Human Rights.

The third is just the level of de facto disenfranchising caused both with the legislative regulations (statutory establishing procedures and mechanisms of positive realization of the right to vote and of their protection) and with an implementation of legal rules (practices of implementation of statutory regulations).

At least, the fourth level is of social and political (or even in some sense psychological) nature. There could be some legal measures aimed to overcome voters’ abstention but in general it should be studied mostly from the point of view of political science, sociology and so on.

Following aims of this Conference it is the third level which is the most interesting. Nevertheless I take the liberty to mention shortly some aspects of other three levels. Besides the basic international legal instruments I’ll use mainly the experience of my country – Ukraine. It belongs to young, new democracies; thus some issues there are manifested in a legal sense more clear than in traditional western democracies where they are covered with a thick layer of unwritten democratic traditions and customs.

It also should be stressed that these issues are very sensitive to the type of elections (national, supranational or regional/local). I’ll confine myself only with the problems of national elections – parliamentary or presidential (where president is elected by direct suffrage).

Among the above mentioned demands of the **first level** it is worthy to mention the criterion of citizenship.

It seems to be obvious that the right to vote belongs to all citizens of the state conforming demands of lawful age and capability. But there arise questions about (i) foreigners (citizens of other states, citizens of EU, persons without citizenship) and (ii) persons with double (or multiple) citizenship.

A few states do not worry with empowering citizens of some specific other states to vote (like Great Britain). The early (of the beginning of 1990-ies) Ukrainian electoral legislation foresaw the right to vote for citizens of other republics of the former Soviet Union. But this should be considered as exclusion (for national level election). Establishing and defense of the national sovereignty of such European post-colonial states like Ukraine makes it necessary to treat very jealously the non-participation of foreigners in election process in any active role, to say nothing of voting.

Almost the same could be said about persons with a multiple citizenship. The European Convention on citizenship enables them with the same rights as usual citizens (without special mentioning of electoral rights). Nevertheless in the case when national legislation of some state (contrary to its neighbours) does not tolerate double citizenship the participation of such persons in national elections may cause both legal and political problems. In any case it would seem unnatural for persons with a double citizenship to participate elections in both countries on terms of equality. To my mind, this problem needs more detailed discussion

On the **second level** the problem of voting those who are imprisoned is to be mentioned.

The Code of Good Practice in Electoral Matters prescribes that the deprivation of the right to vote in this case must be based on a criminal conviction for a serious offence. The problem was discussed in the 2005 Venice Commission Report on the Abolition of Restrictions on the Right to Vote in General Elections on the base of the case law of the European Court of Human Rights.

We in Ukraine don't use the deprivation of imprisoned at all; this is due to 1998 case law of Constitutional Court which judged it would be unconstitutional. Nevertheless sometimes we feel the necessity to introduce such a deprivation as a kind of sanction in the case of electoral offences because both a money penalty and an imprisonment are not considered (for different reasons) as an appropriate punishment.

From the point of view of legal regulation it is the **third level** which particularly deserves consideration. The situation in this case could be described as follows: some person has the right to vote and wishes to realise his/her right but cannot do it. What could be the reason for that?

The first reason: a voter is not included into voters' rolls at any poll station.

The second: a voter cannot vote on the poll station where he/she is included into voters' roll because of improper organisation of voting procedure.

The third: a voter cannot get to his/her poll station due to his/her disability (illness) or his/her ability to move is limited for other reasons.

The forth: a voter cannot get to the poll station where he/she is included into voters' roll because he/she is far away of the proper poll station.

The latter could be divided in some additional cases:

- there exists some poll station a voter can get to;
- there exists no poll station a voter can get to (for example, on the territory of foreign state).

Speaking more formally we deal with three legal problems. The first is the problem of voters' register and of compiling voters' rolls for poll stations according to the register. The second is the problem of proper regulation and proper organisation of voting process (the size of poll station, suitable voting time, sufficient number of members of poll station commission etc.). The third could be denoted as absentee voting. All these problems have both regulatory and practical components.

To look for solutions to these problems it's useful to keep in mind some underlying principles of election law.

First of all I'll stress that we speak of the **right** to vote. It means that voter's participation in elections is considered just as the right, not as the obligation. In turn, combined with the principle of universal suffrage it means that it is the state which is obliged to ensure possibilities to every voter to use his/her vote without any discrimination, among others on reasons of place of residence or stay.

Next we have to adopt the demand of one-fold voting. It means that a voter can use his/her vote during the same elections only once and only in one poll station. This principle means that any attempt of any voter to try to vote on two or more poll stations is illegal and must be prevented (or punished).

I'd also like to mention the demand of personal voting which means that a voter has to fill his/her ballot paper and to put it to a ballot box personally. This principle is not recognized in a number of traditional democracies due to mechanism of proxy voting (and partly post voting) which violates that demand. It seems that proxy voting is the only reason for which the demand of personal voting is not included to the principles of European electoral heritage. Nevertheless for new democracies this principle is very important being an instrument against the so called "family voting" (see, e.g., 2006 Venice Commission's Declaration on Women's Participation in Elections where the principle of personal voting is stressed).

These principles may compete when we try to solve above mentioned problems.

Let's consider in short the problem of voters' register. The essential demands to such a register are listed in the Code of Good Practice in Electoral Matters. Nevertheless the crucial requirement is: every voter should be included to the register, but only once. As it was shown this is the responsibility of the state (i.e., the government) to create and to maintain such a register corresponding to citizens' right to vote. But it seems unreal to keep the register database in everyday actual state without the active position of a voter whose personal data could be changed.

As in many post-communist countries there was a tradition in Ukraine to form voters' rolls ad hoc, for every election. Now we can claim that our ambitious

project to create the State voters' register as an electronic information and telecommunication system is realised now.

The IT form of the register permits to satisfy two demands: locality in relations with voters (which is necessary to include all voters) and nationwide character of its maintaining (which enables to control the one-fold including of every voter). The register combines a system which contains an element of active participation of the voters in initiating their registration (every person may apply for registration or for checking personal data to the register maintaining body) with regular updating (four times per year) of database made on documental base (without addressing to voters) and general correction (once a year) when the every voter is addressed to check his/her personal data in the register database.

Now we have finished the first general correction of the register database. In particular, as a result of this procedure some hundred thousand records of "twin" voters (about 1% of the total number of voters) were excluded. At the current presidential election the register passes its first practical test.

The voters' register helps essentially to solve the problem of precision and completeness of voters' rolls. Nevertheless there still exist some questions which are to be answered independently. The main question is: could voters' rolls formed according to the register data be changed after their formation? Usually (but not everywhere) the answer is "yes". Different procedures could exist (and they really exist in some countries) – an administrative procedure subject to judicial control, or a judicial procedure, allowing to do some changes in rolls, in particular to include the voter who had to be but was not registered. But a wish to help a voter to realize his/her right to vote including him/her to a roll on the election day cannot be accepted. The Explanatory Report to the Code of Good Practice in Electoral Matters says gently that "it is thus ill-suited to the organisational needs on which democracies are based". We can say more clear that such an approach means a threat of abuses and thus obviously violates the principle of fair election. Unfortunately today in Ukraine we meet an attempt to repeat this approach well known at the 2004 Presidential elections.

In practice procedural (or de facto) disenfranchising could happen due to some organizational complications in the procedure of voting (the second, third and fourth reasons mentioned above).

Usually there is no problem for large group of voters who could come and vote in premises of poll stations where they are included to voters' roll. The proper measures ensuring it include the appointment of the election day on a day of rest with a suitable voting time and especially the size of poll stations. We in Ukraine have an upper limit of a number of voters per poll station established by law up to 2,500 (for parliamentary elections) and even up to 3,000 (for presidential elections), and these limits are not rigid. It's really difficult to organize properly voting process; and sometimes there arise long lines of voters waiting for possibility to come to premises of the poll station. It is not strange that some of them don't want to wait and decide not to vote.

Much more complicated is the problem of those voters who, for different reasons, cannot come to poll station where he/she is included into voters' roll. I'd like to remind that it is the state which is in charge for creating conditions to every voter enabling him/her to cast the vote. It means that the state must foresee (both on the legal and organizational level) some additional mechanism of voting.

There exist three possible solutions for all cases of voter who cannot get to his\her poll station on Election Day. They are:

- early voting in poll station (i.e. voting before the election day);
- post voting (which really is also early voting);
- proxy voting.

The last way (proxy voting) could be the best if it would not violate the principles of personal and one-fold voting (and in some sense of secret suffrage). For that reason some countries cannot adopt it.

Other two are doubtful being unprotected of abuses. For example, it could demand to make ballot papers accessible long before the election day; it would be necessary to maintain ballot boxes during all these days in a safe way. In post-totalitarian societies where the level of mistrust is rather high it cannot be accepted taking into consideration the principle of fair elections.

There exist some other mechanisms which give the possibility to vote for some of above mentioned special categories of voters.

First of all, if we allow imprisoned to vote we need to establish poll stations in places where they are kept. In Ukrainian legislation such a poll station are called “special” due to the special regime of corresponding institution. We also establish special poll stations in hospitals and some other institutions (even in polar scientific station in Antarctica) to give the possibility to vote for those voters who stay there. Despite of special regime of such institutions special poll stations are open for observation.

For voters who will be away from their home area (and thus from poll station where he/she is included in voters’ roll) the use of so called “absentee voting certificates” is foreseen by parliamentary election law. But previous (2004) presidential elections were characterized with the abuse of the absentee voting certificate system; that is why for this year elections this mechanism is excluded (this step was supported in the Common Opinion of Venice Commission and OSCE/ODIHR). Nevertheless I’d like to stress that now it will be problematic (if not impossible) for this category of voters to realize their right to vote. Thus this step could be an example of de facto disenfranchising of some group of voters in a legal way.

I’d like to pay some attention to the case of voters who reside or stay on the Election Day abroad. States keeping the principle of personal voting face necessity to open their poll stations out of their sovereign territory. But there exists no uniform approach to opening poll stations of other state in Europe. Practice is extremely various. It’s clear that the solution of this problem is not simple. Nevertheless for Ukraine having more than one million our citizens in Europe (practically everybody is a voter) it’s urgent. Impossibility to open sufficient number of poll stations abroad also means real disenfranchising of large group of voters.

Somebody considers the e-voting (via Internet) as a mechanism which could help to solve problems of voting of all special categories of voter mentioned above. To my mind it cannot be considered as panacea. Remote e-voting is very doubtful from the point of view of keeping the principles of secret suffrage, personal and one-fold voting. In societies where these principles are vital for democracy remote e-voting seems to be far from usefulness.



It should be stressed that there exist no perfect procedures of voting of special categories of voters; anyone of them threatens some fundamental principles of democratic elections. Thus every society has to select some of them according to their reliability and to the choice of principles which could be deviate or to weaken. In any case corresponding safeguards must be implemented to ensure the integrity of the vote cast in a specific way.

As it was mentioned the **fourth level** of our main problem (i.e. the problem of turnout) has rather political nature then legal one. Nevertheless there exist some attempts to solve this problem with legal instruments.

One attempt consists in establishing some threshold of turnout for recognizing elections to be valid. We in Ukraine have very unfortunate experience of using this measure. In 1994 parliamentary elections the two-round majority system was used combined with the demand of 50% turnout in every round. As a result some constituencies had never elected a member of parliament up to the next elections in 1998. Thus this way seems not to solve the problem of low turnout.

Another way is imposing a voter the obligation to vote. I'll not comment this way but has to say that it changes the philosophy of relations between voters and the state; at least it weakens the state obligation to ensure possibilities to vote for every voter. Another aspect of this problem was mentioned in 2008 Venice Commission Comparative Report on Thresholds and Other Features of Electoral Systems Which Bar Parties from Access to Parliament. It has been suggested that under a compulsory voting regime voters who are otherwise not inclined to vote might, out of their dissatisfaction with the major parties, "cast a protest vote" which often goes to a radical (usually a minor) party. As D.Nohlen reports, "radical right did fare slightly better in the eight nations which use compulsory voting" and "this evidence is suggestive".

Speaking politically, non-participation of voters in elections means that they have no incentive to vote because they don't believe it would change their life. It could be caused by two opposite reasons. On the one hand, people could be quite satisfied with the living conditions and feel no danger to them irrespectively of election results. On the other hand, people could be quite disappointed and not believing that something could change after elections.

It's clear that these two situations are met in different countries. Nevertheless the recipes are not of legal nature.

In this presentation I tried to gather and to systematize possible criteria for disenfranchising which without any doubts are well known. I hope it could be a base for fruitful discussion.

**6<sup>th</sup> European Conference of Electoral Management Bodies**  
**“Enhancing participation in elections”**  
**The Hague, 30 November – 1 December 2009**

**PROGRAMME**

**Monday 30 November 2009**

10.00 – 10.30                      Registration of participants (with coffee and tea)

10.30 – 11.00                      Opening of the conference

Opening remarks by:

- Ms A. Bijleveld, State Secretary of the Ministry of the Interior and Kingdom Relations of the Netherlands
- Mr H. Kummeling, Chairman of the Electoral Council of the Netherlands
- Ms M. Stavniychuk, Deputy Head of the Presidential Secretariat of Ukraine, Member of the Venice Commission

11.00 – 11.45                      **Presentation by EMBs on 2008/2009 elections**

- Short presentations by representatives of countries that had general or presidential elections in 2009
- Address by Ms M. del Carmen Alanis Figueroa, President of the Electoral Tribunal of Mexico

11.45 – 12.15	<p><b>1<sup>st</sup> Working session:</b>  <b>Attracting electors to participate (in elections)</b></p> <ul style="list-style-type: none"> <li>- Mr E. Tanchev, President of the Constitutional Court of Bulgaria, Member of the Venice Commission</li> </ul>
12.15 – 12.45	Questions and discussion
12.45 – 13.45	<p><b>Workshop 1</b> (3 parallel sessions by 3 speakers)  <b>Attracting electors to participate (in elections)</b></p> <ul style="list-style-type: none"> <li>- <i>Mr S. de Mul, Head of Elections Unit, General Direction of Institutions and Population, Federal Public Service, Belgium</i></li> <li>- <i>Ms M. Leyenaar, Professor of comparative politics at Radboud University Nijmegen, Member of the Electoral Council of the Netherlands</i></li> <li>- <i>Mr P. Wardle, Chief Executive, Electoral Commission of the United Kingdom</i></li> </ul>
13.45 – 15.00	Lunch at the Kurhaus, offered by the Ministry of the Interior and Kingdom Relations of the Netherlands and the Electoral Council of the Netherlands
15.00 – 15.30	<p><b>2<sup>nd</sup> Working session:</b>  <b>Information campaigns on specific elections</b></p> <ul style="list-style-type: none"> <li>- Ms M. van den Broeke, Deputy spokesperson and head of the Press Unit at European Parliament</li> </ul>
15.30 – 16.00	Questions and discussion
16.00 – 16.30	Coffee break
16.30 – 17.30	<p><b>Workshop 2</b> (3 parallel sessions by 3 speakers)  <b>Information campaigns on specific elections</b></p>

- Mr D. Magalhaes, Director of Services, Interior Ministry, Directorate General of Internal Affairs, Portugal
- Ms K. Lemon, Election Authority, Senior Advisor, Sweden
- Ms C. Wennekers, the Netherlands Government Information, Service/Public and Communication Service

17.30 – 18.00 Conclusions of the first day

18.00 – 19.30 Evening drinks reception and networking (at the Kurhaus)

**Tuesday 1 December 2009**

09.15 – 9.30 Results of the first day and short introduction of the programme of this day

- Mr H. Kummeling

09.30 – 10.30 **3<sup>rd</sup> Working session:  
Criteria for disenfranchising electors**

- Mr E. Abrahamson, Solicitor, London, United Kingdom  
“Disenfranchisement of prisoners by particular in reference to the European Court of Human Rights case of *Hirst vs United Kingdom*”
- Mr G. Golosov, Professor, University of St Petersburg, Russian Federation

10.30 – 11.00 Questions and discussion

11.00 – 11.30 Coffee break

11.30 – 13.00	<p><b>Workshop 3</b> (3 parallel sessions by 3 speakers)  <b>Criteria for disenfranchising electors</b></p> <ul style="list-style-type: none"> <li>- Mr G. Wenda, Deputy Head of the election administration Department, Electoral Affairs, Federal Ministry of the Interior, Austria</li> <li>- Mr Y. Kluchkovskyi, Member of the Ukrainian Parliament, Deputy Chairman of the Parliamentary Committee for Public Authorities and Local Self-Governance Development, President of the Election Law Institute</li> <li>- Mr A. Cimdars, Chairman of the Central Election Commission of Latvia</li> </ul>
13.00 - 14.15	Lunch at the Kurhaus, offered by the Ministry of the Interior and Kingdom Relations and the Electoral Council of the Netherlands
14.15 –15.15	Conclusions of the workshops
15.15 – 16.15	Questions and discussion
16.15 – 16.45	<p>Close of the conference</p> <ul style="list-style-type: none"> <li>- Mr H. Kummeling</li> </ul>

**PART II**

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

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**(VENICE COMMISSION)**

**in co-operation with  
THE ELECTORAL COMMISSION OF THE UNITED KINGDOM**

**7<sup>TH</sup> EUROPEAN CONFERENCE  
OF ELECTORAL MANAGEMENT BODIES**

**“EVERY VOTER COUNTS”**

**Dexter House, Tower Hill, London**

**22-23 June 2010**

## PART II

### “Every voter counts”

#### SYNOPSIS

The seventh European Conference of Electoral Management Bodies – “Every Voter Counts” – was organised by the Venice Commission in co-operation with **the United Kingdom Electoral Commission** in London on 22-23 June 2010. The issues which were addressed during the conference included the recent elections in Member States, as well as a range of issues concerning ways of ensuring that electors’ interests are given the importance they deserve in the planning and management of elections and electoral systems.

Around 50 participants from national electoral management bodies of the following countries attended the conference: Armenia, Austria, Belgium, Bosnia and Herzegovina, Brazil, Finland, Germany, Kyrgyzstan, Lithuania, Mexico, Netherlands, Norway, Portugal, Russian Federation, Slovak Republic, Spain, Sweden, Ukraine and United Kingdom, as well as members of the Venice Commission and the Congress of Local and Regional Authorities of the Council of Europe, and representatives of the Council of Europe’s Directorates-General of Democracy and Political Affairs, and Human Rights and Legal Affairs.

Also represented were the Organisation for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights; the United Nations; and the Organisation of American States.

The conference was opened by Ms Jenny Watson, Chair of the UK Electoral Commission, Professor Jeffrey Jowell, Member of the Venice Commission and Mr Thomas Markert, Secretary of the Venice Commission.

Reports on member states’ recent elections were presented by Ms Tatevik Ohanyan, Spokesperson, Central Electoral Commission of Armenia; Mr Gregor Wenda, Deputy Head of the Electoral Administration Department, Federal Ministry of the Interior of Austria; Mr Stéphan de Mul, Head of the Elections Unit, General Directorate of Institutions & Populations, Federal Public Service of Belgium; Ms Susan Kleebank, Adviser for International Affairs, Superior Electoral Court of Brazil; Mr Melle Bakker, Secretary-Director, Netherlands



Electoral Council (Kiesraad); Mr Vladimir Churov, President, Central Election Commission of the Russian Federation; Ms Eva Chmelova, Ministry of Interior of the Slovak Republic; Mr Andrii Maghera, Vice-President, Central Electoral Commission of Ukraine; and Mr Peter Wardle, Chief Executive, United Kingdom Electoral Commission.

The conference heard key addresses from Mr Keith Whitmore, Member of the Congress of Local and Regional Authorities of the Council of Europe, Member of the Council for Democratic Elections; Mr Konrad Olszewski, Former Deputy Head of Elections Department, OSCE/ODIHR; Mr Dovydas Vitkauskas, Consultant on European Human Rights Law; Mr Andrew Scallan, Director of Electoral Administration, UK Electoral Commission.

The conference discussed how to ensure that “every voter counts” in relation to three main areas: electoral modernisation; the accessibility and inclusiveness of the electoral process; and the professionalism of electoral management bodies.

The conference:

- 1 *Took note* of the information from participants about elections organised in their countries during 2009-10.
- 2 *Underlined* the continuing importance of work on international standards for the use of election technology such as the development of guidelines on the certification of e-voting systems and guidelines on transparency in e-enabled elections by the Council of Europe, and discussion papers by OSCE/ODIHR and other international observation missions on observation of e-enabled elections.
- 3 *Noted* the continuing imperative of ensuring that electors have access to free and fair elections at all times.
- 4 *Noted* that citizens expect their voice to be listened to when designing and delivering public services in the 21<sup>st</sup> century, and that the extent to which this expectation is met will

have a strong influence on electors' confidence in the electoral process.

5 *Concluded* that not only electoral management bodies, but also policy-makers should:

- a. make determined efforts to understand fully the needs and wishes of electors when considering how best to ensure that all aspects of the electoral process – including, for example, not only the procedures for registering to vote and the opportunities and methods for casting a vote, but also the procedures for publishing and explaining the results of elections and for making complaints about the electoral process – are fully accessible and transparent to all.
- b. be aware that basic, good, clear and transparent legislation, including enforcement thereof, contributes to integrity and public confidence in the electoral process.
- c. actively seek the views of electors – and all other participants in the electoral process<sup>2</sup> – to evaluate all aspects of the electoral process.
- d. be prepared to change the electoral process where appropriate in order to respond adequately to the needs and wishes of electors; an important aspect of this involves analysing electors' questions and complaints about the electoral process in order to identify and respond to widespread problems.
- e. while recognising that electoral management bodies and policy-makers alone cannot be expected to increase general turnout at elections, they should

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<sup>2</sup> Including political parties and other participants in civil society.

nevertheless constantly seek to identify obstacles to electors' full participation in all aspects of the electoral process, including legal and practical barriers, and consider how to remove them where possible; noting that there is a wide range of potential barriers, for example for people with disabilities, those from minority groups, people living or serving abroad.

- f. reinforce the importance of providing electors – and all other participants in the electoral process – with clear explanations of their rights and obligations; and the conference noted that this role should be performed on a strictly impartial basis at all times, and also at all levels of electoral management, i.e. national, regional and local.
- g. make efforts to understand the best way of communicating with electors - and other participants in the electoral process – including how best to educate them about the electoral process; and to provide them with information about how to participate, which should include work to ensure that electoral registration materials and ballot papers benefit from the best possible design and use clear language.
- h. avoid the assumption that electors are all the same, but instead remember that electors are a diverse group with a range of needs and wishes that should be understood and addressed when considering improvements to the electoral process.
- i. remember that the most effective way of responding to electors' different needs and wishes may often be at regional or local level, rather than always at a central or national level; and that all other participants in the electoral process have an important contribution to make in ensuring that “every voter counts”.

- j. ensure that all those responsible for managing elections - at every level of the electoral process - have the appropriate level of skills, knowledge, training, experience and impartiality to provide electors with a professional service that meets electors' needs and wishes and builds confidence in the democratic process; and in particular, that those responsible for the management of elections are adequately trained in any changes to the electoral process in order to ensure that electors benefit fully from improvements.
  - k. bear in mind that electoral management bodies should command the confidence and trust of electors.
- 6 *Noted* that in order to fulfil these responsibilities, electoral management bodies require adequate resources; and reminded member states of the importance of ensuring that these resources are available.
- 7 *Invited* electoral management bodies to provide the Secretariat of the Venice Commission with their current electoral legislation if possible in one of the official languages of the Council of Europe.
- 8 *Requested* the Secretariat of the Venice Commission to continue to provide the secretariat of the European Conferences of Election Management Bodies.
- 9 *Requested* the Secretariat of the Venice Commission to conduct a comprehensive comparative study of electoral management bodies.

The eighth European Conference of Election Management Bodies will take place in Vienna in the first half of 2011.

## Opening remarks

Jenny WATSON<sup>3</sup>

### Introduction

I firstly want to thank you all for attending, and the Venice Commission for organising the conference. The UK Electoral Commission is delighted to be hosting this event.

It is very important that we take these opportunities to share our knowledge and experience to ensure the best outcome for voters now and for the future. I look forward to hearing your views on all the topics in the conference programme.

Political parties and free and fair elections are fundamental to our democracy.

We need organised politics because, as a society, we often disagree about the challenges we face and it is through the parties' competing programmes / manifestos that we choose, as voters, our next government.

Electoral Management Bodies have a central role in making it possible for people to express those choices through the electoral process in a way that is as accessible and secure as possible.

### Our history and role

For those of you who might be unfamiliar with the UK Electoral Commission, who we are and what we do, here's a little on our history.

The Commission was established in 2000 by an Act of Parliament to deliver functions that either didn't previously exist – ensuring transparency in where political parties get their funding from – or were the responsibility of various

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<sup>3</sup> Chair of the UK Electoral Commission

parts of central government. We are the first EMB of any kind that the UK has had.

Our core aim is integrity and public confidence in the democratic process and we are accountable to a Committee of Parliament, rather than a government department.

We encourage people to register to vote and set standards for well-run electoral registration services. We also set standards for elections management – so people know how to vote, that their vote will be safe and that it will be counted.

But we are unlike many electoral management bodies in that we don't deliver elections or run registration services ourselves. These are under the control of independent, non-partisan Local Returning and Registration Officers who report to us on their performance through our performance standards framework.

We also have responsibility for regulating election and political party finances -making sure that politicians, political parties and campaigners understand and follow the rules, and publishing details of donations and spending so that the public can see where the parties get their money from, and how they spend it.

### **Electoral Modernisation**

Here in the United Kingdom we continue to run 21<sup>st</sup> century elections with 19<sup>th</sup> century structures. The system that was in place at the time the 1884 Reform Act is much the same system that we use today. We currently have 46 million electors – almost ten times as many as the five million in 1884.

The picture is getting more complicated. In all 39 pieces of primary legislation, relating to elections, have been passed since 1998. With devolution to the Scottish Parliament, the Welsh, Northern Irish and London assemblies, we now have a range of different electoral systems and more frequent elections.

These changes have not come with a review of how elections are run. The system is under strain and we would like to see some kind of consolidation of legislation in the near future.

We are proud of our democratic traditions but, perhaps because of this, we also take our system too much for granted. The way in which we register and cast our vote is rarely challenged and in the past it has been difficult to get a public debate on electoral modernisation and how things can and should be done better.

We have said for some time that the system is close to breaking point in the UK and on the 6<sup>th</sup> May, as some of you will know from reports of queues at polling stations and some people being unable to vote by close of poll, we saw it break in some places.

In the report we published last month on polling station queues, we've made recommendations to address these and will be pressing the government to make sure they are implemented.

With this comes an opportunity to debate and explore how the system could be improved for the longer-term.

We have made a number of specific recommendations for improvements that would make the electoral process better meet the different needs of voters by, for example, allowing advance voting in polling stations. Extending the timetable for elections would also help those not able to vote in person by allowing more time for the dispatch and return of postal votes.

But more broadly we have called for the structure for delivering elections in Great Britain to be reformed so that elections are managed more consistently and professionally. The current system is too fragmented, with hundreds of independent Returning Officers making their own decisions. We think there needs to be better co-ordination and accountability, building on existing regional models. And there should be powers to direct Returning Officers where necessary something that doesn't exist within the current structure: Returning Officers are independent statutory officers accountable only through the courts.

Any new proposals should adhere to fundamental basic principles to ensure that every voter counts; principles with which everyone in this room will be familiar.

People should have the right to vote (or not to vote) in secret, for whom they want, in a way that is easy for them and to have their vote accurately counted within a system which is safe from fraud or abuse

Voters need to have confidence that they can choose fairly and freely between parties and candidates in well-run elections

In addition, voters have a right to know how the political parties that are central to our democracy are funded, and this forms a large part of the work of the UK Electoral Commission.

There have been some promising developments already in the UK. The system of household registration is set to change in the next few years. After much lobbying from the Commission and many others we are going to see the introduction of Individual Electoral Registration. This will mean that for the first time in this country every individual takes personal responsibility for registering themselves to vote - a concept which may not seem so novel to many of the delegates here today.

### **Sharing Experiences**

Democracy does not just mean a fixed set of rules and conventions. It means different things to different people. Other countries have their own traditions, their own history and their own way of going about things. We all face different challenges at different times.

This conference is a great opportunity to draw from each of our unique experiences. I'm sure we all look forward to learning from the other countries represented here today.

I've explained a little about the Commission's priorities for electoral modernisation. However, it is one thing setting out the scope for change, the greater challenge is often getting support for the changes you know are needed.



I'm very excited about having this opportunity to draw on your skills and experience, as we grapple with some difficult questions here in the UK. How in the past have you argued for change, when did it come about and what were the reasons behind it?

The focus behind all of our proposals for electoral modernisation is to put voters first – ensure every voter counts. I would be interested to hear how you have helped ensure that the aspirations of voters are part of debates in your countries about improving the democratic system?

The challenge for any EMB is to anticipate what problems might arise in the future and make sure the electoral system, and those that run it, are ready for it. There will be a lot we can learn from one another as we share our experiences about what our own particular challenges are and how we have responded to them.

With such a wide and diverse range of countries here this promises to be a very rewarding and stimulating conference for us all.  
I'm greatly looking forward to it.

## UK General Election – 6 May 2010

Peter WARDLE<sup>4</sup>

### Context

- Closest political contest (nationally) for many years
- Focus on electoral administration
- More electors, more voters, more parties, more candidates than ever before
- 2006 changes in the law:
  - 11 day registration deadline – closer to polling day
  - Verification of absent vote identifiers
  - Performance standards for ROs
- New constituency boundaries

### Headlines

- Polling station queues –interim report
- Reports of alleged rule-breaking – police and ERO/RO response
- Significant demand for EC advice on managing the election
- Postal vote verification – smoother, closer to 100%, but concerns about mis-matches
- Registration campaign results
- Late legislation – count timings
- Some basic administrative errors
- Timetable and deadlines for registration and PV applications, and close of nominations
- Particular problems for overseas electors
- Security in NI – threats and actual alerts disrupted counts

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<sup>4</sup> Chief Executive of UK Electoral Commission

Total visits to site during campaign period: 2.075 million

Total calls to helpline during campaign period: 50K

Registration forms downloaded from site or ordered through call centre:  
512K

- 4,149 candidates, over 100 political parties
  - 82 new parties registered since January
  - Almost 2,000 requests for advice since January
  - Guidance updates on third party campaigning and hustings events
- Emerging issues
  - Registration – descriptions and emblems
  - Hustings events and third party campaigning

## **Introduction**

A total of 225 parties and 4,149 candidates across the UK contested the parliamentary general election. In Wales 17 parties fielded a total of 268 candidates while in Northern Ireland nine parties and 108 candidates contested the election.

## **Advice and guidance**

We received a total of 1,739 enquiries between the 1st January and the election date of 6th May. We responded to 1,713 of these requests for routine advice issued w/n 5 working days.

We received a total of 221 requests for novel/complex advice and responded to 209 of these within 30 days.

In the lead up to the election we had to deal with a significant number of enquiries largely relating to guidance requests regarding hustings events and third party registration and what constitutes election material.

Given the large number of parties registered in this short period we encountered relatively few issues during the registration process. Incidents

that did arise centred around the use of certain party emblems, the use of people's faces as emblems and the use of descriptions on ballot papers.

## **Campaign Monitoring**

As part of our risk based approach to regulation we undertook a detailed programme of campaign monitoring across the UK targeting those seats we believe to be of high risk of non compliance.

### **92 constituencies UK wide**

England	70	15%
Scotland	8	14%
Wales	8	20%
Northern Ireland	6	33%

Total of 92 constituencies. Produced weekly reports that highlighted high activity constituencies, key events and information sources. We noted the significant usage of the internet as a means of engaging with the electorate. A significant number of candidates monitored utilised Facebook, blogs, personal websites and Twitter to promote candidate and party messages as well as indicating local events.

28 seats changed hands in those we monitored, just under a third.

Best practice report in June and a full report on campaign monitoring will be included in our expenditure report early 2011.

On May 4, two days prior to polling day, we published party donations and borrowing relating to the first quarter of 2010. The returns were received on Friday 30th April and preparation for publication was undertaken over the bank holiday weekend. We published just fewer than 1400 donations to fourteen parties, totalling £19.26m. We also published new loans entered into by five parties totalling £479,450.

## Looking ahead:

- Coalition government commitment to fixed-term Parliament – next election May 2015
  - Fewer MPs?
  - Referendum on the voting system?
  - Change to registration system – implementation timescales; other reforms?
  - Management of elections – greater consistency and coordination; powers to enforce standards?
  - Medium to long-term approach to electoral modernisation

## Elections in Armenia

**Tatevik OHANYAN<sup>5</sup>**

Elections to the Local Self-Government Bodies of Yerevan City are the most significant among the elections held in the Republic of Armenia in 2009. For the first time after the constitutional amendments Local Self-Government body of Yerevan City was formed through elections. Previously, the Mayor of Yerevan was appointed by the President of Armenia.

The Congress of Local and Regional Authorities of the Council of Europe that conducted election observation mission (EOM), noted in its report that the overall organization of the elections had been broadly carried out in compliance with the general principles of the Council of Europe, as well as European and international principles for democratic elections. The Congress expressed satisfaction with the positive developments in local democracy in Armenia, at the same time mentioning a number of shortcomings including the lack of electoral, political culture in particular.

Accepting the opinion expressed by the EOM of the Congress of Local and Regional authorities, we should stress out another issue again pertaining to the lack of culture, expressed in a different form and which is congruous with the main topic of the conference.

From my point of view, the lack of electoral culture refers not only to the lack of high standards of ethics, attitude and behaviour on behalf of the parties running in the elections, but also to ignoring the votes cast in their favor and as a result losing the voters' trust and support.

Basically, the political forces that run in the elections undertake a number of commitments the most significant of which, is, inter alia, representing the interests of their voters in the elected body.

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<sup>5</sup> Spokesperson of the Central Electoral Commission of the Republic of Armenia

The non-parliamentary political force which got 13 out of 65 mandates in the Yerevan City Council refused to participate in the governance of Yerevan thus underestimating the principle of “Every voter counts”. This fact may serve as grounds to assume that only their own political interests are the priority for this political force.

Regardless the motives the policy of this political force is conditioned by, it cannot be justified because a party/candidate should never set his own political interests above the major principle of putting the voters first.

In the Republic of Armenia in 2012 there will be held Parliamentary elections and elections to the Local Self-Government Bodies, Presidential elections will be held in 2013. In the framework of the organizational part of these elections putting the voters first is by no means one of the most significant challenges of the electoral system. For the purpose of achieving the mentioned goal the Central Electoral Commission has set 2 basic phases in terms of organizational activities: first, legislative amendments, and, second, implementation of new technologies and the modernization of electoral systems.

Legislative amendments pertain to the adoption of the Electoral Code under new edition that includes previous focal recommendations made by the Venice Commission.

The Draft of the Electoral Code has already been presented to the Venice Commission in two variants. Discussions pertaining to the amendments are open and public with the participation of all political forces and other stakeholders.

It’s worth mentioning that we succeeded in keeping the principle of “Every voter counts” in the implementation of new technologies and the modernization of electoral systems as well. In this respect, one of the paramount amendments to the Electoral Code is the implementation of the Electronic Voting, which on its initial stage will allow the diplomatic servants of the Republic of Armenia and members of their families residing abroad with them to vote.

Employees of those legal entities which are registered in the Republic of Armenia and have their representations abroad, as well as members of their families residing abroad with them and having the right to vote will also get the chance to vote electronically.

In the event this pilot program succeeds and in case of its positive development other franchised citizens within the borders of the country might be granted the opportunity to vote electronically via the internet. While implementing the system of e-voting, safety safeguards should be applied referring to the secrecy of the vote and the security of counting. In that conjuncture, we will take into account the best practice of those European countries which have already applied e-voting.

In the implementation of internet voting, we are still engaged to the principle of putting the voters first. Voting electronically will complement the paper-based voting, it's an alternative option and it is the voter who decides to choose the traditional way of voting or to take the privilege of voting electronically. And if the voter chooses to vote electronically, that means he/she trusts this system.

We can evaluate the system based on the number of voters who preferred to vote electronically.

The application of internet voting solves other issues that are also of particular note. First, ensuring the voting of those who have the right to vote but reside in a place other than the one where they are to vote, second, decreasing at a polling station the number of voters who prefer to cast their ballot in a traditional way creating improved availability to vote for the disabled, third, facilitating the overwork of electoral commissions, contributing to a faster vote counting and delivery of the final election results and finally increasing the probability of higher voter turnout.

In the context of putting the voters first we also highlight the exercise of the passive suffrage. It was stipulated by our legislation that non-citizens of the Republic of Armenia could also be elected to the Local Self-Government Bodies. In the amended variant of the Electoral Code presented to the Venice Commission a new provision was set, which would give the opportunity to get



also into the Parliament to those citizens of the Republic of Armenia, who would be at the same time citizens of another country.

“Every voter counts” principle is yet supported by the fact of having posted the permanently updated Voters register on the CEC website since 2005. And any voter at any time has the chance of checking whether he is included in the voter list or not. The institute of notification of voters to great extent contributes to the accuracy of voter lists. Each voter receives the notification letter informing him/her about the voting day, time and place of precinct where he/she is to vote.

To sum up, I'd like to note that electoral bodies are to realize that their statutory functions should be discharged along with one major principle, that is to be of service to voters, in other words, to create necessary conditions and opportunities for providing voters' active participation in the voting process and ensuring free expression of their will.

## 2010 Austrian presidential elections

Gregor WENDA<sup>6</sup>

### Removing Barriers to Voting: The Austrian Perspective

This overview summarizes the main points raised in the introductory part of a workshop held by the author within the framework of the 7th European Conference of Electoral Management Bodies in London on 22 June 2010. Some relevant aspects in this text have subsequently been updated in order to keep the publication as current as possible.

When speaking about the removal of barriers to voting, an initial assessment of possible barriers is necessary. Three key questions should be asked to determine the situation:

- Who can vote?
- Where to vote?
- When to vote?

### Who can vote?

With regard to the first question – "who can vote?" – the Austrian situation is as follows: In principle, every Austrian citizen who turns 16 on election day, is entitled to vote. Registration is done automatically, generally depending on the place of abode. Voters have to be in the electoral register of an Austrian municipality on the cut-off day in order to participate in an election (of course, there are remedies to be entered or removed afterwards in case of an error) and they must not be excluded due to certain criminal convictions. Austrian expatriates have to be apply for remaining (or being entered) in(to) the electoral register. With regard to European Elections, (non-Austrian) EU citizens can vote for Austrian MEPs when they officially declared so and were

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<sup>6</sup> Deputy Head of Department of Electoral Affairs, Deputy Chair of the Federal Electoral Board, Federal Ministry of the Interior, Republic of Austria. Check against delivery.

entered into the electoral register of an Austrian municipality. In municipal elections, EU citizens can usually participate without any application as they were entered in the local register automatically (with the exception of the province of Burgenland).

In Austria, the age to vote was changed from 18 to 16 years of age in the course of the 2007 Electoral Reform. The motivation to lower the voting age was mainly a political decision. No official empirical research had been done by the Federal Ministry of the Interior before the bill was introduced. Since 2007, external studies that dealt with the impact of young voters on election results have shown a mixed picture. One of the challenges for the government and campaigning parties is to provide more, and more specific, information for young voters.

When speaking about barriers to voting in Austria, the exclusion from suffrage due to certain criminal convictions is an issue. According to the current legal situation, persons convicted of one or more crimes committed with intent (no negligence), who were duly sentenced (no probation) by an Austrian Court and have to serve more than one year in prison, cannot vote during the time of imprisonment. The voting right is returned six months after their release (for administrative reasons). What will the future bring? In the decision “Frodl v. Austria” (judgement of 8 April 2010), the European Court of Human Rights in Strasbourg held that the current Austrian provisions were too strict in the light of the principles guaranteed by Article 3 of Protocol 1 of the European Convention on Human Rights. The Austrian government filed an application to have the case reviewed by the Grand Chamber but the motion was not granted. Hence, the judgement went into force on 4 October 2010. 5,000 euros were paid to the applicant in respect of costs and expenses. No further action is required as the applicant no longer serves a prison sentence. At the moment, political consultations on the implementation of the judgment are on-going between the parliamentary groups of the parties forming the current government coalition. In parallel, consultations regarding technical and legislative issues in this regard are held between the Federal Ministry of the Interior and the Federal Ministry of Justice.

### **Where to vote?**

On the day of a nation-wide election, votes can be cast before one of the 13,000 to 15,000 election commissions. These commissions work in polling station or they act as "flying commissions" visiting those who cannot leave their home to vote (e.g. bed-ridden voters). Voting is possible outside the "home polling place" when a "voting card" was ordered before. The voting card (in German: "Wahlkarte") is a multi-functional tool. It can be used outside the regular polling station (in any municipality in Austria or for a "flying commission") and it also allows for postal voting. A voting card is only issued upon application. A reason for the assumed absence from the regular polling place on election day has to be furnished (e.g. health reasons, due to staying abroad etc.). Full postal voting was introduced in Austria in 2007. It enables voters to cast their vote wherever they like, be it from abroad or within the confines of Austria. They do not have to go to a polling station any more. Similar to the German model, voters must sign an affidavit that they cast the vote personally, secretly, and without any outside influence. Since 2007, several legislative changes to the postal voting system have aimed at making this new voting channel even more easy to use while keeping up the necessary security standards. In 2010, a new envelope for postal ballots was created. After signing the affidavit, a special lid is supposed to cover the signature and personal information (e.g. the year of birth) for data protection reasons. What will the future bring? Recent discussions about the security of postal voting in some provincial elections and the general deadlines for returning postal ballots have caused the parliamentary groups of the Austrian government to start political consultations about possible changes to the system. The deliberations are on-going.

### **When to vote?**

After the introduction of postal voting, the need to cast a vote on election day does no longer exist. Before 2007, only electors abroad on polling day were able to vote earlier (though they needed one witness confirming that they had cast the vote themselves). While some Austrian provinces introduced a system of "early voting" in provincial or local elections, there is no such possibility in federal elections. Future developments will show whether the current system of postal voting is increased (e.g. by allowing more people to generally subscribe to voting cards without the need to apply for them every time; at the moment only expatriates and persons with special needs can ask



for such a subscription) and whether the obligation to furnish a reason is upheld by the legislator.

### **Persons with special needs**

When speaking about removing barriers to voting, persons with special needs always have to be kept in mind. Article 29 of the UN Convention on the Rights of Persons with Disabilities, which went into force in 2008, protects "the right of persons with disabilities to vote by secret ballot in elections and public referendums". "(V)oting procedures, facilities and materials are appropriate, accessible and easy to understand and use." For about two decades, the Austrian law-maker has paid particular attention to the special needs of individuals with disabilities. While the right to vote is always personal (see § 66 of the National Council Elections Acts), i.e. no proxy voting is allowed, the law provides for the possibility of an accompanying person assisting the elector. No assistance is possible when the disabled person cannot express the wish to be helped or when no election commission is present. This means that no aided voting is possible in case of postal voting. Blind electors can ask for templates which are meant to help them fill in the ballot sheet without assistance of another person. These templates were first introduced in 1992. Further provisions meeting the needs of disabled persons include the above-mentioned "flying election commission", special electoral precincts in hospitals, and the principle that one polling station per municipality (2,357 in total) should be accessible without architectural barriers on election day. In 2010, the possibility of a subscription of voting cards for persons with special needs was laid down in the law since voting cards are needed for "flying commission" and the use of postal voting, respectively. The official report of the Austrian Government on Disability Issues, prepared by the Ministry of Social Affairs and published in 2009, stated that "(...) due to the different possibilities provided by legislation (in particular postal voting, voting card, special precincts, flying commissions, accompanying persons, templates) even seriously handicapped persons are able to cast the vote in „practically any given case“. The Austrian Report to the UN on the implementation of the UN Convention on the Rights of Persons with Disabilities came to very similar conclusions.

## Postal Voting: New Design

Until 2009/2010:

	 Amtsstampiglie	Ortes, an dem sie im Wahlverzeichnis eingetragen ist, auszuüben. Duplikate für abhanden gekommene oder unbrauchbar gewordene Wahlkarten dürfen in keinem Fall ausgefolgt werden.
<p><b>Mit meiner Unterschrift erkläre ich eidesstattlich, dass ich den inliegenden amtlichen Stimmzettel persönlich, unbeobachtet und unbeeinflusst ausgefüllt habe.</b></p>		
Ort der Stimmabgabe:		
Staat (im Fall der Stimmabgabe im Ausland):		
Datum: (Tag, Monat, Jahr)		
Uhrzeit:		


2 | 0 | 0 | 8

(bitte lokale Zeit angeben, falls Sie sich in einer anderen Zeitzone als der in Österreich geltenden befinden)

Mit dieser Wahlkarte können Sie Ihre Stimme für die Nationalratswahl 2008 auf folgende Weise abgeben:

1. Mittels Briefwahl vom Inland oder vom Ausland aus, sofort nach Erhalt der Wahlkarte:
  - Füllen Sie bitte den amtlichen Stimmzettel aus

Today:

	 Amtsstampiglie	Die oben genannte Person ist berechtigt, ihr Wahlrecht auch außerhalb des Ortes, an dem sie im Wahlverzeichnis eingetragen ist, auszuüben. Duplikate für abhanden gekommene oder unbrauchbar gewordene Wahlkarten dürfen in keinem Fall ausgefolgt werden.
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Bürgermeisters(in)/ für den (die) Bürgermeister(in)

### Eidesstattliche Erklärung:

**Mit nebenstehender Unterschrift erkläre ich eidesstattlich, dass ich den inliegenden amtlichen Stimmzettel persönlich, unbeobachtet, unbeeinflusst und vor dem Schließen des letzten österreichischen Wahllokals ausgefüllt habe.**

*Watermark: Unterschrift*

Mit dieser Wahlkarte können Sie Ihre Stimme für die Europawahl 2009 auf folgende Weise abgeben:

1. Mittels Briefwahl vom Inland oder vom Ausland aus, ab Erhalt der Wahlkarte:
  - Füllen Sie bitte den amtlichen Stimmzettel aus.
  - Legen Sie den amtlichen Stimmzettel in das beiliegende beige-farbene gummierte Wahlkuvert und kleben Sie dieses zu.
  - Geben Sie bitte das beige-farbene Wahlkuvert in dieses Wahlkartenkuvert und kleben Sie es ebenfalls zu.
  - Geben Sie die eidesstattliche Erklärung durch Ihre Unterschrift in der dafür vorgesehenen Rubrik ab.

## Postal Voting: Data Protection (since 2010)

Wahlkarte für den zweiten Wahlgang Bundespräsidentenwahl XXXX		
Fortlaufende Zahl im Wählerverzeichnis	Vor- und Familienname	Geburtsjahr
Gemeinde		Straße/Gasse/Platz, Hausnummer
<b>Eidesstattliche Erklärung:</b>		
<p>Mit nebenstehender Unterschrift erkläre ich eidesstattlich, dass ich den inliegenden amtlichen Stimmzettel persönlich, unbeobachtet und unbeeinflusst nach dem XX. XX. XXXX und vor dem Schließen des letzten Wahllokals am Wahltag (XX. XX. XXXX) ausgefüllt habe.</p>		Diese Wahlkarte ist Eigentum der Bundeswahlleiterin. Sie ist für den Wahltag 2010/2011 bestimmt. Nach dem Wahltag ist sie zu vernichten.

Bezirk	Wahlsprenge	Regionalwahlkreis
Ort, Datum	Unterschrift des (der) Bürgermeisters(in) für den (die) Bürgermeister(in)	Die oben genannte Person ist berechtigt, ihr Wahlsicht auch außerhalb des Ortes, an dem sie im Wählerverzeichnis eingetragen ist, auszuliefern. Die Karte für abendens gekommene oder unbeschädigt geordnete Wahlkarten dürfen in keinem Fall ausgelegt werden.
	Amtsstempelsigle	

Mit dieser Wahlkarte können Sie Ihre Stimme für die Bundespräsidentenwahl XXXX auf folgende Weise abgeben:

### 1. Mittels Briefwahl vom Inland oder vom Ausland aus, ab Erhalt der Wahlkarte:

- Füllen Sie bitte den amtlichen Stimmzettel aus.
- Legen Sie den amtlichen Stimmzettel in das beiliegende beige-farbene gummierte Wahlkuvert und kleben Sie dieses zu.
- Geben Sie bitte das beige-farbene Wahlkuvert in dieses Wahlkartenkuvert.
- Geben Sie die eidesstattliche Erklärung durch Ihre eigenhändige Unterschrift in der dafür vorgesehenen Rubrik ab und kleben Sie das Wahlkartenkuvert ebenfalls zu.

## Antrag auf eine amtswegige Ausstellung einer Wahlkarte für Personen, denen der Besuch des zuständigen Wahllokals am Wahltag infolge mangelnder Geh- und Transportfähigkeit oder Bettlägerigkeit nicht möglich ist.

(Bitte Antrag leserlich in Blockbuchstaben und in dunkler Farbe ausfüllen.)

Ich beantrage eine amtswegige Ausstellung von Wahlkarten für

- Nationalratswahlen, Bundespräsidentenwahlen, Volksabstimmungen, Volksbefragungen (§ 9 Abs. 4 des Wahlerevidenzgesetzes 1973)
- Europawahlen (§ 12 Abs. 4 des Europa-Wahlerevidenzgesetzes)

Begründung (Angabe der besonderen Bedürfnisse):

Ich nehme zur Kenntnis, dass ich meines Wahlrechts verlustig gehen könnte, falls ich der Gemeinde einen Wechsel meines Hauptwohnsitzes oder der Zustelladresse nicht mitteile und es deshalb zu einer Fehlzustellung der Wahlkarte gekommen ist, und dass ich verpflichtet bin, der Hauptwohnsitz-Gemeinde den Wegfall der besonderen Bedürfnisse mitzuteilen.

Familienname oder Nachname:

Vorname:

Geburtsdatum (TT. MM. JJJJ)

Titel/Grad:

Geschlecht:

weiblich

männlich

Straße (Hausnummer, Stege, Tür):

PLZ:

Ort/Gemeinde:

Telefon (optional, hilfreich bei Rückfragen):

Wohin soll die Wahlkarte gesendet werden? (Bitte ankreuzen!)

- Nirgendwohin, ich möchte sie persönlich abholen.
- An die oben angeführte Adresse.
- An folgende andere Zustelladresse:

Straße (Hausnummer, Stege, Tür):

PLZ:

Ort/Gemeinde:

Bitte führen Sie im Fall einer postalischen Übermittlung nachstehend Ihre Pass- bzw. Personalausweisnummer zur Glaubhaftmachung Ihrer Identität an, da ein Antrag ohne Identitätsnachweis nicht zulässig ist.

Nr:

Reisepass

Personalausweis

Alternativ können Sie dieser Anforderung die Kopie eines anderen Lichtbildausweises oder einer anderen Urkunde zum Nachweis Ihrer Identität beilegen.

Bitte senden Sie diese Anforderung in einem Kuvert oder per E-Mail (eingescannt) an Ihre Hauptwohnsitz-Gemeinde (das ist jene Gemeinde, in der Sie in die Wählererevidenz eingetragen sind) oder überbringen Sie den Antrag persönlich. Andere Gemeinden können für Sie keine Wahlkarte ausstellen.

Datum (TT. MM. JJJJ)

Unterschrift:



## General elections of the 13th of June 2010 Challenges of unexpected elections<sup>7</sup>

Stephan DE MUL<sup>8</sup>

### Elections

- Why?

### Electoral constituency BHV

- Last time : 1988
- Dissolution of the Parliament : 7th of May
- Constitution : within 40 days
- Day of elections : Sunday 13th of June

37 days to organize general elections

### Challenge : electronic voting

- 201 municipalities
- 25.000 machines (1994 and 1998)
- Control of all the machines within 10 days
- Day of elections : less problems than last elections
- Future : ?

### Challenge: members of electoral offices

- 10.500 polling stations
- 4.500 counting offices
- More than 100.000 citizens are members of PS of CO
- Compulsory

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<sup>7</sup> Powerpoint presentation

<sup>8</sup> Head of the Elections Unit, FPS Home Affairs - Belgium

- Demands to change the procedure of designation of the staff members

**Challenge:** Belgians who live abroad

- Procedure : 22 days/6 months
- Form with the choice of way of voting (5) and the municipality of inscription (free)
- Embassies verify the conditions
- Form send to Belgian municipality \ voter's list (15th for the elections)
- 2010 : 42.000 voters / 2007 : 126.000 voters
- Vote by post : 12 days (60% in time)

**Conclusions**

- Hard work (municipalities, electoral offices, ministry of Home affairs)
- Lessons learned

## Recent (2010) elections in the Netherlands

Melle BAKKER<sup>9</sup>

- Introduction: Melle Bakker, the new Secretary-Director of the Netherlands Electoral Council, since February 2010. Successor of Mrs. Hanneke Schipper.

- The last years were busy elections years in the Netherlands: In June 2009 we had the elections for the European Parliament, and in March 2010 local elections were held. Because of the fall of government we had unplanned dissolution elections to the House of Representatives (the Lower House) the second week of June this year as well.

- All three elections were special for the Netherlands, because there was no more use of voting machines or internet voting from abroad. The voting was entirely 'traditional': by paper ballot and red pencil.

- In the Netherlands, elections for the municipal councils take place once every four years. This year, the elections for the municipal councils were on March 3.

The Netherlands has over 400 municipalities. Municipalities are responsible for the logistical organisation of the elections, and for the determination of the official election results.

In the local elections the Netherlands Electoral Council acts mainly as an advisor on judicial and practical matters relating to elections. Preceding the local elections, the Electoral Council supported, in cooperation with the Ministry of the Interior and Kingdom Relations, a so called "Elections Information centre". This centre was installed in October 2009 and took care of almost 4.500 queries by telephone and by e-mail, mainly from citizens, municipal officials, political parties and from the media.

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<sup>9</sup> Secretary-Director of the Netherlands Electoral Council

- This year, irregularities arose in some municipalities during polling day. Voters wanted to assist other voters, although that is not allowed, unless a voter has a physical disability to vote by himself. More than one voter stepped into the polling booth. Some voters felt influenced or even threatened by other voters, and there was a lot of agitation in some polling stations. Due to these irregularities there was a commotion concerning the result of the elections, and several objections and complaints were submitted. As just mentioned, the municipalities are responsible for the organisation and determination of the election results, and because of the problems, some municipalities (about 15 in total, amongst which the City of Rotterdam) ordered a recount. The recounts did not lead to a different result in terms of number of party seats, but in Rotterdam two seats two other candidates were chosen because of their new number of votes. The recounts did increase the credibility of the results and helped creating political stability.

- Some interesting findings:
  - The counting of votes by hand by the polling station staff after a long day of work – in the Netherlands polling stations open at 7.30 and close at 9.00 – and the necessary paperwork after that did lead to a strong request – from the local authorities, from the organisation of Mayors in the Netherlands, from our Dutch local Government Association and from civil servants dealing with elections – to re-introduce electronic voting machines at the shortest possible term.
  - The minister for the Interior rejected this request, by stating that at the moment there are no there “safe and transparent” e-voting machines. She also mentioned that internationally more and more countries turn away from electronic voting.
  - She did say however that she will look at ways of electronic counting of votes and possibly central counting of votes in stead of counting by our 10.000 polling stations.
- 3 Months after the local elections, on June 9, elections for the 150 members of our Second Chamber, the Lower House, were held.

The “Elections Information centre” was continued, and from March till June the centre answered over 2000 questions.

The elections for the House are organized by the municipalities as well, but the Electoral Council is the Central Elections Committee for these elections. The Electoral Council is responsible for registration of party names, for the numbering of party lists and for determining the official election results. The Council also appoints the 150 members and advises parliament about legality of the elections.

After the problems that occurred at the local elections in March, a lot of recommendations were made by the Ministry of the Interior and a lot of improvements were carried through. For instance: more and better information to the voters, more staff to count the votes, more and better education for the polling station officials.

Possibly because of these improvements, the elections for the House went off smoothly. After election day, the Electoral Council checked the protocols from about 1.800 polling stations, but the noted remarks were of minor interest.

When the Electoral Council would have noticed counting mistakes which could (likely) influence the result, the Council should have decided to do a recount. That was not necessary. There were only negligible differences. Therefore, on Tuesday June 15 – so 6 days after the elections – the Electoral Council determined and validated the official election result and announced this result at a public session with a lot of media attention. The Lower House, with its new members, gathered two days later, on June 17.

Some interesting findings:

- Again there were quite a lot of strong voices calling for the re-introducing of electronic voting machines. One of the company's that actually built electronic voting computers came with a new prototype that was tested in a few local polling stations. A new prototype with a paper trail. The Minister rejected this by saying that, when it comes to elections and voting techniques, she does not want to be lead by the market, the private sector.
- This will not be the end of the discussions about electronic voting techniques. The Electoral Council will evaluate the two elections of this year and the use of e-voting in the process of Dutch elections will be one of the items to be discussed.

## Single (or United) Voting Day in the Subjects of the Russian Federation

Vladimir CHUROV<sup>10</sup>

Four very important events in the Russian election system mark the year 2010. Two of those are the single voting days conducted on a regular basis in the Subjects of the Russian Federation, i.e. March 14 - the day of past elections and October 10 - the day of forthcoming elections. The third event is the twentieth anniversary of the first alternative elections of the people's deputies in Russia which were conducted for the first time in 1990. The fourth one is the celebration of the 65<sup>th</sup> anniversary of the Victory in the Great Patriotic War.

Some people say that democratic elections in Russia became possible only due to events of August 1991. However, the progression of our state historical development is continuous and if the Soviet tanks had not been in Vienna and Berlin in 1945 it's highly probable that we wouldn't have any elections in Russia at all. This is why we gave the title "*When there's a war there are no elections, when there are elections – there's no war*" - to the exhibition dedicated to the activity of the Russian parliament in the war years that was arranged at the Central Election Commission of the Russian Federation. Exclusions to this rule are very rare.

As in most elected democracies, in the Russian Federation elections take place at three basic levels. The first is the federal level – elections of deputies of the State Duma of the Federal Assembly of the Russian Federation and elections of the President of the Russian Federation. Before elections in 2011-2012 the federal election cycle was four years. Starting from 2011 the State Duma will be elected for 5 years and starting from 2012 the President of the state will be elected for 6 years. By the way, the term of election bodies is extended from 4 to 5 years accordingly.

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<sup>10</sup> Chairman of the Central Electoral Commission of the Russian Federation

Second level elections are the elections of legislative bodies of the Subjects of the Russian Federation and indirect elections of heads of administration (heads of the highest governmental bodies) of the Subjects of the Russian Federation.

The third level is elections to local self-government, including deputies of local representative bodies and heads of municipalities.

The year 2004 marked an important step for the election system (in the broad meaning). From that year, the outcome of political parties in regional elections corresponds to their national ratings.

It was 2004 when the Central Election Commission of the Russian Federation proposed to establish a single voting day in the Subjects of the Russian Federation. March 12, 2006 was the first in the Russian electoral practice single voting day for elections in the Subjects of the Russian Federation. It is established by law that single voting days take place twice a year – on the second Sunday of March and on the second Sunday of October, except the year of elections of the President of the Russian Federation. In such year the single voting day coincides with the voting day of the presidential election. In the year of the parliamentary elections the voting day coincides with the December elections of deputies of the State Duma of the Federal Assembly of the Russian Federation. The law sets that a voter may receive not more than four different ballots on a single voting day (excluding by-elections and re-elections).

In fact, when judged **by the volume of voting in the Subjects of the Russian Federation, the single voting day is a quasi-federal election campaign**. On March 14, 2010 more than 6,200 regional and municipal elections, local referenda (voting) in 76 Subjects of the Russian Federation took place, among them:

- Elections to the legislative (representative) bodies of state power in 8 Subjects of the Russian Federation with the total number of 269 seats to be filled; out of those 107 seats were elected in majoritarian election constituencies and 162 - in single mandate constituencies (by party lists). The total number of registered candidates was 1,899 – among them 479 in

majoritarian election constituencies (with 115 of those running as self-nominated candidates);

- Elections of Heads of municipalities in administrative centers (capitals) of 5 Subjects of the Russian Federation, deputies of legislative bodies of administrative centers of 8 Subjects of the Russian Federation and elections of deputies of representative bodies of local self-government in 70 Subjects of the Russian Federation and elective officials at other levels of local self-government in 58 Subjects of the Russian Federation;
- By-elections to the bodies of state power and local self-government. By-elections of deputies of the legislative (representative) bodies of state power took place in 17 Subjects of the Russian Federation, with 26 seats to be elected and 102 candidates were registered to run for the seat.

147 local referenda (voting) on local issues were conducted in 6 Subjects of the Russian Federation.

Overall, in 76 regions over 40,300 mandates and elective offices were run for, with over 85,000 registered candidates averaging over two candidates per seat/elective office.

About 31,000 polling stations were established on this single voting day; 222,500 members with casting vote were appointed to election commissions.

**The single voting day this fall 2010.** The day of October 10, 2010 will be a single voting day with elections scheduled (but have not been called officially yet) to the legislative (representative) bodies of state power in 6 Subjects of the Russian Federation, Heads of municipalities of administrative centers (capitals) of 2 Subjects of the Russian Federation, deputies of legislative bodies of administrative centers in 14 Subjects of the Russian Federation.

**The Address of the President of the Russian Federation and the guidelines for modernization of the election system in the Russian Federation.** As of today another adjustment of election legislation has been introduced in the Russian Federation. It, in fact, includes the ten proposals made by President Medvedev in 2008 and another ten proposals stated in the 2009 presidential address.



For example, the Address of the President of the Russian Federation Dmitry Medvedev of November 12, 2009 contains provisions concerning the election rights of citizens, development of democratic institutions and amendments to the laws of the Russian Federation regarding:

- Introduction of uniform criteria to establish the number of deputies in the legislative (representative) bodies of state power in the Subjects of the Russian Federation;
- An opportunity to form deputy factions by all political parties represented in regional parliaments;
- An opportunity for representatives of all political parties to hold executive positions and to work in regional parliaments on a full time basis;
- An opportunity for representation in the legislative (representative) bodies of state power in the Subjects of the Russian Federation for those political parties who collect 5% or more votes in regional elections;
- Provision to exempt political parties from collecting signatures in their support in regional elections if they are not represented in the State Duma but still have factions in the legislative (representative) bodies of state power in the Subjects of the Russian Federation where elections are held;
- Updates to the order of early voting in elections to the legislative (representative) bodies of state power in the Subjects of the Russian Federation and the bodies of local self-government.

The President of the Russian Federation also entrusted us with preparing a program for [expeditious](#) technical re-equipment of the election system.

**There are some novelties in registration of candidates and lists of candidates.** In March 2010 elections the electoral deposit required to register candidates and lists of candidates was dropped by law; registration was only allowed upon presenting signatures of voters supporting the nomination (except parliamentary political parties that are exempt from collecting voter signatures according to the abovementioned law).

Thus, all seven political parties registered with the Ministry of Justice of the Russian Federation participated in regional and municipal elections. As was mentioned above, the total number of registered candidates was over 85,000 including: 39,700 from United Russia (46.4%), 5,600 from CPRF (6.5%), 5,000 (about 6%) from LDPR, 5,300 from Just Russia (over 6%). Other political associations and political parties: Yabloko, The Right Cause, Patriots of Russia nominated 141 candidates. Totally 29,400 candidates were self-nominated (34.6%).

**High turnout is a sign of responsible civic position.** The new legal provision stating that elections are deemed as taken place regardless of the actual turnout was introduced for the first time on the single voting day. Despite multiple discussions regarding these novelties the elections have shown that this adjustment allowed Russian voters to make a more definite choice in favor or against a candidate or a party, and to take decision on participation or non-participation in voting.

The average voter turnout in elections on March 14, 2010 in 8 Subjects of the Russian Federation where elections to the legislative (representative) bodies of state power took place was 42.79%. In the Altai Republic the turnout was 59.63% (52.5% in previous elections, i.e. 7% higher), in the Khabarovsk territory (krai) – 38.98% (34.45% in previous elections, i.e. 4.5% higher), in the Voronezh region (oblast) – 56.32% (45.93% in previous elections, i.e. 10% higher), in the Kaluga region (oblast) – 41.32% (32.07% in previous elections, i.e. 7% higher), in the Kurgan region (oblast) – 38.15% (53.23% in previous elections, i.e. 15% lower), in the Ryazan region (oblast)– 44.27% (37.08% in previous elections, i.e. 7% higher), in Sverdlovskaya region (oblast) – 35.83% (27.91% in previous elections, i.e. 8% higher), in the Yamalo-Nenetsky Autonomous Region – 51.43% (45.34% in previous elections, i.e. 6% higher). Thus, only in one Subject of the Russian Federation (the Kurgan region) the turnout was lower in comparison with the previous elections.

In the elections of the Heads of municipalities in 5 administrative centers (capitals) of Subjects of the Russian Federation the turnout averaged 40.78% in all administrative centers.

In elections of deputies of representative bodies in municipal units in 8 administrative centers of Subjects of the Russian Federation the turnout averaged 34.71%.

**Representation of political parties: access to representation of non-parliamentary political parties.** In March 2010 elections for the first time the new provision of the law was tested which provides for the allocation of one seat in the legislative assembly of the Subject of the Russian Federation to a party who failed to reach the established vote threshold but obtained not less than 5% of the total number votes of election participants. In elections to the legislative assemblies in 6 Subjects of the Russian Federation the mixed majoritarian-proportional system was used while 2 Subjects of the Russian Federation used the fully proportional system.

On single voting day of March 2010 the threshold was set at 7% in 6 Subjects of the Russian Federation and at 5% in 2 Subjects of the Russian Federation. For the first time the provision was established that lists of candidates that received less than 7% but not less than 5% of votes of election participants are not included in the seat distribution but get one seat.

In 5 municipalities in administrative centers (capitals) of Subjects of the Russian Federation elections of mayors (heads of administration) took place on the basis of the relative majority system, where the winner is elected in the first round (except Krasnodar, where second-round was set for the two candidates who obtained the two highest votes, provided none of the candidates gets over 50% of votes in the first round).

Elections of deputies of representative bodies of municipal units in 8 administrative centers of Subjects of the Russian Federation took place using different election systems. Thus, in Astrakhan, Voronezh, Novosibirsk, Smolensk, Ulyanovsk the majoritarian system was used; Tula for the first time used the proportional system, in Ivanovo the mixed majoritarian-proportional system was used.

**Technical re-equipment of election system is one of important ways of developing the free elections institute in the Russian Federation and raising trust in election results.** Single voting days in the Subjects of the Russian Federation have become a large scale test ground for refining the future-

oriented hardware and software facilities for vote counting and applying the up-to-date voting systems.

Ballot-processing terminals with integrated scanners capable of reading voter marks on paper ballots were used at polling stations on the single voting days in 2007-2010 in 10 Subjects of the Russian Federation (the Dagestan Republic, the Stavropol territory (krai), the Vladimir, Ivanovo, Ryazan, Samara, Tula regions (oblasts) and the Leningradskaya region (oblast), and in Moscow).

Several polling stations in Suzdal of the Vladimir region (oblast) used touch screen terminals in March 2008 as a follow-up to the pilot project conducted in Oryol and Saratov in 2007.

The first tryout in the Russian electoral practice in Internet-based electronic voter poll took place on the single voting day in October 2008 at municipal elections in Novomoskovsk, the Tula region (oblast). The key component of the technology was a e-polling disk.

In March 2009 during tryout voter e-polling the e-polling disk was used in the Volgograd, Vologda and Tomsk regions (oblasts), while other elements were used in different regions: in the Vladimir region (oblast) the remote access technology on the basis of the GSM 900/1800 mobile networks was used and the social security chip card was used in Yugra, the Khanty-Mansiysk Autonomous region.

The voter e-polling on the basis of mobile networks was continued in October 2005 in Kingissepp, the Leningradskaya region (oblast). On the same day, in the Bratsk district of the Irkutsk region (oblast) a tryout was conducted employing the GLONASS and Gonets satellite GPS systems to monitor (among other functions) movements of cars delivering electoral documents.

During elections of deputies of Ryazan region (oblast) Duma of March 2010, hardware and software facilities were tested which included an advanced scanning complex and a prototype model of the precinct election commission member workplace.

On March 2010 single voting day web-cameras were successfully used in 95 polling stations in 12 Subjects of the Russian Federation. They allowed any

citizen who has access to the Internet to observe the voting and vote counting in real time.

**New steps in information openness and transparency.** To inform voters about the course of voting and the election results the CEC of the Russian Federation establishes the Information Center on single voting days. The Information Center was open for the first time in 2008. The information is transmitted from election commissions via the GAS Vybory State Automated System, which is the largest information and telecommunication system in the country. It is built to meet large scale organizational, technological and informational challenges from planning election administration to processing voting results and determining election or referendum outcome.

## **Elections in Ukraine<sup>11</sup>**

**Andrii Maghera<sup>12</sup>**

Прежде всего, позвольте выразить благодарность за приглашение на столь представительный форум и предоставленную возможность выступить на нем с докладом, а также поделиться опытом по обсуждаемому здесь вопросу о полномочиях организаторов выборов в сфере регистрации избирателей. Я расцениваю это как отношение к Украине, высокой оценке места и роли нашего государства в европейском сообществе.

Тем отрадно отметить, что предоставленная мне возможность совпала с послеизбирательным периодом, по итогам которого тем более интересно обменяться мнениями с вами, уважаемые дамы и господа. Ведь небезизвестно, что не так давно Украина прошла очередную избирательную кампанию по выборам Президента Украины, которая происходила в весьма непростой экономической и социально-политической ситуации в стране, усугубляемой мировым финансово-экономическим кризисом; тем не менее, к чести отметить, что этот урок Украина достойно выдержала.

Об этом свидетельствовала позитивная оценка выборов, дана международным сообществом, причем уже в первые дни после дня выборов и дня повторного голосования. "Первый тур выборов Президента Украины, который состоялся 17 января 2010 года", – идет речь в Заявлении о предварительных результатах и выводах наблюдения Международной миссии наблюдения за выборами, обнародованной 18

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<sup>11</sup> Speaking notes

<sup>12</sup> Vice Chair of the Central Electoral Commission of Ukraine

января 2010 года, – "проведено качественно, что засвидетельствовало существенный прогресс, который достигнуто в сравнении с предыдущими выборами. Эти выборы проведены в соответствии с большинством обязательств, принятых в рамках ОБСЕ и Совета Европы".

В аналогичном Заявлении о предварительных результатах и выводах Международной миссии наблюдения за выборами, обнародованной 8 февраля 2010 года, также отмечалось, что "Второй тур выборов Президента Украины подтвердил оценку первого тура – большинство обязательств в рамках ОБСЕ и Советов Европы были соблюдены".

Нужно отметить, что впервые такая высокая международная оценка проведенных в Украине выборов была дана еще избирательной кампании 2006 года. Тогда международная общественность в лице наблюдателей, которые могли беспрепятственно видеть и оценивать все этапы избирательного процесса, назвала выборы народных депутатов Украины 2006 года одними из самых демократических за всю историю независимой Украины, открытыми, прозрачными, соответствующими духу и букве закона.

Как отметили представители миссии ОБСЕ/БДИПЧ, парламентские выборы 26 марта 2006 года были проведены преимущественно в соответствии с обязательствами в рамках ОБСЕ, обязательствами в рамках Совета Европы и другими международными стандартами демократических выборов; в целом соблюдалось уважение гражданских и политических прав человека, в том числе основных свобод, таких, как свобода высказывать собственное мнение и свобода объединений и собраний. Беспрепятственный процесс регистрации кандидатов и активная медиа-среда обеспечили подлинную соревновательность. Это дало возможность избирателям сделать сознательный выбор между различными политическими альтернативами. Были закреплены позитивные сдвиги в избирательном процессе, которые стали очевидными уже во время проведения повторного второго тура президентских выборов 26 декабря 2004 года.

Аналогичным образом международным сообществом были оценены ход и итоги внеочередных парламентских выборов 30 сентября 2007 года как честных, демократических и прозрачных, проведенных в основном в

соответствии с требованиями ОБСЕ, Совета Европы, а также других международных стандартов демократических выборов. Отрадно, что многочисленные международные наблюдатели заявили об этом уже в первые дни после того, как выборы состоялись.

Как отмечено в заключительном отчете Миссии наблюдения на досрочных парламентских выборах в Украине, который распространило 20 декабря 2007 года Бюро демократических институтов и прав человека (БДИПЧ) ОБСЕ, досрочные выборы в Верховную Раду Украины состоялись, в целом, в соответствии с соглашениями, взятыми на себя нашим государством в рамках ОБСЕ, Совета Европы и других международных стандартов относительно проведения свободных демократических выборов. Были обеспечены открытость и конкурентность избирательного процесса, предвыборная кампания была активной, конкурентной и носила состязательный характер. Центральная избирательная комиссия организовала избирательный процесс эффективно, на должном уровне работали окружные и участковые избирательные комиссии. Процедуры голосования и подсчета голосов были оценены как хорошие и очень хорошие на большинстве избирательных участков. Отмечено улучшение ситуации в мас-медийном пространстве в период после проведения предыдущих президентских выборов 2004 года, плюрализм мнений, отсутствие сообщений о централизованном давлении или запугивании представителей мас-медиа, в целом отмечается широкое освещение СМИ предвыборной кампании и положений предвыборных программ партий.

Относительно президентских выборов следует подчеркнуть, что впервые такие выборы в Украине проводились одновременно с всеукраинским референдумом об одобрении Акта провозглашения независимости Украины 1 декабря 1991 года, а следовательно минувшая избирательная кампания, как и парламентская 2007 года, стала уже пятой в новейшей истории украинского государства.

Кроме того, в Украине за это время состоялось аналогичное количество выборов органов местного самоуправления – сельских, поселковых, городских, районных в городах, районных, областных советов, а также сельских, поселковых, городских глав.



Безусловно, эти выборы, как и каждые последующие со времени независимости, проходили на основе более совершенного, чем предыдущее, законодательства. Как правило, постоянно, хотя и не всегда системно, менялись не только политическая составляющая выборов – избирательная система, но и процедурно-процессуальная их часть – территориальная организация выборов, процедура формирования окружных и участковых избирательных комиссий, порядок выдвижения и регистрации кандидатов, основы проведения предвыборной агитации, порядок организации голосования, финансовое и материально-техническое обеспечения выборов, а также процедура подведения их итогов.

Вместе с тем, хотя и в новом законодательстве учитывались и разрешались проблемы, выявленные в ходе правоприменения, а также рекомендации международных организаций, высказанные за результатами избирательных кампаний или экспертизы соответствующих законопроектов, все же в каждом обновленном законодательстве, которое в соответствии с устоявшейся украинской традицией изменялось перед новыми выборами, как правило, оставалось много неразрешенных проблем.

Причины такого положения, с чем соглашаются и теоретики и практики, кроются в явно компромисном характере принимаемых избирательных законов, а также частое игнорирование научного подхода к инсталляции избирательной системы в существующую в Украине правовую модель. Причем это также стойкая и достаточно давняя традиция в законотворческом подходе парламента к избирательному законодательству, определяемая диаметрально противоположными целями участников договоренностей разработки избирательных правил, одни из которых пытаются удержать власть, а другие – получить ее. Фактически политические силы, в зависимости от поставленных целей, пытаются создать такие правила игры, с помощью которых их посчастливится добиться.

Именно поэтому, каждый новый Закон не становился продуктом законотворчества, а результатом разных политических договоренностей и компромиссов. К величайшему сожалению, управляемые узкопартийными интересами и своими собственными, парламентарии

часто не прислушивались к предложениям специалистов, которые базировались на соответствующем теоретическом и практическом опыте.

Тем не менее, предусмотренная избирательными законами, в частности о парламентских и президентских выборах, система составления списков избирателей, которая является предметом сегодняшней дискуссии, претерпела весьма существенные и, надо сказать, достаточно позитивные изменения.

Начало таким изменениям было заложено в 2005 году принятием новой редакции закона "О выборах народных депутатов Украины", в соответствии с которым впервые в нашей стране на парламентских выборах вместо смешанной пропорционально-мажоритарной внедрялась (пропорциональная избирательная) система по которой состав парламента формируется только из представителей политических сил.

Для национальной практики организации и проведения выборов традиционным является составление новых списков избирателей перед каждыми выборами, что обеспечивает обновление списков – приведение их в актуальное состояние путем включения, в частности, граждан, которым на день выборов исполнится 18 лет, лиц, которые приобрели гражданство Украины, и исключения из списков умерших, тех, которые вышли из гражданства Украины, были признаны судом недееспособными, а также учет миграционных процессов, в первую очередь изменения избирателями постоянного местожительства или пребывания.

Вместе с тем, этот порядок составления списков избирателей в силу отсутствия в нем системности каждый раз становился камнем приткновения органов исполнительной власти, органов местного самоуправления, избирательных комиссий, вызывая в их адрес справедливую критику избирателей.

Так вот, внесенные в 2005 году изменения существенно усовершенствовали, а точнее внедрили новую концепцию составления и уточнения списков избирателей. Об этом красноречиво свидетельствует

тот лишь факт, что работа по составлению списков длилась свыше шести месяцев.

Подход законодателей к этому этапу отличался системностью и новизной. Во-первых, была определена система органов государственной власти и местного самоуправления, на которые возложена обязанность предоставлять достоверные сведения об избирателях, осуществлять необходимые проверки с целью уточнения информации о гражданах Украины. Во-вторых, задачи по составлению и уточнению списков возложены на нового субъекта – рабочие группы учета избирателей, которые создавались в местных органах исполнительной власти (в районах) и органах местного самоуправления (в городах). В-третьих, впервые предусмотрено формирование списков избирателей в электронном виде. В-четвертых, внедрялась обработка общих списков избирателей в электронном виде Центральной избирательной комиссией с целью выявления случаев кратного и неправильного включения граждан в списки. И в-пятых, предусмотрено ознакомление граждан с общими списками избирателей, а также учреждение института общественного контроля за процессом их составления. Такой контроль осуществлялся центральной и региональными контрольными группами, в состав которых входили представители партий (блоков), имеющие в парламенте свои партийные фракции.

Благодаря внедрению системного подхода к сбору, проверке и уточнению данных о гражданах Украины, которые вносятся в общие списки избирателей, в процессе их составления практически был отработан прототип общегосударственного Реестра избирателей.

Следует отдельно отметить, что законодателем был значительно расширен перечень данных о гражданах, которые традиционно вносились в общие списки избирателей. Так, в общие списки дополнительно включались данные, во-первых, о месте рождения избирателя в соответствии с современным административно-территориальным делением государства. Во-вторых, о постоянной неспособности избирателя передвигаться самостоятельно. В-третьих, о другом возможном месте жительства или пребывания избирателя, установленном на основании данных, предоставленных руководителями

органов, предприятий, учреждений, организаций, представительств, командирами воинских частей (формирований), сельскими, поселковыми, городскими головами.

Также необходимо подчеркнуть, что Законом впервые в национальной практике было запрещено вносить изменения в список избирателей за два дня до дня выборов, что вызывало на выборах Президента Украины 2004 года определенное обострение, прежде всего политическое.

Важной гарантией реализации общего избирательного права и возможности проголосовать гражданину не только по месту жительства, но и по месту его пребывания, был создаваемый институт открепительных удостоверений.

В связи с этим, особого внимания требовало нововведение в Законе, определяющее статус открепительного удостоверения как документа строгой отчетности, и соответственно – установление жесткого контроля их использования. Центризбиркому пришлось искать такое полиграфическое предприятие, которое могло изготовить эти документы строгой отчетности с соответствующей защитой, а также разрабатывать для окружных и участковых комиссий ряд разъяснений относительно механизмов работы с открепительными удостоверениями.

В тоже время практика избирательной кампании 2006 года в целом подтвердила низкую эффективность этого института, который, как оказалось, существенного значения на результаты выборов не имел. Ведь тогда за открепительными удостоверениями проголосовало лишь 0,045 процента избирателей (16 899 граждан), внесенных в списки избирателей на избирательных участках.

В связи с этим в последующих избирательных кампаниях – парламентских внеочередных выборах 30 сентября 2007 года и президентской – 17 января 2010 года этот институт был упразднен.

На внеочередных выборах народных депутатов Украины 2007 года, как и на прошедших до того очередных выборах 2006 года работа по составлению и уточнению списков возлагалась на рабочие группы учета избирателей, которые создавались в местных органах исполнительной

власти (в районах) и органах местного самоуправления (в городах), а также окружные и участковые избирательные комиссии.

Вместе с тем, законодателем было существенно изменено концепцию составления и уточнения списков, механизмы осуществления соответствующими органами своих полномочий, отдельные базовые принципы подготовки списков, предусмотренные для очередных выборов народных депутатов Украины. Прежде всего, потому, что вместо предусмотренных на прошедших выборах шести месяцев такую работу необходимо было выполнить всего лишь за 43 дня.

Новизной в вопросах составления и уточнения списков избирателей на внеочередных выборах стало также неприменение на них института открепительных удостоверений, отмены необходимости документального подтверждения избирателем временной неспособности передвигаться самостоятельно для голосования по месту пребывания, внедрение в порядке уточнения списков избирателей нормы относительно исключения из списков по предоставлению органов Государственной пограничной службы граждан Украины, зарегистрированных в пределах соответствующей административно-территориальной единицы, которые пересекли Государственную границу Украины и на момент представления соответствующих сведений отсутствуют данные об их возвращении на территорию Украины. Последние две законодательных новеллы вызвали особенно острые дискуссии в обществе как среди политиков, так и практиков относительно возможности и границ их применения во время организации подготовки и проведения внеочередных выборов, а норма относительно исключения из списков избирателей граждан, которые пересекли Государственную границу Украины, стала предметом рассмотрения в Конституционном и Высшем административном судах Украины. К тому же последняя вызвала справедливые нарекания у международной миссии наблюдения за досрочными парламентскими выборами.

Кроме того, негативное значение имела отмена порядка составления общих списков избирателей, в частности предусмотренных им механизмов их уточнения на межокружном и общегосударственном уровнях. Оно стало основанием для критики, причем обоснованной,

отдельных политических сил относительно наличия в списках избирателей так называемых "двойников". В свою очередь исключение из списков на основании сведений о гражданах Украины, поданных Государственной пограничной службой Украины, обусловило многочисленные случаи невозможности реализовать избирателями, которые вернулись в Украину ко дню выборов, свое избирательное право.

В целом же, внедренная на парламентских выборах практика составления списков избирателей по сравнению с существующими до этого была более эффективной.

Подтверждением этого является относительно небольшое расхождение в количестве избирателей, включенных в списки на парламентских выборах 2006 и 2007 годов. Так, если на выборах 30 сентября 2007 года в списки было включено 37 588 040 избирателей, то на выборах народных депутатов Украины 26 марта 2006 года это число составляло всего лишь на 60 тысяч меньше. Таким образом, существенная составляющая для реализации гражданами Украины пассивного избирательного права была создана<sup>13</sup>.

Но все же, механизм составления списков избирателей специально созданными рабочими группами учета избирателей с привлечением окружных и участковых избирательных комиссий оказался слишком громоздким и недостаточно точным. В частности, при отсутствии в

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<sup>13</sup> Справочно: согласно установленным результатам в день голосования с выборов Президента Украины 17 января 2010 года в списки избирателей на избирательных участках было внесено 36 968 041 избиратель.

Согласно объявленным результатам повторного голосования с выборов Президента Украины 7 февраля 2010 года в списки избирателей на избирательных участках было внесено 37 051 449 избирателей.

государстве единого органа, который бы собирал и обобщал сведения о гражданах и предоставленной Законом возможностью использования сведений разных субъектов часто создавало препятствия для получения достоверной информации об избирателях и приводило к ошибкам в указании данных о них, – написании фамилии, имени, отчества избирателя, даты (числа, месяца, года) и места рождения, адреса жилья и местожительства. В целом это приводило к таким ошибкам, как невключение или неправильное включение, в том числе и кратного включения избирателей в списки избирателей.

При этом окружные и участковые избирательные комиссии, в силу отсутствия соответствующего опыта работы, незначительного промежутка времени для ее проведения и громоздкого механизма устранения недостатков в списках избирателей (наличие жалобы избирателя, проверка сведений, о которых идет речь в такой жалобе, принятие решения, внесение изменений в список избирателей, внесения соответствующих сведений в перечни с последующей передачей таких перечней участковой комиссией окружной, а окружной – участковой) в ряде случаев уже не в состоянии были исправить такие ошибки.

Наличие названных недостатков в механизмах составления списков избирателей часто негативно сказывалось на возможности реализации избирательных прав граждан, вызывало многочисленные нарекания субъектов избирательного процесса, жалобы избирателей в избирательные комиссии и суды.

При таких обстоятельствах мы понимали, что говорить о создании полноценной системы составления списков избирателей без внедрения постоянно действующей, обновляемой в межизбирательный период, электронной базы об избирателях невозможно. Тем более, вопрос о создании такой базы в повестку дня в отношениях с Украиной неоднократно ставился международными организациями за результатами наблюдения за избирательными процессами в Украине.

Создание такой системы предусматривал вступивший в законную силу с 1 октября 2007 года Закон Украины "О Государственном реестре избирателей" (далее – Закон о Госреестре) – автоматизированной информационно-телекоммуникационной системе (банк данных), которая

предназначена для сохранения, обработки данных, которые содержат предусмотренные Законом сведения, и их использования, и создана для обеспечения государственного учёта избирателей, а также составления списков избирателей для выборов и референдумов.

В 2009, после проверки работоспособности автоматизированной системы Реестра, был введен в действие постоянно функционирующий Реестр избирателей с электронной централизованной базой данных.

Обеспечение функционирования Реестра возложено на систему постоянно действующих органов Реестра: распорядителя Реестра – Центральную избирательную комиссию, 27 региональных органов администрирования Реестра и 755 органов ведения Реестра, которые имеют доступ к базе данных Реестра и выполняют действия относительно его ведения.

Одним из основных принципов ведения Реестра является принцип постоянного обновления сведений об избирателях, то есть периодическая или инициативная актуализация базы данных (внесение либо уничтожение записей, изменение или уточнение персональных данных Реестра) в установленном Законом порядке, что обеспечивает возможность использования обновленных сведений для составления списков избирателей в любое время. Этого как раз не хватало применяемым во время всех предыдущих выборов системам составления списков избирателей, о которых уже говорилось ранее.

Актуализация базы данных происходит на основании сведений об избирателях, например, в связи с тем, что гражданин достиг 18 летнего возраста, получил гражданство Украины, изменил место жительства, фамилию, имя, отчество, дату, место рождения или умер.

Соответствующие сведения об изменении персональных данных избирателей, согласно Закона о Госреестре, ежеквартально предоставляют территориальные органы Министерства внутренних дел Украины, Министерства юстиции Украины, командиры воинских частей (формирований), руководители консульских учреждений, органов опеки и попечительства, местных органов Государственного департамента



Украины по вопросам исполнения наказаний, специализированных учреждений, которые ведут учёт бездомных граждан.

Кроме того, ежегодно проводится уточнение персональных данных избирателей путем обращения к ним с просьбой уточнить свои персональные данные в Реестре. Каждому избирателю отправляется именное уведомление, в котором указаны права избирателя относительно Реестра и порядок обращения к органу ведения Реестра в случае выявления несоответствий или неточностей в его персональных данных. Во время проведения первого уточнения в базу данных Реестра было внесено около 500 тыс. изменений.

Граждане могут и по собственной инициативе обратиться в установленном порядке в соответствующий орган ведения Реестра с мотивированным заявлением относительно неправомерного включения (невключения) в Реестр себя или других лиц, записей о себе или других лицах, исправления недостоверных сведений в Реестре о себе или других лицах.

Важная роль в функционировании Реестра отведена адресной системе, которая содержит сведения обо всех населенных пунктах, улицах, домах, где зарегистрированы избиратели.

Информацию о наименовании новых или переименовании улиц (проспектов, бульваров, площадей, переулков, кварталов и т.д.), присвоении номеров новым домам или изменении нумерации существующих в соответствующем населенном пункте предоставляют сельские, поселковые, городские председатели в порядке упомянутого выше периодического обновления персональных данных Реестра.

Создание Реестра обусловило качественную трансформацию механизма составления и уточнения списков избирателей. Так, Закон о Госреестре предусматривает двухэтапный механизм составления списков избирателей: первый этап – формирование предварительных списков избирателей; второй – их уточнение, по результатам которого изготавливаются окончательные (уточненные) списки избирателей.

В случае проведения выборов органы ведения Реестра составляют предварительные списки избирателей, которые предоставляются на избирательные участки для общего ознакомления. Таким образом, у избирателей есть возможность до дня голосования, в случае обнаружения неправильностей в предварительном списке, обратиться в соответствующую избирательную комиссию, непосредственно орган ведения Реестра или суд относительно допущенных неправильностей и внесения соответствующих изменений в список избирателей.

Кроме того, органы, которые ежеквартально предоставляют сведения для актуализации базы данных Реестра, не позднее, чем за 6 дней до дня выборов предоставляют соответствующие сведения о персональных данных избирателей за тот период, который прошел с последнего ежеквартального уточнения фактически до момента составления органами ведения Реестра окончательных списков избирателей.

Таким образом, уточнение предварительных списков избирателей происходит на основании рассмотрения органами ведения Реестра жалоб граждан; проверки обращений избирательных комиссий относительно неправильностей в списках избирателей и обработки уведомлений окружной избирательной комиссии о включении граждан в списки избирателей в случаях, предусмотренных законом; решений судов; обработки сведений о персональных данных избирателей, указанных выше.

Окончательные списки избирателей согласно украинскому законодательству изготавливаются за три дня до дня выборов, однако, внесение в них изменений допускается и в день голосования.

Списки избирателей изготавливаются органами ведения Реестра для каждого избирательного участка, созданного на территории, на которую распространяются его полномочия. Руководитель органа ведения Реестра подписывает каждую страницу составленного списка. Его подпись заверяется печатью органа ведения Реестра.

В список избирателей включаются граждане Украины, которые имеют право голоса и избирательный адрес которых в соответствии со сведениями в Реестре относится к этому избирательному участку. Здесь

необходимо отметить, что Законом Украины о Госреестре предусмотрено право избирателя обратиться с мотивированным заявлением в орган ведения Реестра для определения другого избирательного адреса по сравнению с зарегистрированным местом жительства, что в принципе явилось одним из аргументов отмены на парламентских и президентских выборах института открепительных удостоверений.

На органы ведения Реестра возлагается задача отслеживать одноразовость включения каждого гражданина в Реестр, что является гарантией реализации одного из основополагающих принципов – наличия у каждого избирателя только одного голоса. Так, меньше чем за год функционирования Реестра из базы данных Реестра удалено более 700 тыс. двойников.

Важно отметить, что за ведением Реестра осуществляется публичный контроль. В частности политические партии, представленные в действующем парламенте, получают копию базы данных Реестра для проверки полноты и достоверности персональных данных Реестра.

Следует подчеркнуть, что очередные выборы Президента Украины 17 января 2010 года стали первыми выборами, в процессе которых, хотя и с некоторыми оговорками и особенностями, впервые списки избирателей на обычных и заграничных избирательных участках изготавливались именно на основе сведений Государственного реестра избирателей. Следовательно, в сущности такие выборы начались с осуществления под руководством Центральной избирательной комиссии комплекса кадровых, финансовых, материально-технических, организационно-правовых мероприятий по подготовке создания Государственного реестра избирателей в соответствии с Законом о Госреестре еще в 2007 году.

К сожалению, во время этих выборов Государственный реестр избирателей еще не заработал, так сказать, на полную силу, не стал последним звеном в вопросе составления списков, по которым проводилось бы голосование избирателей. Ведь в Закон "О выборах Президента Украины" были внесены положения, которые позволяют включать в списки избирателей граждан за решениями судов, окружных

и участковых избирательных комиссий. Именно в связи с этим законодатель поддался значительной и нужно сказать, небезосновательной критике, ведь такими нововведениями фактически перечеркивалась вся логика внедрения Реестра.

Еще одной законодательной новеллой в вопросе составления списков избирателей стало положение Закона "О выборах Президента Украины" относительно возможности обжалования избирателем неправильностей в списке избирателей, в частности в участковую избирательную комиссию, не позднее как за один час до окончания голосования и необходимость принятия участковой избирательной комиссией соответствующего решения по такой жалобе. Тем самым впервые в национальном избирательном процессе было введено правило относительно одновременного обеспечения участковой избирательной комиссией проведения голосования избирателей на избирательном участке, а также за пределами помещения для голосования, и проведения ею же заседания по вопросу рассмотрения жалобы гражданина и принятия по результатам соответствующего решения. При этом Закон не установил никаких положений, которые бы синхронизировали одновременное осуществление участковой избирательной комиссией соответствующих полномочий, что не могло не вызывать на практике трудности во время их применения комиссиями. Естественно, что соответствующие положения Закона также обусловили поток критики кандидатов на пост Президента Украины, политических партий, политиков, научных работников и практиков. Данный вопрос стал предметом также и судебного разбирательства.

Таким образом, нам еще предстоит много работать на том, чтоб Государственный реестр избирателей стал последним звеном в вопросе составления списков, по которым проводилось бы голосование избирателей.

В связи с этим нужно сказать, что по нашему мнению неудачной пока что выглядит конструкция Закона о Госреестре, по которому часть вопросов, связанных с составлением списков избирателей и их уточнением, отнесена к сфере регуляции избирательных законов, причем с задействованием в этом процессе избирательных комиссий. Естественно, возникает вопрос целесообразности создания Государственного реестра

избирателей как автоматизированной информационно-телекоммуникационной системы (банка данных), предназначенной для обеспечения государственного учета граждан Украины, которые имеют право голоса, с системой профессиональных органов во главе с Центральной избирательной комиссией, и расходование на это значительных материальных, финансовых, кадровых ресурсов, если с помощью такой системы государство не сможет выдавать во время проведения выборов ее конечный продукт – списки избирателей, а будет привлекать для этого еще и органы, которые работают на общественных началах, – избирательные комиссии. Видится, что такая позиция законодателя относительно составления списков избирателей могла быть оправдана при отсутствии соответствующей системы, как это осуществлялось на прошлых очередных и внеочередных парламентских выборах, однако на данное время ее внедрение вызывает определенное сомнение.

Именно поэтому безотлагательным нашим сегодняшним заданием есть существенное совершенствование Закона о Госреестре с целью формирования на основе его положений полноценного реестра избирателей и подготовке на основании сведений такого реестра соответствующими органами без участия в этом процессе избирательных комиссий окончательных списков избирателей, на основании которых проводилось бы голосование. Такие органы должны организовывать работу относительно составления списков избирателей и нести ответственность за ее результаты.

Кроме того, практика засвидетельствовала некоторую нецелесообразность одновременного существования органов ведения реестра в составе местных государственных администраций и органов местного самоуправления, не подчиненных Центральной избирательной комиссии – ее Службе распорядителя Государственного реестра избирателей, и (хотя еще и только на бумаге в соответствии с Законом Украины "О Центральной избирательной комиссии") региональных представительств Комиссии. Возможно, эти органы необходимо было объединить, создав на их основе единые подразделения под руководством Центризбиркома. И в этом направлении нам тоже предстоит еще много работать.

Исходя из этого мы не имеем иллюзий, хотя и не теряем надежды, относительно возможности подготовки и принятия Верховной Радой Украины полноценного Избирательного кодекса Украины, который бы системно и комплексно урегулировал все вопросы организации подготовки и проведения всех выборов и референдумов, в том числе и вопросы составления списков избирателей (на необходимости чего национальные теоретики и практики, а также международное сообщество настаивают уже достаточно давно) и нивелировал бы все недостатки действующего избирательного законодательства, включая отдельные несоответствия его европейским и международным избирательным стандартам.

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Думаю сказанного мной вполне достаточно для того, что бы получить общее представление о механизмах и процедурах составления у нас списков избирателей, как неотъемлемого этапа избирательного процесса, а также полномочиях в этой сфере организаторов выборов.

Следует подчеркнуть, что прошедшие в нашей стране президентские выборы вполне можно отнести к очередному тестированию нашего государства на способность избирать власть в соответствии с международными избирательными стандартами проведения демократических выборов, в том числе и в части составления списков избирателей, как необходимого условия обеспечения пассивного избирательного права граждан. Оценка международной общественности свидетельствует о том, что этот тест, несмотря на работу в довольно сложных политико-правовых условиях, организаторы выборов, в целом украинское общество сдали на высоком уровне.

Вместе с тем мы сознаем, что для достижения устойчивого результата в этом направлении нам необходимо еще решить многие задачи, в том числе и в сфере составления списков избирателей, причем для всех видов выборов – парламентских, президентских, местных, а также референдумов.

Естественно проблем в этой сфере у нас еще немало. Они требуют дальнейшего обсуждения, широкой дискуссии в научных кругах, среди практиков, в партийной среде.

Мы будем рады на приобщение к такому обсуждению всех, кому не безразлично государство Украина и верим, что нам в ходе и по итогам таких широких дискуссий удастся оптимизировать механизмы и процедуры ведения Государственного реестра избирателей, составления на его основе списков избирателей, а также в целом избирательного законодательства, обеспечив полное его соответствие международным стандартам проведения выборов для существенного продвижения Украины на пути развития демократического, правового государства, в котором гражданам будет всецело обеспечиваться возможность формировать власть путем свободного участия в демократичных, открытых и справедливых выборах.

## Elections in Brazil

Susan KLEEBANK<sup>14</sup>

I am speaking on behalf of the President of the Brazilian Superior Electoral Court, Minister Ricardo Lewandowski, who was unable to attend this conference as his presence is required for hearings of great importance in this electoral year.

Brazil was formally accepted as a member of the Venice Commission in April 2009, jointly with the Latin American countries of Peru, Chile and Mexico. We were pleased to participate as observers in the interesting debates of the 6<sup>th</sup> Conference in The Hague in 2009. At this instance, we have asked for an opportunity to address this conference in the capacity of a country that is holding elections in 2010. We believe that it would be relevant to share our electoral experience. Today, Brazil is a solid democracy with approximately 135 million voters that successfully uses biometric registration and electronic ballot boxes, which both eliminates fraud and enables us to compute the votes on the same day of the election.

From an objective perspective, I will offer an overview of the **data** and the **key features** of our electoral system, based on the queries that we tend to receive from other countries and focus upon the subjects that will be discussed at this Conference, for instance, modernization of the electoral system. The main goals are to enable us to draw analogies and to promote cooperation on the themes that might be of shared interest.

With reference to the **data**, the biggest computerized election in the world takes place in Brazil, in accordance with provisions set out in the 1988 Constitution, Electoral Code and electoral laws. Every four years, elections for

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President, Vice President, Governors, Senators, Federal and State Deputies are held in Brazil. This year, the first round of the presidential elections will be held on 3<sup>rd</sup> October; and should it be necessary, a second round will be held on 31<sup>st</sup> October. Municipal elections for mayors and city councillors also happen every four years – the next elections will be held in 2012.

Voting is carried out on the basis of both majority and proportional representation systems. The majority system is applied to the elections of the President, Vice President, Governors, and Mayors, whose municipalities exceed 200 thousand voters, and Senators: if absolute majority is achieved in a single round the candidate with the majority of votes wins, and blank and spoiled votes are not counted; in case absolute majority is not achieved, a second round is held.

The proportional voting system is applied to the elections of the members of the legislative chambers (federal and state deputies and city councillors), that is to say that the number of votes obtained by party influences the number of seats the party will have in the chambers.

For the 2010 presidential elections, it is expected that there will be around 135 million voters (population: 193 millions) including 180 thousand voters that will vote abroad (24 thousand more than in 2006, when the last presidential election was held). Some 600 electronic ballot boxes are expected to be used abroad (in 2006: 270). The exact data will only be available after 6<sup>th</sup> July, which is when the electoral year officially begins in Brazil.

The most updated numbers currently available are those for the 2008 municipal elections: there were 130,604,430 voters (population: 189.6 millions), 85.47% of which turned out to vote and there were 90.35% of valid votes. On that occasion, 455,971 ballot boxes, managed by 13,000 IT technicians, were used. In addition to that, 27 Regional Courts (“TREs”) controlled the activities of 3,105 electoral zones, which are subdivided into 400,588 electoral sections with a total of 1,665,816 poll workers employed.

The **Electoral Justice** in Brazil is constituted by a main body, which is the Superior Electoral Court (“TSE”), 27 Regional Electoral Courts (“TREs”), Electoral Judges and Electoral Boards. The Superior Electoral Court is

constituted of seven members, each with a two-year mandate, namely, three Ministers from the Supreme Federal Court (“STF”), two Ministers from the Superior Court of Justice and two distinguished lawyers, recommended by the Supreme Federal Court and appointed by the President of Brazil. Their responsibilities include the administration of elections and enforcement of electoral decisions, issuing registrations for both political parties and candidates for the offices of President and Vice President or revoking the said registrations, judging whether persons are ineligible to hold those offices, counting of votes of the elections and declaring the results for President and Vice President of Brazil.

The exercise of the political rights by the Brazilian citizens has some peculiarities. For instance, **electoral roll registration** (identification and registration of the voters) is mandatory: the Constitution determines that voting is mandatory for all citizens over 18 years of age, optional for illiterate people and citizens over 70 years of age and those aged 16 to 18. The candidate must be affiliated to a political party, which means that it is impossible to run as an independent candidate. Party conventions choose eligible members to run for office (they must, for instance, be Brazilian nationals; candidates must be resident and registered in the constituency where wish to be elected and to comply with minimum age requirements, namely, presidential candidates have to be at least 35 years of age), and candidates must fulfil the eligibility criteria (*e.g.* illiterate citizens, foreign nationals, conscripted nationals, members of the executive power that wish to run for an executive position for a third term, office holders that do not resign from their post within the deadlines set by law are not eligible).

**With a view to possible international cooperation**, there are three main elements that distinguish the Brazilian electoral system: the use of electronic ballot boxes, biometric voter registration and the combination of the two processes.

The **computerization of the electoral process** began in 1986, at which time approximately 70 million voters were re-registered. In 1995, the commission formed by Superior Electoral Court consultants and technicians created a prototype of the electronic ballot box that was used for the first time by approximately one third of the voters at the 1996 elections. During the 1998 elections, two thirds of the voters used electronic vote. Finally, in 2000, all

voters used the electronic ballot boxes. The electronic vote was created to prevent fraud. It is a truly original Brazilian process with both hardware and software developed by the Superior Electoral Court, in compliance with national legislation and by applying the standards enshrined in the concepts of durability, safety, logistics facilities, autonomy, reduced cost and standard pattern.

The **certification of the ballot boxes** takes place both during the manufacturing process and as their digital files are produced. Purchased in the national market, the ballot boxes are manufactured to the Superior Electoral Court technical specifications and are manufactured under an *in situ* audit by a team of Superior Electoral Court technicians. The digital files produced by the ballot boxes are digitally certified by signature keys developed by the Brazilian Research Centre, which has an agreement with the Superior Electoral Court.

The **inspection** of this process continues in various subsequent stages: in the **presentation of the codes** applied to the political parties, the Brazilian Bar Association (“OAB”) and the Brazilian Public Prosecutor's Office (“Ministério Público”); in the **digital signature and sealing of source code of software programmes** (the systems can only operate on the computers of the Electoral Justice and are activated by passwords generated by the Superior Electoral Court); by means of the **media generation system** that the regional electoral courts use to download the ballot boxes; in the **ballot box download**; in the audited **simulated voting** on the day before the election date in States of the Federation, and, finally, with the Zeroth Report (“zerésima”) on the day of the election, before the voting begins in order to provide evidence that no votes had been input into the ballot box prior to the start of voting.

The control continues on Election Day: the ballot box only allows the start of the voting at 8.00 *am*. At the close at 5.00 *pm*, the ballot box saves a Ballot Box Bulletin in an encrypted format in media, which contains the result of the voting in that ballot box. The Ballot Box Bulletin is also printed, displayed at the poll station and copies are distributed to the inspectors that are present. Once the voting is over, the bulletins of the ballot boxes are sent to the Electoral Justice equipment that adds the results up and announces the results. The Ballot Box Bulletins are received by a Ballot Box Bulletins Reception System, which decodes them, verifies their digital signature, checks

the structure of the file and other security items (chart of correspondences and pending items), before totalizing them.

During the **electoral registration**, in addition to the photo of the voter, his/her biometric identification is made, with images of fingerprints from all of the fingers. On the Election Day, after the voter's registration card is presented jointly with a photographic ID, the identity of the voter is confirmed by means of biometric fingerprint recognition. If there are any doubts regarding the identification of the voter, or if his/her fingerprint can not be recognized by the biometric system, the poll worker will be able to check the voter list, which carries photos of all voters of the constituency.

In order **to re-register voters** according to their biometric data, the Electoral Justice makes the so called 'Bio Kits' available to all electoral constituencies, which comprise a portable computer (laptop), a digital camera, a scanner and a mini photographic studio. The technology that the 'Bio Kit' uses enables the photo and fingerprints of the voter to be taken in an easy and quick manner. The scanner reads the fingerprints, and a computer programme is used to correct possible errors of image positioning, focus and lighting automatically.

Finally, biometric ballot boxes capable of processing the vote through biometric identification are currently being developed. This technology was first trialled in pilot projects at the municipal elections in three cities in 2008; in 2010, this will be extended to 51 cities. It is hoped that 155 million voters will use ballot boxes with biometric readers in every city of the country by 2018.

In addition to the security procedures mentioned above, the Brazilian electoral process excels in its transparency. Resolution number 23,205 of 9<sup>th</sup> February 2010, allows political parties, the Brazilian Bar Association and/or Brazilian Public Prosecutor's Office ("Ministério Público") to participate in the process, in various ways, for instance, in the verification of the source code for the software programmes to be used in the elections, access to digital summaries (hash) of all the products employed in the process, access to the digital signature of the whole electoral system and the medias created to provide the necessary elements for electronic ballot box operation; in the verification of the authenticity of software programmes used, the control of the electoral process development by means of suitable authorization by the

Superior Electoral Court, participation in the simulated electronic voting aimed at corroborating the electronic ballot box operation conditions at the same time and date of the official electronic voting (ballot boxes are randomly chosen on the day before the election), access to all the ballot boxes bulletins printed immediately after the close of the elections with the results of the electronic voting; access to electronic voting results, access to the files generated by the electronic ballot box, including those with information about the control logs of the equipment.

In addition, the Superior Electoral Court allows political parties, the Brazilian Bar Association and/or Brazilian Public Prosecutor's Office (“Ministério Público”) to participate in all of the public security tests of the electronic voting system, which are also open to the community trials in order to check the likelihood of faults or fraud attempts.

Within this context, **trust in the electoral voting system** has been reached by means of a reliable voter registration; by building a precise, verifiable and consistent electoral process; by way of high transparency degree applied to the process; by means of various control and security mechanisms developed along the process; and, above all, by process maturity without recording any corroborated flaws or irregularities in 14 years.

I would also like to comment on two additional aspects that are usually of interest to other countries: voting abroad and international observers.

Voting abroad is exclusively managed by the Overseas Electoral Registry Office (1<sup>st</sup> ZZ Electoral Zone), subordinated to the Federal District Regional Electoral Court. Overseas, the Overseas Electoral Registry Office operates jointly with the Ministry of Foreign Relations and with the Brazilian Embassies and Consulates. Born or naturalized Brazilian nationals that have residency abroad are able to vote by applying for their electoral voting card to be transferred to and registered with the relevant overseas missions. The application must be made to the judge of the Overseas Electoral Registry Office at least 150 days before the election date similarly to the national registration deadlines. Currently, there are around 180 thousand registered overseas voters, and they are only required to vote at elections for President and Vice President of Brazil.

The 'Voter Registration Application' is the document containing the voter details, which Embassies and Consulates send to the Overseas Electoral Registry Office, so that it can process the electronic registration. The voter may apply to be included in the electoral roll, to transfer, revise or receive a second copy of the voter registration card. Once the Overseas Electoral Registry Office electoral judge grants those requests, details of the applications are included in the overseas voter roll. The electoral voter cards are issued at the Registry Office and forwarded to the Ministry of Foreign Relations, which sends them to the Missions abroad. The voter registration card can only be delivered to the voter in person by a consular official, and powers of attorney for the collection of the voter card are strictly forbidden.

In order to set an electoral section abroad, at least 30 voters need to be registered with the electoral subdivision under the jurisdiction of an Embassy or Consulate. The maximum number of voters per one electoral section is 400, in other words, the capacity of every ballot box is of 400 votes. It should be noted that each ballot box corresponds to one electoral section. Once the maximum number of 400 voters is reached in a section, the system automatically creates a new one. If voters do not comply with the Electoral Justice requirements, they will not be able to renew their passports.

As for **international observers**, the Superior Electoral Court organizes the participation of 27 observers in the elections in coordination with the Ministry of Foreign Affairs ("MRE") and with the Regional Superior Courts, and their details are available at [http://intranet.tse.gov.br/institucional/tribunais\\_regionais/principal.html](http://intranet.tse.gov.br/institucional/tribunais_regionais/principal.html).

The mission of observers may ensue from either an invitation from the Superior Electoral Court or as response for a request made by interested countries (in which case, the requesting party is responsible for their own expenses). During the 2002-08 period, observers from 35 countries were welcomed and visited nine Brazilian cities.

Last but not least, I would like to mention that on 4<sup>th</sup> June, President Luiz Inácio Lula da Silva ratified the Complementary Bill 58/10, known as **Clean Criminal Record ("Ficha Limpa") Bill**, which forbids politicians that have been convicted by a appellate court to run as a candidate in elections. The Bill was the result of a popular initiative, headed by the Movement against Electoral Corruption ("Movimento de Combate à Corrupção Eleitoral - MCEE"), which

received over 4 million signatures. The Bill was approved by the Chamber of Deputies, but the text of the Bill was amended by the Senate, causing two main doubts: whether it will be applied only for future elections, thus protecting the politicians that have been convicted by the Court of Justice, or whether the Law comes into force immediately for this year's general elections or only for 2012. It is the duty of the Superior Electoral Court to rule on both cases. Nevertheless, there were important achievements: in accordance with the Clean Criminal Record Bill, the ineligibility period increases from three to eight years in all foreseen cases in law (provided the sentence is transited *in rem judicatam* or the decision is reached by an appellate court). As such, ineligibility applies to those who commit crimes against the public economy, public administration, private property and environment and electoral crimes and those who were sentenced to prison and those that have committed offences such as abuse of power, money laundering, concealment of assets and rights, drug trafficking, racism, torture, terrorism, heinous crimes, practice of forced labour, crimes against life and sexual dignity and other such offences.

To conclude, on behalf of the President of the Superior Electoral Court, I would like to reiterate that should any of you be interested in further details of our electoral system, we remain available to share our experience with electoral authorities from any country in the world and, specially, with those present here today. I should add that international observers will be welcome in this context. Information in English about the current presentation is also being forwarded to the Venice Commission.

## **Voter experiences at elections - a comparison of different countries: putting the voter first**

**Peter WARDLE<sup>15</sup>**

### **UK principle of putting the voter first**

In the United Kingdom, people have the right to say who governs them. This means they have the right to vote (or not to vote) in secret, for who they want, in a way that is easy for them, and to have their vote counted. They need to have confidence that they can choose fairly and freely between parties and candidates in well-managed elections. Voters have a right to know how the political parties that are central to our democracy are funded. They expect parties and candidates to play by the rules.

The UK Electoral Commission has developed the principle of “putting the voter first” – we describe this as follows:

“In the United Kingdom, people have the right to say who governs them. This means they have the right to vote (or not to vote) in secret, for who they want, in a way that is easy for them, and to have their vote counted. They need to have confidence that they can choose fairly and freely between parties and candidates in well-managed elections. Voters have a right to know how the political parties that are central to our democracy are funded. They expect parties and candidates to play by the rules.”

When looking at policy recommendations for electoral modernisation (or any other aspect of elections) we use this guiding principle to ensure policy has the voter at the centre.

### **Modernisation agenda in UK**

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<sup>15</sup> Chief Executive, UK Electoral Commission



UK Commission's modernisation agenda focused on the importance of outcomes and on ensuring that any change is delivered in a way that reflects the expectations of voters. These expectations were described as voter focus, integrity, professionalism and value for money.

## **Governance of the UK**

- Constitutional monarchy; Parliamentary democracy; bicameral legislature
- Powers devolved from the UK Parliament:
  - Scottish Parliament
  - National Assembly for Wales
  - Northern Ireland Assembly
- Elected local authorities (some directly-elected mayors)
- London - directly elected Mayor and Assembly

Before talking about voter experience in the UK, just a few details about our electoral system.

## **Responsibilities**

- Government & Parliament responsible for legislation
- Independent local officials (Registration Officers & Returning Officers) maintain electoral roll and run elections
- Electoral Commission responsible for ensuring electoral process is well-run– that is, **Government & Parliament** get the framework and resources right, and **local officials** deliver the process successfully (eg by setting performance standards). (EC also has major role enforcing party and election laws.)

## **Turnout in the UK**

- **General Elections** 70% or above from 1945 to 1997; fell to nearer 60% in 2001 and 2005
- **European Parliament elections** around 30-40%

- **Local elections** range from 28-40% when stand alone; but nearer 70% when on the same day as a General election

## **Voter experience in UK**

### General observations in the UK

- Voting is not compulsory
- Various factors affect failure to vote:
  - Age
  - Social class
  - Gender
  - Voter's own identification with a party
  - Perceived differences between candidates/parties
  - How close the contest is
  - Interest in the campaign
  - Impact of electoral systems

### What prevented people voting in 2010 elections

- About one third (31%) said circumstantial reasons prevented them from voting, inc:
  - Lack of time or too busy (12%)
  - 18% non-voting was linked to dislike of parties or candidates
  - 13% administrative reasons (i.e. not registered, no polling card or postal vote)

### How did electors cast their vote?

- Election on a Thursday
- Polling stations open 7am to 10pm
- 80% of electors voted at a polling station
- In total, over 22 million votes cast in polling stations across the UK
- Remainder, cast by post

### What are people's priorities for voting in the UK?

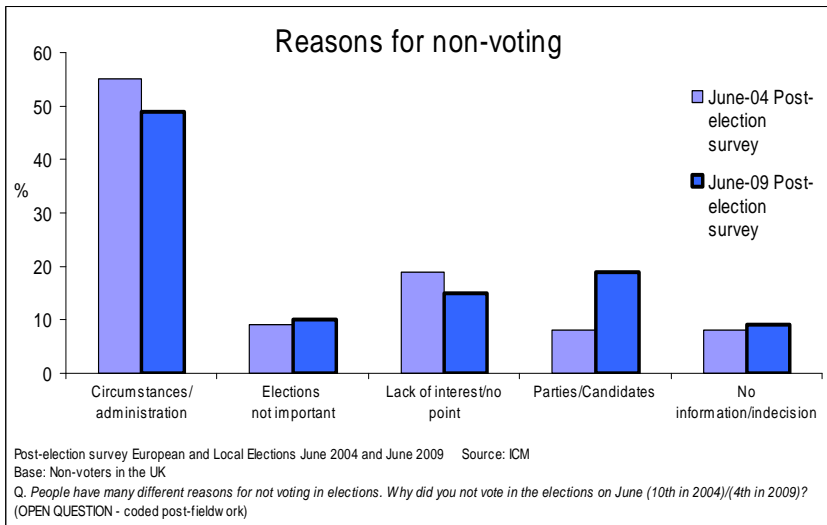
- One third (33%) priorities their vote being safe from fraud or abuse
- 31% value the secrecy of the ballot as the most important feature of voting

- 19% said ease of convenience of voting was most important
- 14% said priority was having a choice of methods to vote

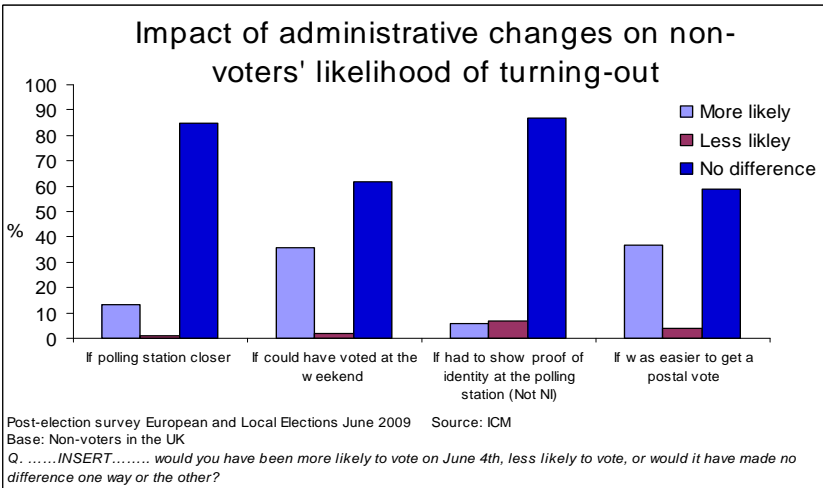
Caveat – this data is not yet published, will be in statutory election report in July. Some data still needs to be verified etc.

What changes would make people more likely to vote in UK?

- Most options would not have made any difference to majority who didn't vote, but:
- 38% would vote if getting a postal vote was easier
- 30% would vote if they could at the weekend
- 24% would vote if they could register at the polling station
- 85% (voters and non-voters) having to show ID at polling stations made no difference to likelihood of voting



NB: These are from European election public opinion – not 2010 elections



NB: These are from European election public opinion – not 2010 elections

### Voter experience in New Zealand and Canada

Caveat – these figures can not be directly compared with each other or UK as they are compiled through different data sets and methodologies but do give some comparison.

#### New Zealand

- New Zealand is planning a referendum on its electoral system in 2011
- In New Zealand turnout at general elections is on a steady decline although still at high levels internationally (75% in 2008)

#### New Zealand – voter experience

Selected voter satisfaction findings (2008)

- The majority of voters said they vote in every General Election (73%), with the remainder voting in most (20%) or some (7%) General Elections.

- There has been an increase in the proportion giving positive ratings for the convenience of location (97% in 2008 compared to 95% in 2005 and 95% in 2002). Other ratings about the polling place experience in 2008 were very similar to 2005.
- Ease of access to exit after voting (97% positive rating)
- How well-equipped polling booth was with pens that worked etc. (97% positive rating)
- How easy it was to identify Election staff (93% positive rating)
- Physical layout of polling place (93% positive rating)
- Privacy you felt in casting votes (91% positive rating)
- How obvious it was where to place completed ballot paper (89% positive rating)
- Signs outside to indicate it was a polling place (88% positive rating)

### **Canada – voter experience**

- A survey of electors conducted after the last election shows that leaving aside apathy and cynicism, most non-voters abstain due to personal circumstances (travel, shift work, lack of transportation methods, caring for children or others, etc.)
- A lesser percentage abstain because of real or perceived administrative barriers (lack of identification documents, polling location too far or not physically accessible)

### **Elections Canada – access and voting**

- Elections Canada approach to voting and elections is two-pronged : they are investing efforts towards enhancing physical accessibility of voting sites and of the voting process:
  - Better load balancing of electors-per-poll by redefining polling division boundaries
  - Bring advance voting closer to electors in rural districts
  - Reduce number of non-wheelchair accessible voting sites
  - Pilot assisted-voting technology for visually impaired electors in a by-election next year

### **Canada – modernising the system**

- Internet-voting can also mitigate “life circumstances” situation by providing a variety of electors with a convenient method of voting

- While interesting internet-voting systems exist in some Canadian municipalities, it has not yet been developed for provincial elections, and internet-voting at federal election is still a project at its initiation phase.
- Ensuring security and integrity is paramount:
  - Internet voting convenient as it offers the prospect of doing away with the supervision of an election officer who ensure identity of the voters.
  - But this undermines trust and confidence of the public in the Canadian electoral system
  - Voting without the supervision of an election officer is accepted in Canada only in special cases (mail-in ballot).
  - However internet voting could be good for overseas and military voters

## **Modernisation agenda**

### **Future priorities**

- Advance voting
- Ballot paper design
- Individual Electoral Registration
- More consistency & co-ordination for local officers' work
- Simplify the legal framework for elections
- Secure funding

### **UK modernisation issues**

- Greater consistency and coordination of electoral administration – management boards and consolidation of the law
- An extended electoral timetable – more time for postal voting process
- Individual electoral registration
- 100% checking of personal identifiers for postal votes
- Advanced voting
- RO access to publicly owned buildings

### Discussion themes

Thought it was a good idea to use June elections as an example for looking at voter turnout as it is a short presentation.

### **Questions**

- Are there key principles that will ensure voters' interests come first?
- How can EMBs ensure that electoral modernisation puts voters first?
- Do improvements in the system guarantee higher turnout?
- Is modernisation always better for voters?
- How can we balance security and easy access?

## **Remote Voting – Assurance of the Balance between Voting Accessibility and Citizens' Trust in Voting Systems**

**Vladimir CHUROV<sup>16</sup>**

The voting facilities which are being tested and introduced in the Russian Federation are more or less the same as in most other states. These facilities can be arbitrarily divided into three main groups:

- the first group: technical devices for voting at fixed polling stations (polling stations of conventional type);
- the second group: technical devices which are used for the preparation of electoral documentation, transmission of information, communication and control over the movement of the electoral documentation;
- the third group: technical devices which provide the means for remote voting in foreign countries, hard-to-reach and far-off areas.

Our polling stations are equipped with two kinds of technical devices for voting.

The devices of the first type use ballot papers and are known as optical scanners, which we call ballot processing complexes. These devices proved themselves to be simple and reliable and won the voters' trust. However, their use requires increased expenses on the organization of voting.

The devices of the second type used in the Russian Federation are e-voting complexes using a sensor screen and an electronic ballot. Our devices of this kind differ from most similar devices used in the other countries in that they have a register with a paper ribbon on which the result of each will-expression is marked, after which the ribbon is rewound. This increases the

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<sup>16</sup> Chairman of the Central Electoral Commission of the Russian Federation



degree of trust in the vote counting results. There is also the economy of funds due the absence of the need to print and distribute ballot papers.

The polling stations are equipped with web-cameras and have automated workstations for election commissions, which make it possible to form an electronic protocol, directly place it in the Internet and pass it on to the higher-level commissions.

It is planned to equip 15 percent of the polling stations in Russia with such devices by the end of 2012, and all polling stations – we have more than 96 thousand polling stations in the federal elections – will have them by 2015. In addition to this, we use a system which monitors the movement of motor vehicles transporting electoral documentation by means of the GLONASS satellite navigation system, with the relevant information being available on-line in the Internet, and also various remote data transmission systems, based on mobile communication systems and Gonets satellite systems. For two years, successful experiments are being carried out to develop remote voting methods using mobile telephone communication and the Internet. In the course of these experiments different versions of such voting were investigated: the use of a special individual CD or a chip card or voting without any physical access device – by means of a mobile phone. Voting by means of a mobile phone has nothing to do with a traditional exchange of SMS messages. The experiments were conducted both in large cities and in small villages in the far-off regions of Russia. We believe that introduction of remote voting methods is most important at polling stations abroad and in hard-to-reach and far-off areas.

The use of this voting method makes it possible significantly to cut down the expenses on the organization of voting for these groups of voters. All experiments are accompanied by parallel public opinion polls which demonstrate a high degree of trust even among senior age groups which are traditionally more conservative so far as technical innovations are concerned.

In the geographical conditions of the Russian Federation remote e-voting does not only confirm the progressive and democratic nature of the state, which is concerned about its citizens-voters, but is also a necessity. It must be remembered that the number of election precincts formed for Russian citizens living abroad or staying in hard-to-reach or far-off areas is less than

one percent and approximately the same number of election precincts is formed in federal elections on ships at sea.

The Russian election laws contain definitions of such terms as "e-voting complex," "e-voting" and "electronic ballot." They also establish the total number of election precincts where e-voting may be conducted – this number must not exceed one percent of the number of election precincts formed on any given territory. However, special quotas for organization of remote e-voting are still absent in the Russian legislation.

In the period from October 2008 to October 2009, three experiments in electronic polling of voters were conducted with the participation of the Central Election Commission and election commissions of the subjects of the Russian Federation in the course of voting in elections. .

The first experiment in the use of Internet technologies in the Russian electoral practice was e-voting by means of discs in the municipal elections in the city of Novomoskovsk, Tula Oblast, in October 2008.

In the course of the elections held in March 2009 such experiment was already conducted in five regions in different parts of the country, both in urban and in rural areas. Thus, disc-based e-voting technology was used in the Volgograd and Tomsk Oblasts and in the city of Vologda; the remote e-polling technology with the use of GSM 900/1800 mobile networks was used in the Vladimir Oblast; voting by means of an electronic social card was conducted in the city of Nizhnevartovsk, Khanty–Mansiisk Autonomous Okrug–Yugra. Experimental e-polling of voters with the use of mobile communication facilities was also carried out in October 2009 in the elections held in the city of Kingisepp, Leningradskaya Oblast.

The Russian and foreign experience demonstrates that remote e-voting has a number of possibilities and advantages, such as:

- possibility for voters to vote not only at polling stations but also outside polling stations, which objectively expands the possibilities for the expression of their will;

- creation of additional channels to enable separate categories of voters, deprived of generally accessible means, to participate in the elections;
- faster and more reliable transmission of voting and election results and higher trustworthiness of these results;
- prevention of accidental errors or falsification of voting results which are possible in manual vote counting.

In addition to this, new voting systems produce a certain effect on the electoral activity of young voters for whom the Internet and mobile phones have become everyday sources of information and means of communication.

E-voting is accompanied by public opinion polls which aim at finding out how far voters are ready to use the new voting means and how much they trust it.

In Russia such opinion polls were conducted both on a national scale and directly among voters who participated in experimental polling in separate regions. According to the national opinion poll conducted in Russia in the autumn of 2008 by the Russian Public Opinion Research Center (VCIOM) 34 percent of the Russians generally approve the idea of Internet voting and 48 percent are against it. These figures show that the Russians take the same attitude towards this innovation as voters in other countries.

Compared to the national figures the positive assessments of the public opinion poll in the city of Novomoskovsk, Tula Oblast, are much higher. There the post-election poll has shown that 65 percent of citizens are for the introduction of the Internet voting and 4 percent are against.

Favorable results were obtained in the year 2009 in the course of the experimental e-polling in five subjects of the Russian Federation (mentioned above): 65 percent of respondents approved the innovation. According to the post-election poll, over 71 percent of respondents expressed a positive attitude towards introduction of e-voting, while almost 59 percent believe it possible and necessary.

The trust of the Russian voters in the new voting systems is confirmed by the coincidence of the main parameters of the data obtained as a result of the experimental e-polling and the official election results – as regards the

electoral activity and the voters' preferences. This fact was established in all regions where experimental e-polling was conducted. The deviations were within 2 – 4 percent.

At the same time, voters note certain obstructions in the way of introduction of remote e-voting, including those due to technical difficulties – 31 percent, possibility of distortion of the results – 27 percent, high financial expenditures – 22 percent.

To some degree this is due to the apprehensions on the part of voters caused by the fact that it is difficult for a voter to gain an insight into the technical processes connected with the processing of voting results. Therefore the election officials believe it to be their task to ensure that these complex technical processes are understood by all voters, are transparent and accessible at all stages of technological processing. For this purpose we include representatives of all political parties, contesting the elections, in the technical control groups, so that they could monitor operation of the technical facilities online.

The analysis of the results of the experiments has shown that the remote e-voting technologies are needed by the voters, that such technologies are reliable and have a good development potential. At the same time, certain risks and dangers have become obvious, which are connected, among other things, with possible violation of confidentiality, interference with the vote processing systems, complexity of organization of public supervision and control over the remote e-voting procedure, and so on.

The performance of the experiments was followed by the selection of priorities in the implementation of the remote voting technologies – voting technologies using mobile communication facilities and electronic social cards.

We believe that an urgent necessity has now emerged for raising the question of adoption of legislative acts supporting the use of remote e-voting technologies. In our opinion it is a pressing task now to introduce remote e-voting in the electoral practice on the basis of the experience of all interested states. An important aspect of making e-voting systems trustworthy is the certification of these systems.

Based on the results that have been achieved, considering the necessity and possibility of the use of the information and telecommunication technologies and the future prospects of their development in the modern society we regard remote voting as one of the principal methods for the assurance of the balance between voting accessibility and citizens' trust in voting systems

## Electronically Managed Polling Station

Pedro COLMENARES SOTO<sup>17</sup>

### **The electronically managed polling station**

#### *What*

The electronically managed polling station is a set of information technology provided to make it easier for polling station staff to carry out their duties on the election day.

#### *Why*

### **Was it used at the European Parliament Elections held on June 2009?**

Because in EPE there is only one electoral constituency (a nationwide one), therefore the counting of the votes is more simple.

#### *Where*

Three cities: Lleida, Pontevedra and Salamanca

459 Polling stations

1.377 Members of polling stations

280.520 Voters

#### *How does the new system work*

Each polling station had:

- Printer
- Lap top with a national ID Card reader and a GPRS Modem
- Optical barcode reader
- Ballot papers with printed barcodes

### **PROCEDURE**

#### **Polling station set up and opening**

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<sup>17</sup> Ministry of the Interior, Spain.

The “president” of the polling station inserts in the laptop the USB memory stick that contains (encrypted) that polling station electors’ list, provided by the Electoral Roll Office (Oficina del Censo Electoral).

The poll opening form is filled out using the laptop. Data is directly captured from the electors’ list. (Polling station members’ names and data are in that list.)

The poll opening form is printed, and signed, and a copy of it is electronically sent to the Centro de Recogida de Información-CRI- (Information Compilation Center) CRIS are located at each one of the 52 Central Government Delegations, one by provincia, to centralize information related to the elections during polling day. (I.e. opening of the polling stations, turnout, preliminary results...)

## ***VOTING***

### **Quick and easy search in the electors’ list.**

If the elector identifies him/herself with the non electronic National ID the polling station staff will search his/her data in the Laptop (i.e. search by name, surname or NID number).

If the elector has an electronic National ID (**DNI-e**), he/she inserts it into the card reader device and introduces the security pin.

➔ Easy: the numbered voters’ list is printed. (No handwriting needed.)

Once the vote has been cast, the software automatically includes the voter’s name and ID number in the numbered voters’ list.

**The polling station may print ballot papers whenever this is considered to be necessary.**

## ***POSTAL VOTE IS INCORPORATED***

### **Immediate identification of the postal voters in the electors’ list.**

Each envelope that contains the postal vote includes: the electoral envelope with the ballot paper the elector chose, a copy of the ID (only in Out of country voting) and a certificate issued by the Electoral Roll Office.

This certificate had a barcode to identify the elector.

The optical barcode reader allows for the reading of those data and the identification of the voter in the electors' list.

### ***POLL CLOSING AND COUNTING OF THE VOTES***

The ballot box is opened and each ballot paper is read with the optical barcode reader.

Thus:

- the vote counting sheet / form, that contains preliminary results, is automatically filled out, without errors;
- the incident report form is filled out and data is sent.

The USB memory stick and the laptop hard disk are erased.

The EMPS (CAE) is a system supervised by:

- The Central Electoral Commission
- The Congress of Deputies (1st Chamber) Constitutional Committee

The EMPS makes the most of the ICTs to improve electoral management.

The EMPS is adapted to the Electoral Law provisions. No legal reform was needed.

Organic Law 5/1985 on the General Election Regime (LOREG).

The electronically managed polling station is a system...

1. Which provides more guarantees and security.

No room for possible errors.

2. More effective.

The voter's name is now easier to find in the electors' list than with the traditional system.

Data (poll opening information, turnout information and preliminary results) are sent by electronic means to the CRIS, instead of sending them by phone or PDAs.

Interesting: Center for Social Research evaluation study on the EMPS.

3. More ecofriendly and cost effective.



Less election materials are needed (i.e. ballot papers can be printed in the polling stations).

**Inclusiveness in the electoral process.  
Article 3 of Protocol No. 1 of  
the European Convention on Human Rights**

**Dovydas VITKAUSKAS<sup>18</sup>**

I. Political democracy - the *only* system of government compatible with the Convention

A. Reason for the creation of the European Convention on Human Rights (the Convention): common *heritage* of European political traditions, ideals, freedom and the rule of law (Preamble).

B. 2 core ingredients for an effective system of human-rights protection:

- a) political *democracy*;
- b) *common* understanding and observance by the State of its obligations, but:
  - - subsidiarity;
  - - margin of appreciation.
- *Refah Partisi (the Welfare Party) and Others v. Turkey*, 2003
- *Gorzelik and Others v. Poland*, 2004

2. Democracy capable of *defending* itself

A. No abuse of rights or protection for those aiming to destroy the rights of others (Article 17).

B. Requirements of *loyalty* to the State may be imposed to limit political activities, subject to a proportionality test, on:

- a) teachers (*Vogt v. Germany*, 1995);
- b) policemen (*Rekveniy v. Hungary*, 1999);
- c) prosecutors (*Guja v. Moldova*, 2008);
- d) any public servants but not private-sector workers (*Sidabras and Dziautas v. Lithuania*, 2004);

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<sup>18</sup> Consultant on European Human-Rights Law, United Kingdom

*but* no requirement of ‘political neutrality’ of politicians (*Zdanoka v. Latvia, 2006*).

C. *Pre-emptive action*, such as a *dissolution* of a party, may be allowed for the State to ‘reasonably forestall the execution of ... a policy incompatible with the Convention provisions before an attempt is made to implement it’ (*Refah Partisi*).

### 3. Election rights - limited scope of application

Only *parliamentary* elections are regulated by Article 3 of Protocol No. 1 to the Convention (A3/P1) which states: “The High Contracting Parties undertake to hold *free elections* at *reasonable intervals* by *secret ballot*, under conditions which will ensure the free *expression of the opinion* of the people in the choice of the *legislature*.” Not covered are:

- a) elections to city council or other local authorities (*Cherepkov v. Russia* (dec.), 1999);
  - b) elections of a Head of State (*Habsburg-Lothringen v. Austria* (dec.), 1989);
  - c) referendums (*Hilbe v. Liechtenstein, 1999*);
- but* covered:

European Parliament (*Matthews v. the U.K., 1999*) and  
Regional representative organs in federal systems (*Mathieu-Mohin and Clerfayt v. Belgium, 1987*).

### 4. *Lex specialis* vs *Lex generalis*

Main differences between A3/P1 and Articles 8-11 (*Zdanoka*):

- a) A3/P1 is phrased in terms of a positive obligation of a State rather than those of an individual right; both ‘passive’ and ‘active’ election rights are *implied*, not literal, requirements of the provision;
- b) no specific list of legitimate aims - the State may choose one, its compatibility to be verified;
- c) margin of appreciation is *wider*, allowing for considerations of country-specific historical development, cultural diversity and political thought (*Hirst v. the U.K., 2005*); allows co-existence of different electoral systems and the calculation of proportional thresholds - no answer, for instance, as to whether blank ballots to be taken into account (*Paschalidis and Others v. Greece, 2008*);

- d) margin of appreciation is *wider still* in matters of *passive* election rights;
- e) restrictions are not subject to the requirement of ‘necessity’ or ‘pressing social need’;
- f) *no ‘individualisation’* of a restriction of election rights is required, as such, as long as a person falls within a clearly-defined *category* or group under a relevant statute.

## 5. Compliance:

A) clarity and foreseeability of the law and the protection from arbitrariness

While there is no separate ‘lawfulness’ test as in matters of Articles 8-11, the Court verifies under A3/P1 whether:

- a) restriction was based on a *clear* and *foreseeable* domestic law (which is examined separately as a ‘lawfulness’ test under Articles 8-11), and there was no arbitrariness in its application (*Melnychenko v. Ukraine*, 2004; *Podkolzina v. Latvia*, 2002);
- b) but *negative presumptions* or shifting of burden of proof may be applied in procedures restricting election rights (*Zdanoka*);
- c) Electoral Commission lacking independence from the executive does not raise an issue under A3/P1, unless there is evidence of the abuse of power by the Commission on the facts of a particular case (*Georgian Labour Party v. Georgia*, 2008);
- d) the requirement for ‘*individualisation*’ - which consists of the need to clearly and reasonably distinguish the rights of a certain group of an individuals (i.e. minors) while *adopting* the law providing for a restriction and, in addition, the need to take into account the specific features of an individual while *applying* the law - is *not a precondition* for compliance with A3/P1 (*Zdanoka*), but becomes more important when the legislation is too wide (*Adamsons v. Latvia*, 2008).

B) proportionality test

Having satisfied itself that the restriction was based on a clear and foreseeable legal basis and not arbitrary, the Court carries out an

autonomous proportionality test, usually applying *comparative law* as a benchmark but also taking into account the specifics of the system in question (margin of appreciation):

- a) purpose of restriction must not *thwart* the free expression of the will of the people; the electoral process must be aimed at *identifying* that will through *universal* suffrage (*Hirst*);
- b) '*preventive*' measure stands a better chance of justification than '*punitive*' (*Campagnano v. Italy*, 2006), unless a proper criminal prosecution is involved (*X. v. Belgium*);
- c) a *timely* measure stands a better chance of justification than a *belated* one (*Zdanoka*);
- d) an individualised measure - while not indispensable - is desirable (*Adamsons*);
- e) all 'substantive' elements of the proportionality test - such as, for instance, the question of dangerousness of an organisation or activity of a person or a party to the democratic order - is *factual and objective*; it is thus irrelevant whether the impugned activities or views were legal or illegal at the material time (*Zdanoka*) - the concept of 'degree and intensity rather than nature'.

## 6. Permissible restrictions of 'active' election rights

*Exclusion* of a certain group or individual is allowed, if based on a *clear and precise* law, which may specify:

- a) minimum *age* and *residence* requirements (*Hilbe*);
- b) a voter registration system which is 'active', namely shifting responsibility for the accuracy of the electoral rolls from the authorities onto the voters (*Georgian Labour Party*);
- c) The Court's has to date approved disenfranchisement of *convicted persons* in various cases:
  - *offences of political* nature, such as uncitizen-like conduct for past collaboration with the *nazi* regime (*Glimmerveen and Hagenbeek v. the Netherlands* (dec.); *X v. Belgium* (dec.) 1974; *X. v. Netherlands* (dec.) 1979); - *crimes* having no *political* connotations, i.e. possession of explosives (*Holland v. Ireland*, 1998);
  - *financial crimes*, including fiscal fraud (*M.D.U. v. Italy* (dec.) 2003);

- the Court has approved both *lengthier* (7 years in *Holland*) and *shorter* (*M.D.U.*) prison sentences as a justification to accompany the disenfranchisement; a prison sentence can also serve as a trigger for *disenfranchisement* which lasts *longer than the imprisonment* itself (*Glimmerveen*; *X cases*);
- at the same time, it remains unclear *whether* the disenfranchisement should necessarily be *linked* to a prison sentence (*M.D.U.*);
- the Court has approved both *temporary* and *lifelong* (*Glimmerveen*; *X. cases*) disenfranchisements; - *but a carte blanche* restriction on *all detained convicts* to vote - without sufficient possibility for further individualisation based on the nature or type of the offence - is disproportionate (*Hirst*).

## 7. Restrictions of 'active' election rights in breach of A3/P1

Violations were caused by the lack of *clarity and foreseeability* of the law and excessive discretion of the courts to annul election results (*Kovach v. Ukraine*, 2008; *Georgian Labour Party*). Other violations:

- a) temporary (5 year-long) ban of a bankrupt in civil proceedings (*Campagnano*) - questions remain however as to the consequences of criminal/fraudulent bankruptcy (*M.D.U.*; *Frodl*);
- b) ban of all *detained convicts* to vote, despite being linked (limited) in time to the detention (*Hirst*);
- c) ban on a *murderer* convicted to *life imprisonment* in view of *insufficient individualisation* - 'no possibility for decision taken by a judge to link the offence committed and issues relating to elections and democratic institutions' (*Frodl*); it remains unclear when *individualisation by law* is sufficient (*Zdanoka*, *Hirst*) and when further *individualisation by courts* is needed in regard to convicts; *Frodl* also creates confusion as to whether disenfranchisement should be linked to political crimes only (see slide 8);
- d) failure of the State to give election rights to everyone within its *territorial jurisdiction* - remote or factually uncontrollable areas (*Matthews*; *Aziz v Cyprus*, 2004);
- e) treatment as a single class of *intellectual and mental disabilities* - and those under total or partial guardianship - in disenfranchising

sufferer from a manic-depressive disorder (*Alajos Kiss v. Hungary*, 2010).

#### 8. Permissible restrictions of 'passive' election rights

There is no right to win but to stand *freely and effectively* (*Namat Aliyev v. Azerbaijan*, 2010). *Restriction* on the right to stand as a parliamentary candidate would be compatible with A3/P1, provided the legislation is sufficiently *clear and precise* and its application is not arbitrary:

a) official *language* proficiency (*Podkolzina*) or *residence* requirements (*Melnychenko*); requirements to *declare* a candidate's *property*, earnings, sources of *income* (*Russian Conservative Party of Entrepreneurs v. Russia*, 2007; *Sarukhanyan v. Armenia*, 2008), *employment* and *party-membership* information (*Krasnov and Skuratov v. Russia*, 2007);

b) *wrong factual information* must be submitted in *bad faith*, or intended to mislead the voters; proving *negligence* is not sufficient (in *Krasnov and Skuratov*, exclusion for indication of heading a local authority that no longer existed was approved as compatible with A3/P1, while being Acting Head of University Department/Professor not); secondly, the information required must be *substantive* (in *Sarukhanyan*, intricacies of the privatisation and occupancy of a flat - not enough importance).

c) refusal of registration as candidate for failure to pay an *electoral deposit*, even if the person is in an *unprivileged* position physically or socially and the deposit is non-refundable (*Andre v. France* (dec.), 1995); it appears that the ECHR would be ready to approve deposits of *2,500 times the minimum salary* for proportionate systems and *100 times* for majority voting systems - yet the deposit must not amount to an *insurmountable* administrative or financial barrier (*Sukhovetsky v. Ukraine*, 2006).

d) a former *nazi* collaborator convicted of treason - lifelong exclusion (*Van Wambeke v. Belgium* (dec.), 1991); leaders of a proscribed *organisation* with *racist and xenophobic* tendencies (*Glimmerveen and Hagenbeek v. the Netherlands* (dec.), 1979) - reference to Article 17;

e) disqualification of a former *activist* of a *communist* party in a post-Soviet democracy, despite the restriction being based on past

conduct which had been *assumed* to have happened more than 10 years ago - on condition of regular review by the national legislature of the need to maintain the measure only temporarily (*Zdanoka*; but see *Adamsons*);

f) electoral *threshold* in a proportionate system in Turkey amounting to 10% - albeit labelled by the Court as 'excessive' in the reasoning part as the 'common practice' of the States was established at 5%, and despite the fact that 45.3% of the votes cast in a 2002 Turkish election were 'wasted' on unsuccessful candidates - counterbalanced by the ability of candidates to run independently and form coalitions (*Yumak and Sadak v. Turkey*, 2008);

g) *threshold of 5%* coupled with the inability to recover an electoral deposit of EUR 15,000 (*Tete v. France* (dec.), 1987).

## 9. Restrictions of 'passive' election rights in breach of A3/P1

Most violations to date concern *lack of clarity and foreseeability or arbitrariness* in applying the rules:

a) no *clarity* and foreseeability in the law on the notions of *language, residence, property* and *party membership*, coupled with an unpredictable reversal of the burden of proof, especially in view of the lack of *bad faith* or intention by the subject (*Podkolzina, Melnychenko, Krasnov and Skuratov, Sarukhanyan*); discrepancies in the domestic law and jurisprudence (*Paschalidis and Others v. Greece*);

b) *retroactive application* of a constitutional provision adopted in 2001 to disqualify a person elected in 2000 for being member of parliament and practising lawyer at the same time; question of compatibility of parliamentary and legal professional duties not pursued (*Lykourazos v. Greece*, 2006);

c) *re-opening of proceedings* regarding an approved electoral list by way of extraordinary review on *points of law* - lack of *res judicata* (*Russian Conservative Party of Entrepreneurs*);

d) disqualification of the *entire list* of candidates in view of the withdrawal of *one of the top three* candidates for discrepancies in his financial statements (*Russian Conservative Party of Entrepreneurs*);



e) refusal of the electoral authorities to *comply* with the domestic court orders *reinstating* the applicants' candidatures on the electoral list (*Petkov and Others v. Bulgaria*, 2009)

f) disqualification of a *former KGB officer* - applicable legislation not distinguishing between different types of former KGB operatives, with no consistent approach of the domestic courts as to 'individualisation' of the danger presented by different applicants to whom the rules were applied, as well as in view of the belated application of the measure (*Adamsons*);

g) refusal of the registration as a candidate on the basis of an applicant being a 'clergyman' - lack of a precise definition of the notion in the domestic law or whether professional religious activities ought to be suspended or dropped altogether when elected - but the question of compatibility of parliamentary and religious activities, as such, was not pursued (*Seyidzade v. Azerbaijan*, 2009).

h) *Aliyev* concerned various allegations that the electoral authorities were:

a) *helping* the applicant's opponent (from the ruling party) to *campaign*,

b) *intimidating* voters,

c) *excluding* them from the *rolls and voting stations*,

d) allowing *multiple voting*.

The domestic courts found that the applicant had not submitted *evidence* that he *had ever applied* to the electoral commission (CEC), while copies of witness *affidavits* were disallowed for *not being notarised* (the applicant claimed that he had submitted the originals to the CEC). Finding of a violation was based primarily on

a) the *lack of investigation* by the CEC and

b) the formalistic approach of the courts on admissibility of evidence.

The case shows that a certain *positive obligation* exists, even though the burden on the State to investigate is *not automatic*; it only arises - as in *Aliyev* - where an applicant builds a good *prima facie* case based on the evidence collected and provided on his own.

- c) legislation banning dual nationals from running as parliamentary candidates *while allowing* dual nationality (*Tanase and Chirtoaca v. Moldova*, 2010);
- d) exclusion from eligibility to stand as parliamentary candidates in view of *ethnic* origin - in order to be eligible to stand for election, one had to declare affiliation with a “constituent people” (Bosniacs, Croats and Serbs) which the applicants (of Roma and Jewish origin) could not do; but this was a discrimination issue under Article 14 (*Sejdic and Finci v. Bosnia*, 2009).

# Role and responsibilities of EMBs in identifying and removing barriers to voting and alternative methods of voting – the German perspective<sup>19</sup>

Christiane EGERT-WIENSS<sup>20</sup>

## Role and responsibilities of EMBs

Division of the electoral area/ designation of polling stations

Alternative methods of voting:

Absentee

Advance

Remote

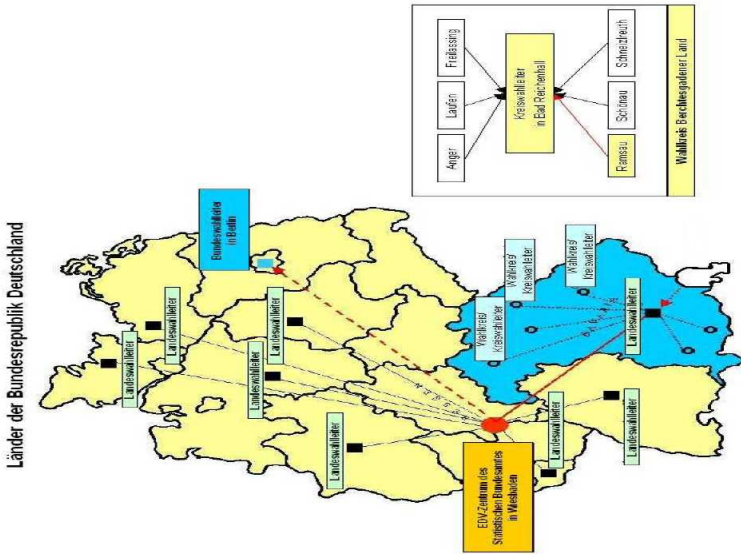
Election to the 17th Bundestag, 2009

Population	81,9 million
Persons entitled to vote	62,2 million
Voters	44,0 million
Voter turnout	70,8 per cent

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<sup>19</sup> Powerpoint presentation

<sup>20</sup> Federal Statistical Office / Office of the Federal Returning Officer, Germany

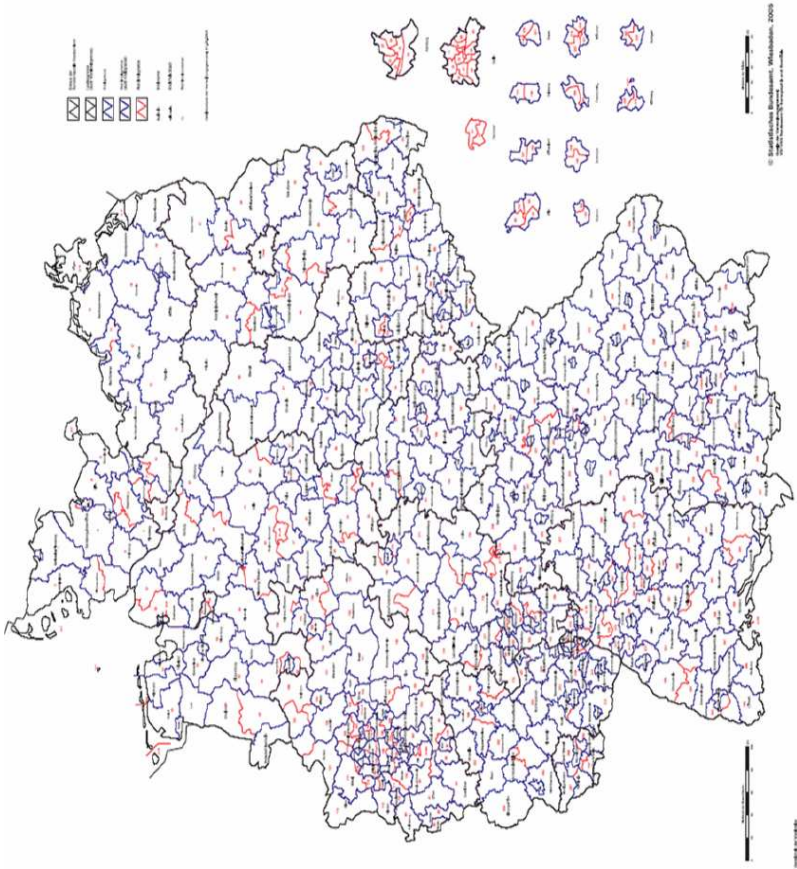


Electoral area:

299 Constituencies

75.000 polling districts  
15.000 districts

for postal voting



## Professionalism of EMBs

Andrew SCALLAN<sup>21</sup>

The topic that I have been asked to cover this morning is professionalism of EMBs. This could mean many things in our different languages and cultures, so I'd like to take a minute to outline what I am referring to.

Most of us are aware that there is a small football tournament going on at the moment; some of you may have seen a few minutes of a game over the last two weeks. Now those players in that tournament come from very different backgrounds and very different situations. Whether they are paid £100,000 a week just to walk onto the pitch or work two jobs and have sold their house to support their football, at this point in time they are all professional World Cup footballers – their every focus is on winning the World Cup and representing their country. Their professionalism is in their dedication to the task at hand. In line with what we have talked about here this week, I believe a professional EMB is one that is dedicated to the task of putting the voter first.

Across Europe we have many different arrangements for our EMBs – some permanent and some temporary; some with a full range of duties and powers and others with few. Some who are responsible for the running of elections and some who are not. Our different legal and administrative traditions mean that it is not possible or appropriate to prescribe one model to meet our common standards and aspirations. But we can look at some key attributes we would all expect to see in an EMB for it be capable of dedicating itself to safeguarding electors' human rights in a professional manner.

The first – and often the most confusing - is of course independence. This term is thrown around a lot in electoral administration, and causes a lot of confusion as well. In some systems, the most important type of independence

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<sup>21</sup> Director of Electoral Administration, UK Electoral Commission

is structural independence – complete separation of the EMB from other institutions of the state, a separate and guaranteed funding source, and its own public voice and opinions. Complete structural independence of the EMB is found in only some of our nations; yet many more European countries enjoy impartial and well run elections. This is because independence of action is a more common form of independence for us; the ability of those acting as the EMB to be resourced to implement the law, to act without direction from the government of the day, and most importantly to act to protect the rights of all electors. While in some situations structural independence is required to deliver independence to act, the European experience shows us that independence to act can be delivered without full structural independence, and that this is the most crucial form of independence that we must entrench as elections become more complex, more costly, and more scrutinised. Independence extends to the appointment of Commissioners and the staff of the Commission

This leads me to the next principle, which is impartiality. Impartiality is essential to establishing the credibility of electoral processes, most especially of course with those who do not win. Irrespective of how the EMB is formed, it must treat all election participants equally, fairly and even-handedly. While independence can be mandated in law, impartiality is demonstrated through actions and words, and it is through such impartial actions that EMBs can demonstrate that the electorate, not individual parties or candidates, remains their key focus.

My third principle is transparency – the EMB must promote transparency of the electoral process, as well as transparency of their own affairs. This is crucial when EMBs are not large permanent entities, but reliant on other bodies or temporary recruitment for their election period needs. There must be transparency in recruitment and remuneration, and then transparency in the actions of the EMB. This is of course particularly vital for those EMBs empowered to make regulations or binding interpretations of the electoral law. EMBs must support and assist those who wish to scrutinise the electoral process – observers and monitors, NGOs, and the media all play a role in watching the EMB, and in documenting how well it does its work.

My fourth principle is one that I do not feel is discussed enough, and it is proficiency (or you could call it competency) or indeed professionalism. EMBs

must be able to be proficient in their work, which means that they must have adequate resources to cover their whole area of operations; they must have the time and the ability to recruit and train their own staff, whether permanent or temporary, and they must be able to keep up with changes in legislation, in technology, and in public expectations. A proficient EMB will be able to demonstrate the commitment of their staff to modern principles of public service – such as equity, accuracy and diligence - and deliver good value for public money. Importantly, a proficient EMB is much more likely to be able to exercise its independence to act, and to do so in an impartial fashion. A lack of visible competence in electoral management, on the other hand, will lead to public suspicions of inaccurate and perhaps fraudulent activity, and a lack of trust.

The range of skills needed by an effective EMB is considerable. Depending on the nature of the role and function of the EMB there is likely to be a need to have access to lawyers, accountants, administrators, experts in public awareness and for the EMB to develop itself into a centre of excellence on all matters relating to elections and the electoral register. All those involved need to have access to appropriate training and resources and to be able to network with other EMBs to try and maintain an overview of developments which could improve the voters experience.

Crucially an EMB should have access to research into aspects of the electoral system to understand how voters and others perceive this aspect of the democratic process. It needs to understand the make up of its electorate and consider equality issues and ensure that the rights of minorities including national minorities are safeguarded. It must be able to appreciate the changing nature of its voters and to consider how to adapt to those changing needs. It must be an advocate for the voter in recommending changes for improvement.



## How can EMBs maintain skills to deliver first class elections?<sup>22</sup>

Monique LEYENAAR<sup>23</sup>

### Professionalism of EMBs

#### Workshop 3

- Skills of EMBs to ensure integrity and public confidence in elections
- Key issues:
  - Legality
  - Professionalism
  - Transparency
  - Building and maintaining TRUST
  
- The Dutch case as an input for discussion

#### Legality

- Legal system is in place:
  - Constitutional guarantees on universal and equal suffrage, provides for proportional electoral system, sets criteria for active and passive electoral rights
  - Parliamentary Act (Elections Act) to cover the elements of the electoral process
  - Ministerial decrees on organizing and conducting elections

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<sup>22</sup> Powerpoint presentation

<sup>23</sup> Member of the Netherlands Electoral Council, Professor of Comparative Politics at the Radboud University of Nijmegen

- Main tasks of Electoral Council:
  - Counsel to the Minister of the Interior and to Parliament on issues of the election process
  - Central electoral committee (registration of political parties; validation of lists of candidates, control of voting process, validation of the final results of the election)
  
- Main tasks of Minister of the Interior:
  - Executive powers organization of the elections
  - Appointment of local election authorities

## **Professionalism**

### Electoral Council

- Appointed by government
- Experience
- Diversity
- Professional staff
- Independent counsel
  - Directly to Minister and to Parliament
  - Advice upon request and own initiative

## **Transparency Electoral Process**

- Polling stations and the counting of votes can be observed by the public
- EC validates the final results of elections in sessions open to the public
- EC monitors and evaluates all elections and publishes the results
- EC makes recommendations for adapting the Electoral Act and for the practical organization of the elections

## **Building and maintaining trust**

- Information

The EC and the Ministry run together an Elections Information Centre

- Deals with questions, complaints and remarks of the public, media, political

Parties and local authorities

- Around last month's general elections the centre processed over 2000 referrals

- Communication

- Website
- Publication of advisory reports
- (controlled) Use of the media

- Taking every remark – positive or negative - seriously

## **Institutional trust: EC since 1917**

### **Yes, it works!**

- In NL there is no possibility to challenge the final results of elections (no court appeal) and so far this is unproblematic
- Many of our recommendations for improving the electoral process have been followed by MOI and Parliament
  - Fraud by using a voters registration card (Impersonations) ID requirement
  - Fraud by recruiting votes using "voting by proxy" requirement of prove of ID
- OSCE/ODIHR, 2006: "NL has a long tradition of conducting democratic elections, commanding an overall high level of public confidence"

## **In summary**

Required skills to maintain integrity and public confidence:

- Legality: legal framework
- Professional EMB
- Fully transparent electoral process
- Constant focus on building and maintaining TRUST

**7<sup>TH</sup> EUROPEAN CONFERENCE  
OF ELECTORAL MANAGEMENT BODIES**

**“EVERY VOTER COUNTS”**

**Dexter House, Tower Hill, London**

**PROGRAMME**

**Tuesday 22 June 2010**

- 09:30 – 10:00                      Registration of participants
- 10:00 – 10:30                      Opening remarks by:
- Ms Jenny Watson, Chair of the UK Electoral Commission
  - Pr Jeffrey Jowell, UK Member of the Venice Commission
  - Mr Thomas Markert, Secretary of the Venice Commission
- 10:30 – 11:30                      **Chairwoman: Ms Jenny Watson**
- Presentations by EMBs on 2009/2010 elections
  - United Kingdom   Mr Peter Wardle, Chief Executive of the Electoral Commission of the United Kingdom
  - Armenia Central Electoral Commission of Armenia (*Name to be confirmed*)
  - Austria: Mr Gregor Wenda, Federal Ministry of the Interior of Austria
  - Belgium: Mr Stéphan de Mul, Head of the Elections Unit, FPS Home Affairs
  - Netherlands:      Mr Melle Bakker, Secretary-Director to the Netherlands Electoral Council

- Russian Federation: Mr Vladimir Churov, Chairman of the Central Electoral Commission of the Russian Federation
- Ukraine: Mr Andrii Maghera, Vice Chair of the Central Electoral Commission of Ukraine.
- Brazil: Ms Susan Kleebank, Advisor for International Affairs, Superior Electoral Court of Brazil

11.30 – 12:00 Coffee break

12:00 – 12:45 **1<sup>st</sup> Working session: Electoral modernisation**  
**Chairman: Mr Thomas Markert**

Introduction of topic by:

- Mr Georges Papuashvili, President of the Constitutional Court of Georgia, Member of the Venice Commission
- Mr Keith Whitmore, Member of the Congress of Local and Regional Authorities, Member of the Council for Democratic Elections
- Mr Konrad Olszewski – OSCE/ODIHR

Challenges posed by the introduction of new voting technologies to transparency, election observation, and public confidence.

12:45 – 13:00 Questions and discussion

13:00 – 14:15 Lunch at Dexter House

14:15 – 15:15 **Workshop 1: Electoral modernisation**

- i. Voter experiences at elections - a comparison of different countries putting the voter first – Mr Peter Wardle (United Kingdom)

*Breakout Room 1-EURO*

- ii. Distance voting – securing the balance between accessible voting and trust in a secure voting system – Mr Vladimir Churov (Russian Federation)

*Breakout Room 3 – MONEY SUITE*

- iii. New technologies – What could be used without threatening European heritage? Presentation on the Electronically Managed Polling Station - Mr. Pedro Colmenares Soto (Spain)

*Breakout Room 2 - YEN*

15:15 – 15:45

**2<sup>nd</sup> Working session: Accessibility and inclusiveness**

**Chairman: Mr Keith Whitmore**

Inclusiveness in the electoral process. First Protocol, Article 3 of the European convention on Human Rights– Right to free elections – Mr Dovydas Vitkauskas (Consultant on European Human-Rights Law, United Kingdom)

15:45 – 16:15

Questions and discussion

16:15 – 16:45

Coffee break

16:45 – 17:45

**Workshop 2: Accessibility and inclusiveness**

- i. Role and responsibilities of EMBs in providing voter education to ensure people are aware of their electoral rights? – Ms Kristina Lemon (Sweden)

*Breakout Room 1-EURO*

- ii. Role and responsibilities of EMBs in identifying and removing barriers to voting and alternative methods of voting (absentee, advance, remote) – Mr Gregor Wenda (Austria) and Ms Christiane Egert-Wienss (Germany)

*Breakout Room 2 - YEN*

- iii. Role and responsibilities of EMBs in ensuring the voter registration process puts voters first and

makes voting easy – Mr Andrii Maghera (Ukraine)  
and Mr Dovydas Vitkauskas (United Kingdom)

*Breakout Room 3 – MONEY SUITE*

17:45 – 18:30 Conclusions for the first day (Mr Peter Wardle to  
Chair with 5 min summaries from moderators)

18:30 – 20:00 Evening drinks reception and networking (Dexter  
House)

### **Wednesday 23 June 2010**

10:00 – 10:30 **3<sup>rd</sup> Working session: Professionalism of  
EMBs**

**Chairman: Mr Gregor Wenda**

Topic introduced by Mr Andrew Scallan (United Kingdom)

10:30 – 11:00 Questions and discussion

11:00 – 11:30 Coffee break

11:30 – 13:00 **Workshop 3: Professionalism of EMBs**

i. What should EMBs be doing to ensure the integrity  
and public confidence of the electoral process is  
maintained? – Mr Peter Wardle (United Kingdom)

*Breakout Room 1 - EURO*

ii. How can EMBs maintain skills to deliver first class  
elections? – Ms Monique Leyenaar (Netherlands)

*Breakout Room 3 – MONEY SUITE*

iii. What legislation is needed to help EMBs ensure  
integrity and public confidence in the electoral  
process? - Mrs Suzanne Caarls (Council of Europe)

*Breakout Room 2 - YEN*



13:00 – 14:30	Lunch (Dexter House)
14:30 – 15:30	Conclusions of the second day (14:30 – 15:00)
15:30)	Conclusions of the conference and future plans (15:00 – 15:30)

This publication includes reports from the Sixth European Conference of Electoral Management Bodies on “Enhancing participation in elections”, co-organised by the the Ministry of the Interior and Kingdom Relations of the Netherlands and the Electoral Council of the Netherlands and the Venice Commission, in The Hague, on 30 November – 1 December 2009. This publication includes the reports presented during the conference on such topics as the measures aimed at attracting voters to participate in elections, the organisation of the information campaigns before the vote and the problem of criteria for disenfranchising voters.

Around 75 participants from national electoral management bodies of the following countries attended the conference: Albania, Austria, Belgium, Finland, Georgia, Germany, Kyrgyzstan, Latvia, Malta, Mexico, Netherlands, Norway, Portugal, Russian Federation, Spain, Sweden, Ukraine and United Kingdom as well as representatives of the Parliamentary Assembly of the Council of Europe and the Directorate General of Democracy and Political Affairs. Representatives of several international organizations also attended this event.

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In its second part, this publication includes reports from the Seventh European Conference of Electoral Management Bodies, “Every voter counts” co-organised by the United Kingdom Electoral Commission and the Venice Commission, in London, on 22-23 June 2010. This publication includes the reports presented during the conference on such topics as the ways of ensuring that electors’ interests are given the importance they deserve in the planning and management of elections and electoral systems.

Around 50 participants from national electoral management bodies of the following countries attended the conference: Armenia, Austria, Belgium, Bosnia and Herzegovina, Brazil, Finland, Germany, Kyrgyzstan, Lithuania, Mexico, Netherlands, Norway, Portugal, Russian Federation, Slovak Republic, Spain, Sweden, Ukraine and United Kingdom, as well as members of the Venice Commission and of several bodies and directorates of the Council of Europe. Representatives of several international organizations also attended this event.