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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**17TH EUROPEAN CONFERENCE
OF ELECTORAL MANAGEMENT BODIES**
**“ELECTORAL LAW AND ELECTORAL ADMINISTRATION
IN EUROPE - RECURRENT CHALLENGES
AND BEST PRACTICES”**

12 and 13 November 2020

Council of Europe, Strasbourg, France

SYNOPSIS AND CONCLUSIONS

Synopsis

The Venice Commission of the Council of Europe organised the seventeenth European Conference of Electoral Management Bodies (EMBs) online, on 12 and 13 November 2020.

The topic of the Conference was “Electoral law and electoral administration in Europe, Recurrent challenges and best practices”. More specifically, the participants discussed two main issues:

- The recurrent challenges and the best practices in electoral law and election administration in Europe, in particular during electoral campaigns, voting operations, counting, tabulation and transmission of election results;
- Holding elections during emergency situations – Challenges met and solutions found by EMBs during the pandemic.

Theodoros Livanios, Deputy Minister of Interior of Greece, and Gianni Buquicchio, President of the Venice Commission of the Council of Europe, opened the Conference.

Around 160 participants took part in the Conference, representing national EMBs and other profiles such as academics, practitioners and experts.

Other Council of Europe’s institutions, in particular the Congress of Local and Regional Authorities and the European Committee on Democracy and Governance (CDDG), but also international institutions such as the Organisation for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the International Foundation for Electoral Systems (IFES) participated in the Conference.

Conclusions

The 17th edition of the European Conference of Electoral Management Bodies is the continuation of a successful series of international conferences in the electoral field. This edition was dedicated to “Electoral law and electoral administration in Europe – recurrent challenges and best practices”, with a special emphasis on electoral campaigns, vote, counting, tabulation and transmission of election results, which have been challenging subjects for EMBs and other relevant bodies involved in elections all over the world. Given the current situation with the COVID-19 pandemic, conference participants also discussed holding elections during emergency situations to share experiences and solutions found by EMBs during the pandemic.

Elections include a complex series of successive stages, requiring the involvement of various actors, including voters, candidates and EMBs. While in most of Council of Europe (CoE) member States, the electoral laws provide an adequate basis for democratic elections, and the electoral administration enjoys a high level of public confidence, a number of recurrent problems continue to undermine public trust in the electoral process.

Despite improvements in ensuring equal campaign opportunities for candidates, one of the recurrent challenges is the misuse of administrative resources. This practice is widespread in many countries, including those with a long-standing tradition of democratic elections. The Venice Commission has recommended a number of measures to prevent the misuse of

administrative resources and to prevent public authorities from taking unfair advantage of their positions.

Negative campaigning is another recent worrying trend of electoral campaigns worldwide, with campaigns marked by political polarisation, defamation or denigration of political opponents. Some political parties even used inflammatory and racist rhetoric, targeting ethnic, religious or other minorities. Hate speech against political opponents and national minorities, particularly on online platforms, is reprehensible and difficult to curb as undue online regulation can easily result in undermining freedom of expression on the Internet. As such, the blocking and taking down of illegal online content to combat hate crimes must be grounded on precise definitions of the offences and respect the proportionality principle, with an effective judicial remedy by courts to be guaranteed.

Traditional media remain an important source of information and their failure to provide ample information on elections is another recurrent challenge. Online platforms have changed the nature of electoral campaigns with voters having better access to information. Candidates and political parties are able to use these platforms to present their views to voters and mobilise support at low cost. The use of online media poses new challenges to uphold the principles of fair and clean electoral campaigns in the online environment, such as with regard to the regulation of online political advertising, which requires more action from candidates (to uphold ethical standards), social media networks (to improve transparency of political advertising on their platforms) and public authorities (to adopt laws and regulations for political advertising on the online environment).

Social media networks present problems for the integrity of elections also due to “doxing” operations (hacking and leaking of non-public information), mal-information operations (online threats, targeted harassment and hate speech) as well as disinformation operations (spreading false or misleading information). Spreading disinformation and polarised narratives may aggravate divides and conflicts in society. While more comprehensive regulations for online content at election times are yet to be developed, it is important to clarify the liability of social media companies that publish illegal content harmful to candidates. It is also necessary that sanctions do not lead to self-censorship. Other means include digital media literacy programmes and developing tools for empowering users to identify (e.g. flagging, labelling, blacklisting) and counter (e.g. fact-checking, factual corrections) disinformation and working closely with the social media platforms, as is the case in Mexico.

Voter registration can be passive (voter lists taken directly from national, regional and local population databases) or active (voters are not included automatically on the registers, but at their own request). In many CoE member States, voter lists are made available for public scrutiny, for example by posting them at polling stations, making them available in municipality offices and/or publishing them on websites. Transparency and public scrutiny may enhance the accuracy of voter lists but it is also important to protect citizens’ private data. In this respect, some countries introduced restrictions concerning public access to voter lists.

Party and/or campaign financing are a necessary condition for elections but money may also lead to corruption and to undue political influence in the electoral process. To prevent such deviations, party and election legislation must contain clear and comprehensive regulations on party and campaign finances. The allocation of public funding under clear conditions aims to ensure that all political contenders have sufficient resources to reach out to voters and, thus, contributes to the levelling of the playing field for candidates and parties. Public funding

is also an essential tool in the fight against corruption and in reducing the dependency of political parties on wealthy groups or individuals. While a number of CoE member States have limits, prohibitions or strict regulations on donations from foreign donors, there are also others which do not impose any restrictions on such contributions. Here again, transparency should not imply excessive restrictions to the right to privacy.

In a number of CoE member States' elections, a large proportion of polling stations remain unsuitable for independent access by voters with disabilities. Other recurrent challenges during voting include the presence of unauthorised persons inside polling stations, multiple voting, ballot box stuffing, and vote buying. In respect of out-of-country voting or postal voting, it is important that adequate and timely safeguards are implemented to ensure the integrity of the vote. Internet voting offers an alternative to in-person voting in polling stations, but there are still considerable risks to transparency and security and a number of countries have suspended it because of cybersecurity concerns. The Committee of Ministers of the CoE is conscious "that only those e-voting systems which are secure, reliable, efficient, technically robust, open to independent verification and easily accessible to voters will build public confidence, which is a prerequisite for holding e-elections".

There are still technical and political problems during vote counting, including procedural shortcomings but also clear attempts at fraud, including the falsification of results and protocols. It is important that the counting process be open and transparent and carried out in the presence of election observers and representatives of candidates as well as political parties. It is also necessary that results be not only published as fast as possible but are also as detailed as possible. Breaking down the results by polling stations and making the tabulation available to the public contributes considerably towards the transparency of elections.

While international standards do not impose a specific electoral system, (ir)regular and last-minute changes of electoral system, often made on partisan basis and without proper public discussion or consensus, jeopardise the trust in the electoral process and, as a consequence, in democracy itself.

The COVID-19 pandemic has brought a number of challenges for EMBs in making decisions to either hold elections at their normal term or to postpone them until proper measures can be put in place. Local democracy often comes under immense pressure during times of emergencies as the local and regional authorities are at the forefront of coping with the repercussions of the crises. In this context, the democratic legitimacy of elected local and regional representatives provided by free and fair elections is more essential than ever. The holding of local and regional elections in times of major crises may, however, entail risks to the life, health, and security of people as well as present numerous practical difficulties, which may result in postponement of elections. It is important that all relevant actors join efforts to protect the health of both citizens and their democracies. In case a decision to postpone elections is reached, it should be legally grounded and it is important to ensure that any suspension of electoral rights is only permitted to the extent required by the situation, meeting a proportionality test. Political dialogue is key to addressing many of the crucial issues that emerge and such dialogue should happen as soon as possible in an inclusive format. Longer time periods need to be built-in to ensure proper risk-based analysis planning, rather than an *ad hoc* approach and to have human resources and capacity in place. While not all electoral standards can be kept in major crisis situations, a minimum core of electoral principles have to be upheld for elections to be meaningful and to enjoy the trust of the public.

The Venice Commission has underlined in its reports that there is no general principle to avoid holding elections during the state of emergency and postponing them until the situation is back to normal again. However, the state of emergency may raise issues of protection of health and the safety of all participants and stakeholders in the electoral process, but also of effective exercise of electoral rights, including of the right to form one's opinion before voting. Any decision to hold or postpone elections during the state of emergency requires a careful balancing of all these elements. If it is possible to postpone elections, this should be done with a clear timing and within a reasonable timeframe. The second issue concerns how the factual situation impacts campaign possibilities and the means for campaigning used commonly in the country in question for this type of elections. The third issue concerns campaign costs.

Fourth, if the first round of elections has already been held and the extraordinary circumstances occur before the second round of elections, it may mean that the candidates have already finished their campaigning or paid for it. A fifth issue concerns security of election management staff and members of election commissions, including during election day and vote counting. Sixth, different voting modalities like early and postal voting, mobile ballot boxes and technology-based voting could to be taken into account.

Finally, the necessity to improve the legal framework surrounding electoral processes should be underlined, in view of providing all the legal, human and financial resources to electoral management bodies and other relevant bodies in order to organise democratic elections during emergency situations.