

Norms, standards and good practices aimed at securing elections

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Dear participants,

In previous EMBs conferences we have discussed principles of democratic elections such as secret vote, equal and free elections or transparency. Most of these issues are covered by international law, as they are part of the fundamental right to take part in democratic elections. There is no specific international law on security of elections. What we have to do is to apply general principles of public security, one of the main aims of public authority which was already discussed by Niccolo Macchiavelli in 16th century – a person often quoted as an advocate for the aim of the government to discredit the actions of neighbour countries. These general principles have to be adapted to electoral issues.

There are lately updated standards on e-voting – a very important aspect with the main area of concerns arising recently – laid down in Recommendation CM/Rec (2017)5 discussed in detail by Ms Arditia Driza Maurer. Council of Europe has been active in this topic for a long time and these standards, following previous Recommendation Rec(2004)11, are a useful tool for EMBs and international observers.

In national legislation, especially in constitutional law, we can often find provisions on postponing elections due to emergency conditions either due to natural disasters, state of war or other kind of security issues, as well as possibilities to cancel the election results in case of breach of the main principles governing the democratic nature of elections. Election security is aimed at safeguarding this democracy and thus a breach of these principles due to security issues can be solved by cancellation of the election results, although this is only a response to the issue, not providing detailed standards on proactive role for the EMBs.

In addition to that, a list of general international conventions or similar national legislation can be applied, covering data protection, fight against cybercrime and fight against money laundering, all applicable for the issues of security of elections in election campaign area.

The solution to the current and ongoing problems cannot be the use of paper ballots. The risks lay often in financing of political parties and election campaigns, widely discussed problems of fake news and personal data protection. These issues are part of more general problems of security in modern society with a high-level use of ICT in general. E-banking, cryptocurrency and personal data protection are issues we still face even when we use “old” means of electoral processes. No one of us is trying to safeguard the personal data and security of voters registers by keeping the registers only on paper.

I as a constitutional lawyer would base the discussion on the international standards and good practices of election security on the human rights. Security of elections is a duty of the EMBs – but the legislator, too – in order to guarantee free, universal, equal and secret suffrage.

Feeling secure is a prerequisite for taking part in any open discussion, including in pre-election communication on political matters. If the possible voters – in general, all the society – can disseminate their opinion without being afraid of possible consequences, the

social needs and viewpoints, prevailing values can evolve and a balanced understanding of any decision-making can occur. As the parliament should represent all parts of the society with different social background and values, such discussion and communication together with freedom of assembly and association is essential. Such free communication is necessary before nomination of candidates as well as afterwards, between political parties, registered candidates and voters. Election security is a task for the public authority to protect the discussed fundamental freedoms. Without election risk management the duty of the state before the voter or candidate is not fulfilled.

The same applies to the management of security in voting process, in the use of voters' registers and ballot papers or e-votes. This task is related to the duty to arrange secret suffrage.

Election security has thus two topics, one related to free communication and discussion – with the use of ICT – and the other one related to voters' registers and secrecy of the ballots – with e-voting, also closely related to ICT.

Equal voting is related to equality of opportunities, and related a lot to the use of campaign finances. Misuse of administrative resources, illegal funding of political parties and campaign financing, money laundering and illegal money coming from unfriendly foreign countries or domestic interest groups or radical opponents eager to hamper free discussion are issues of election security.

When we talk about election security, we speak about free, equal and secret suffrage from a viewpoint we have not discussed in similar conferences earlier. When we try to find legal principles governing election security, we must first look at the First Protocol to the ECHR or Article 25 of ICCPR.

The duty to provide election security might need a limitation of some people's fundamental rights, e.g. freedom of speech in an anonymous way or the right to get into some monetary transactions. The efficient management of election related risks demands a legislation balancing different interests and limiting others' fundamental rights, especially with regard to campaigning. Obviously, the task is a complicated one, as the means of campaign activities has got more complex, embracing both classical media and social media, but due to Internet, it is difficult to understand whose freedom of speech is under discussion, under which jurisdiction the issue is and where can one find the evidence on that. Same complexity can be seen in financing of campaign activities. When we talk about fundamental rights, it is the court in last instance who has to decide on the legitimate aim and proportionality issues. But such broad values and concepts may not be left out of specific attention by the legislation in order to guarantee foreseeability and certainty of the law. It should not be the EMBs who have to decide on the balancing fundamental rights or interests based on general values of democratic elections.

As the international principles of democratic elections, either in the aforementioned treaties or in the Code of Good Practice in Electoral Matters adopted by the Venice Commission, are general and applicable to any kind of risks to elections security, we have to keep them in mind, but due to the evolvement of communication, best practices in different countries – both in legislation and in practice of the EMBs – need to be shared. A close cooperation between different institutions, including internationally, is inevitable, and in a very speedy manner, as the campaigning, also illegal campaigning, using new

technology, doesn't take much time. Budapest Convention gives opportunities for the EMBs and police, but in election security, its implementation is urgent.