Workshop on
"Codification of the Electoral Law"

Event organized by the
Permanent Electoral Authority
in cooperation with the Venice Commission
Council of Europe

Bucharest
19-20 October 2015
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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

in co-operation with

THE PERMANENT ELECTORAL AUTHORITY OF ROMANIA

WORKSHOP ON CODIFICATION OF THE ELECTORAL LAW

Venue:
Phoenicia Grand Hotel
87th Alexandru Serbanescu, 1st District

Bucharest, Romania
19 October 2015 (9:00) - 20 October 2015 (14:00)

PROGRAMME

19 October 2015

09:00-09:30 Opening session

Mr. Tiberiu Csaba Kovacs, General Secretary of the Permanent Electoral Authority of Romania

Mr. Sorin Moise, General Secretary, Ministry of Foreign Affairs of Romania

09:30-09:45 Photo Group

09:45-11:00 Working session 1 - Codifying Electoral Legislation: Ensuring Stability

Co-moderated by:

- **Mr. Péter Paczolay,** Venice Commission
- **Mr. Csaba Tiberiu Kovacs,** Permanent Electoral Authority of Romania

Keynote speakers:

- *The Principle of Stability of Electoral Law,* **Mr. Péter Paczolay,** Honorary President of the Venice Commission, Judge at the Constitutional Court of Hungary

- *Codifying or Consolidating the Electoral Laws? The Ongoing Quest for Accessibility, Clarity and Predictability in Electoral Matters,* **Mrs. Simina Elena Tănăsescu,** Presidential Advisor, Department of Constitutional and Institutional Reform, Presidential Administration of Romania

- *Introduction to a Theory of Electoral Law,* **Mr. Cristian Leahu,** Director of Legislation, Parliament Liaison and Election Dispute Resolution Department, Permanent Electoral Authority of Romania

- *The Necessity of an Electoral Code in the Context of Assuring the Predictability and Stability of the Legislation,* **Mrs. Cezara Grama,** Legal Adviser, Expert Forum, Romania

11:00-11:15 Coffee break

11:15-12:45 Working session 2 - Codifying Electoral Legislation: Main Principles

Co-moderated by:

- **Mr. Oliver Kask,** Venice Commission
- **Mr. Cristian Leahu,** Permanent Electoral Authority of Romania

Keynote speakers:

- *The Five Key Principles of the Europe's Electoral Heritage and their Effective Implementation in Electoral Processes,* **Mr. Oliver Kask,** Judge at the Tallinn Court of Appeal, Member of the Venice Commission, Estonia

- *Implementation of the Main Principles in the Electoral Code of Albania,* **Ms. Lefterije Luzi,** President of the Central Election Commission of Albania

- *Electoral Law in Romanian Constitutional Court Jurisprudence,* **Mr. Daniel Marius Morar,** Judge at the Constitutional Court of Romania

- *Gender in Electoral Law Reforms,* **Ms. Nana Kalandadze,** Programme Officer, International IDEA

12:45-14:00 Lunch break

14:00-15:30 Working session 3 - Codifying Electoral Legislation: the Procedure

Moderated by: - Mr. Marian Muhuleț, Permanent Electoral Authority of Romania

Keynote speakers:

- *Harmonisation, a Key Word - Strengths and Advantages of a Unified Electoral Code,* **Mr. Gaël Martin-Micallef,** Legal Officer, Elections Division of the Venice Commission

- *The Paradigm Change Regarding the Vote of Romanian Citizens Living Abroad,* **Mr. Mircea Kivu,** Member of the Autonomous Group for Participative Democracy, Romania

- *International Good Practice in the Sphere of Adopting Legal Amendments Codification of the Electoral Legislation,* **Mr. Alexander Shlyk,** Deputy Head of Election Department, ODIHR

15:30-15:45 Coffee break

15:45-17:30 Working session 4 - Comparative Experience

Moderated by: - Ms. Elena Calistru - President, Funky Citizens Organisation, Romania

Keynote speakers:

- *The Ukrainian Electoral Legislation,* **Mr. Andrii Krasnoshchok,** Head of the Legal Department Unit, Central Election Commission of Ukraine

- *The Electoral Legislation Of Georgia,* **Mr. Irakli Khorbaladze,** Member of the Central Election Commission of Georgia

- *The Electoral Legislation Of Moldova,* **Mr. Alexandru Simionov,** Member, of the Central Election Commission of Moldova

- *Uniform Electoral Procedures at the European Elections,* **Mr. Daniel Duță,** Director of Management, Monitoring and Electoral Logistics Department, Permanent Electoral Authority of Romania

20 October 2015

09:30-11:00 Working session 4, continued - Comparative Experience

Co-moderated by:

- **Mr. Kåre Vollan,** Venice Commission
- **Mr. Cristian Leahu,** Permanent Electoral Authority of Romania

Keynote speakers:

- *Unifying Electoral Legislation, a Way to Avoid Inconsistencies and Malfeasance,* **Mr. Kåre Vollan,** Election Expert, Venice Commission

- *Unifying the Romanian Electoral Legislation,* **Mr. Constantin-Florin Mitulețu-Buică,** Vice-President of the Permanent Electoral Authority of Romania

- *The Loathed Need for Details in Electoral Acts,* **Mr. Melle Bakker,** Secretary-Director of the Electoral Council of Netherlands

- *The Lithuanian Electoral Legislation,* **Mr. Rokas Stabingis,** Member of the Central Electoral Commission of the Republic of Lithuania

11:00-11:15 Coffee break

11:15-13:00 Working session 5 - Challenges and Perspectives for Codifying Romanian Electoral Legislation

Moderated by: - Mr. Cristian Andrei - Political Marketing Expert - The Political Rating Agency

Keynote speakers:

- *Codifying Romanian Electoral Law - Historical Considerations 1989-2015,* **Mr. Cristian Petraru,** Head of the Department for Organizing Electoral Processes, Permanent Electoral Authority of Romania

- *Timetable, Stakeholders and Key Chapters of the Potential Electoral Code. A View from Outside the System,* **Mr. Adrian Moraru,** Deputy Director, Institute of Public Politics, Romania

- *The Permanent Electoral Authority (PEA): challenges to its consolidation as a critical institution for Romanian democracy,* **Mr. Laurențiu Ştefan,** Senior Presidential Adviser for Domestic Political Affairs, Presidential Administration of Romania

- *Harmonizing and Unifying the Electoral Legislation: PEA's Priorities in the Following Years,* **Mr. Iulian Ivan,** Director of Electoral Control, Training and Regional Activity Coordination Department, Permanent Electoral Authority of Romania

13:00-14:00 Conclusions

14:00-15:30 Lunch

Rapporteurs:

- **Mr. Oliver Kask,** Venice Commission
- **Mr. Cristian Leahu,** Permanent Electoral Authority of Romania

PARTICIPANTS LIST

Central Election Commissions (CEC)

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Mr. Alexandru Simionov, Member
Mr. Stanislav Bondari, Consultant, Legal department

Central Election Commission of Ukraine
Mr. Andrii Krasnoshchok, Head of the Legal Department Unit
Mr. Viktoriia Hlushchenko, Chief consulting officer of the legal department

Estonian Electoral Committee
Mr. Aaro Mõttus, Chairman
Mr. Arne Koitmäe, Legal Adviser, Elections Department

Central Election Commission of Albania
Ms. Lefterije Luzi, Chairwoman
Ms. Deshira Pasko, Director of the Legal Department
Central Election Commission of Lithuania
Ms. Rasa Mačiulytė, Adviser of the parliamentary committee on the state administrations and local authority of Lithuania
Mr. Rokas Stabingis, Member of the Central Election Commission of Lithuania

Central Election Commission of Georgia
Mr. Irakli Khorbaladze, Member

Electoral Council of Netherlands
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Mr. Edward Brüheim, Senior Legal Adviser/Co-ordinator International Affairs

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Mr. Dan Vlaicu, Vice-president
Mr. Florin-Constantin Mitulețu-Buică, Vice-president
Mr. Csaba Tiberiu Kovacs, General Secretary
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Mr. Cristian Leahu, Director, Legislation, Parliament liaison and election dispute resolution Department
Mr. Cristian Petraru, Head of Department Organising Electoral Processes
Mr. Daniel Duță, Director of Department of Management, monitoring and electoral logistics

International Institute for Democracy and Electoral Assistance (IDEA)
Ms. Nana Kalandadze, Program Officer - Democracy and Gender

OSCE/ODIHR
Mr. Alexander Shlyk, Deputy Head of Election Department
Mr. Ulvi Akhundlu, Election Adviser

Venice Commission of the Council of Europe
Mr. Kåre Vollan, Election Expert, Norway
Mr. Olivier Kask, Judge, Tallinn Court of Appeal, Member of the Venice Commission, Estonia
Mr. Péter Paczolay, Ambassador, Honorary President of the Venice Commission, Former President of the Constitutional Court of Hungary
Mr. Gaël Martin-Micallef, Legal Officer, Elections and Political Parties Division, Secretariat of the Venice Commission

Romanian NGO's representatives
Ms. Elena Calistru, President, Funky Citizens Organisation
Mr. Mircea Kivu, President, Autonomous Group for Participative Democracy
Mr. Ştefan Deaconu, Phd Professor, Scientific Secretary of Centre for Constitutional Law and Political Institutions
Mr. Adrian Moraru, Deputy Director, Public Politics Institute
Ms. Cezara Grama, Legal Adviser, Expert Forum
Mr. Dragoş Geamana, President, Pro-Democracy Bucharest Branch

Independent Experts
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Mr. Constantin Mârza, Electoral Expert

Romanian Central Public Institutions
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Mr. Laurențiu Ștefan, Presidential Counsellor, Presidential Administration
Mr. Sorin Moise, General Secretary, Ministry of Foreign Affairs
Mr. Daniel Marius Morar, Judge, Constitutional Court

Foreign Embassies in Romania
H.E. Mr. Ilir Tepelena, Ambassador, Embassy of Albania in Romania
Mr. Luan Topciu, Minister - Counsellor, Embassy of Albania in Romania
Mr. Samuel Richard- Second Counsellor, Embassy of France in Romania

ORGANISATION TEAM

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Ms. Oana Andrei, Consultant, Communication and International Affairs Department
Mr. Răzvan Cincă, Expert, Communication and International Affairs Department

in collaboration with the

Venice Commission, Council of Europe

Mr. Gaël Martin-Micallef, Legal Officer, Election Division,

Concept Note

The Romanian Constitutional Court and OSCE/ODIHR election observation missions have shown on several occasions the need for reviewing the entire electoral legislation related to elections to the Chamber of Deputies and the Senate, elections of the President of Romania, the European Parliament elections and the election of local authorities. These electoral laws should be concentrated into a unique electoral law, who's specific and common provisions should ensure the organization of democratic fair and transparent elections, in accordance with constitutional principles.

The unification and the improvement of electoral law are required both for its recipients and for those called to apply it. The codification of electoral law would largely solve the inconsistencies of administrative action in this area and would make the electoral law more accessible, increasing the confidence of voters in the electoral act.

Romania is currently undergoing a comprehensive electoral reform. For reasons of time, this will not be translated into an electoral code applicable for elections to be held in 2016. However, the Permanent Electoral Authority considers that a unique electoral law can be developed and adopted by Parliament, in view of 2019 elections.

Therefore, the Permanent Electoral Authority seeks to organize, together with the Venice Commission, a workshop on electoral law codification in which to outline the prerequisites of a Romanian electoral code, taking into account, besides Romanian realities and traditions, European standards and best practices in codification of electoral legislation.

In order to achieve its output, the event should benefit from the participation of academics and practitioners from Romania, Venice Commission, OSCE/ODIHR, and International IDEA experts as well as from the presence of academics and election practitioners from countries that already have an electoral code, who will present national and compared perspectives and experiences related to the electoral law and codification of electoral legislation.

Brief report of the event

The main goal for the codification of electoral legislation must be the harmonisation of electoral laws, in order to bring increased stability, predictability and accessibility to legislative acts governing this area. This is one of the conclusions of the International Workshop on 'Codification of the Electoral Law', organised by the Permanent Electoral Authority (PEA) in co-operation with the Venice Commission (Bucharest, October 19th-20th, 2015). The event brought together over 40 Romanian and foreign electoral experts, representatives of the academia, electoral management bodies and international organisations.

During the five debate sessions, presentations were held by keynote representatives of high standing international organisations in the electoral area, such as the Venice Commission, the Organization for Security and Cooperation in Europe/Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the International Institute for Democracy and Electoral Assistance (International IDEA). Péter Paczolay, Honorary President of the Venice Commission and Former President of the Constitutional Court of Hungary presented the principle of electoral law stability, also reflected in the recommendation of the Venice Commission, stating that electoral laws should not be open to amendment less than one year prior to an election. The Honorary President of the Venice Commission pointed out that 'electoral laws alone cannot guarantee democratic elections. The democratic character of elections depends largely on the responsibility of the authorities to properly implement the electoral law, and the commitment of all other election stakeholders -voters, candidates, parties, media etc. - to conduct democratic elections'. Oliver Kask, member of the Venice Commission and Judge at the Tallinn Court of Appeal (Estonia), illustrated the 'five key principles of Europe's electoral heritage and their effective implementation in electoral processes'. The representative of the Venice Commission underlined the need of implementing electoral law 'in good faith', which, to his opinion, 'must be done daily by electoral bodies and other institutions involved in electoral processes'. Mister Kare Vollan, election expert of the Venice Commission explained why the unification of electoral legislation is a way to avoid inconsistencies and malfeasance. 'There is a risk of malpractice and inconsistency if elections are regulated by different laws', indicated the representative of the Venice Commission. He identified several joint areas of different election types which can be subject to uniform regulations, such as: the training of election officials, the process of separating jurisdictions, the regulation on performing election campaigns, appointing candidates, election crimes, complaints and appeals, election monitoring, counting of ballots, assignment of terms., voting from abroad, aggregating and posting results. Gaël Martin-Micallef, legal officer at the Elections Division of the Venice Commission supported the need of harmonising electoral laws, arguing that the different procedures included within several legislative acts lead to difficulties in organising electoral processes, comprise a higher risk of inaccuracies and are less accessible for voters, candidates and the parties that attend elections. Alexander Shlyk, deputy head of the election department within OSCE/ODIHR, presented 'International Good Practices in the Sphere of Adopting Legal Amendments and Codification of the Electoral Legislation'. He showed that states are free to decide whether or not to prepare an Electoral Code. However, he emphasized that the unification of the electoral legislation is beneficial for all stakeholders and it 'assists in

reaching international standards on election matters'. The OSCE/ODIHR representative recommended for the electoral codification process to be carried out by consulting all political forces, the state institutions involved in organising elections, including legal bodies and the civil society. Moreover, Alexander Shlyk insisted that discussions on the codification of electoral legislation should not be held on the eve of elections, in order to avoid the risk of failing to reach consensus or of including amendments which could potentially be eliminated later, by another political majority. Nana Kalandadze, program officer within International IDEA, brought into discussion the importance of gender equality in electoral reforms. She found that special measures, such as gender shares and gender parity principles must be adopted. Simina Tănăsescu, presidential advisor for constitutional and institutional reform, congratulated PEA for electing a topic deemed 'most relevant for the current situation'. 'The purpose of codification is to ensure the efficiency of legislation on electoral matters. Codification means that a new single act replaces all previous acts regulating a specific domain. Also, it means the improvement of those previous acts as the new single document brings them up to date', stated Simina Tănăsescu. The representative of the Presidential Administration stated that an Electoral Code shall end the inflation of legislative acts specific to post-December Romania and which, to her opinion, 'can sometimes become a danger for the rule of law'. She gave the example of 36 partial or total revisions regarding the law on parliamentary elections, made since 1992 to date. The presidential advisor noted that an Electoral Code needs to render an electoral legislation 'more accessible to voters, candidates and election officials all the same', and the result should bring an increase in public and voter trust with regards to elections and, moreover, it should simplify the procedure. Laurențiu Ștefan, presidential advisor for domestic political affairs, spoke about the challenges of the process of electoral legislation codification. The representative of the Presidential Administration stated that we should consider three main challenges in preparing an Electoral Code: the institutional standing of the Permanent Electoral Authority, the role of leaders in establishing the standing of institutions and the political will. According to Laurențiu Ștefan, PEA is an institution of utmost importance since it 'oversees the electoral processes that are at the heart of a democratic system'. Concerning the political will, Laurențiu Ștefan outlined that the political environment in Romania is 'volatile', with frequent changes, and that this state of affairs is reflected in the process of the electoral legislative process. Daniel Morar, judge of the Constitutional Court of Romania (CCR), stipulated that, by Decision no.51 as of January 25th, 2012, the CCR emphasised the 'need to re-examine the entire electoral legislation on elections for the Chamber of Deputies and the Senate, and for the President of Romania, on elections for the European Parliament, as well as on elections for the local public administration authority, and to outline it in an electoral code containing joint and special provisions to ensure a democratic, fair and transparent voting process, compliant with the constitutional principles'. The magistrate showed that the adoption of numerous legislative changes and the existence of several inaccurate regulations have generated an increasing number of complaints before the Constitutional Court, as the institution requested to perform both an intrinsic and an extrinsic examination of legislative acts in electoral matters. According to Daniel Morar, one decision of CCR judges turned the recommendation of the Venice Commission with regards to making no amendment to electoral legislation 12 months prior to the voting date into an obligation for the lawmaker. The election officials of the Netherlands, Estonia, the Republic

of Albania, Ukraine, Georgia, the Republic of Moldova and Lithuania have submitted the electoral legislation situation and the electoral management experiences of their countries. During the debates, we also had presentations from representatives of key non-governmental organisations of Romania: Mircea Kivu, president of the Autonomous Group for Participative Democracy - PLENUM - The Paradigm Change Regarding the Vote of Romanian Citizens Living Abroad; Cezara Grama, legal advisor, Expert Forum - The need of an Electoral Code in the context of providing predictability and stability for legislation; Adrian Moraru, deputy director of the Public Politics Institute - Timetable, stakeholders and key chapters of the potential Electoral Code. A view from outside the system. During the workshop, Constantin-Florin Mitulețu-Buică, vice-president, Cristian Petraru, head of the Department for Organising Electoral Processes, Cristian Leahu, director of the Legislation, Parliament Liaison and Election Dispute Settlement Department, Daniel Duță, director of the Management, Monitoring and Electoral Logistics Department and Iulian Ivan, director of the Electoral Control, Training and Regional Activity Coordination Department shared the standpoint of PEA.

09:00-09:30 Opening session

Mr. Csaba Tiberiu Kovacs
General Secretary - Permanent Electoral Authority

Dear participants,
Dear colleagues,
Ladies and gentlemen,

Good morning and welcome to the Workshop on the Codification of the Electoral Law, a first event with international participation, organized by the Romanian Permanent Electoral Authority in partnership with the Venice Commission.

I have the great pleasure to salute the presence of the representatives of electoral management bodies from 8 countries as well as of international organizations with a remarkable activity in the electoral field: the International Institute for Democracy and Electoral Assistance (International IDEA), the Organization for Security and Cooperation in Europe/the Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and, of course, the European Commission for Democracy through Law, also known as the Venice Commission.

We are honored to have among us some representatives of the diplomatic corps accredited to Bucharest, of the Presidential Administration, the Constitutional Court, the Ministry of Foreign Affairs and the Romanian academic environment as well as of non-governmental organizations working consistently in the electoral field.

The idea to organize this workshop emerged in the context of the electoral reform in Romania as well as based on the desire of the Permanent Electoral Authority to codify the Romanian electoral legislation.

Our institution has been consistently interested in the systematization and simplification of the electoral legislation.

In March 2011, the Permanent Electoral Authority submitted a draft of Electoral Code to the Parliament, proposing the unification and harmonization of all electoral laws in force at that time. The draft was presented to the parliamentary political groups as well. Unfortunately the respective proposal of the Permanent Electoral Authority did not have the desired outcome.

The Romanian Constitutional Court and the OSCE/ODIHR missions in charge of the supervision of elections in Romania have repeatedly indicated the need to review the entire electoral legislation regarding the elections for the Chamber of Deputies and Senate, the presidential elections, the elections for the European Parliament and the elections for the

authorities of the local public administration.

The year 2015 represented the start of the Romanian electoral reform as the Parliament took the first steps by adopting certain laws with an impact on the local elections, parliamentary elections, the organization and operation of the Permanent Electoral Authority as well as the funding of the political parties and electoral campaigns.

Our institution has participated in an active and professional manner to this law-making process, by providing the specialized consultancy required in the preparation of drafts of laws.

In this respect, in the electoral year 2016 we will see:

- the provision of information technology for the voting sections, leading to an increased transparency and faster voting process, will prevent multiple voting attempts and electoral tourism, before these could generate effects and will provide real-time information regarding the turnout;
- the setup of the Electoral Experts' Body, an old goal of the Authority among which the presidents of the electoral offices of the voting sections and their substitutes will be designated;
- the registration of voters from abroad into the Electoral Register and the setup of voting sections based on these registrations.

Postal voting is likely to be used as well for the parliamentary elections. To this end, last week, the Permanent Electoral Authority presented to the Joint Commission of the Chamber of Deputies and Senate for the preparation of legislative proposals the technical project for the postal voting. This project is currently under legislative procedure in the Senate.

In terms of electoral reform, the codification has an outstanding importance as it may be used as an opportunity to enhance the regulations in this field.

The codification efforts are intended to provide better juridical security and better accessibility to laws in line with the constitutional requirements regarding the guarantee of electoral rights.

The mandatory legislative coherence requires that a field of activity be entirely regulated by one single normative act.

Furthermore, the clarity of the legislation, another aspect indispensable to a modern administration cannot be ensured through a clear wording of the normative acts only. It also requires for these normative acts to be accessible, despite all the amendments made to them.

On the other hand, the principle of legality requires in its turn systemized, clear and coherent rules to govern the activity of the public administration authorities in order for the normative system to be understood by everybody and thus to be easily controllable.

Those to whom the law is addressed need to be clearly aware of the rights and obligations offered and imposed by law, and the law needs to be predictable.

We cannot deny that the effort of codification of the electoral law is difficult due to its overwhelming size. In this context, the practical limits of this process are set by the impossibility to codify all the legal provisions or regulations in the electoral field. The exceptions are justified by the fact that certain rules are so specific that their codification is not a solution.

The adoption of an electoral code will enable the use of a unitary terminology for the same juridical realities, juridical institutions, principles and concepts, thus diminishing the risk of different interpretations thereof. Moreover, it will enhance citizens' trust in the

continuity and sustainability of electoral regulations.

In the Permanent Electoral Authority's view, Romania needs to have one single law regulating the organization and development of elections, irrespective of their type, which should be applied starting with the electoral year 2019.

This was one of the reasons for the organization of this workshop, considered as a good opportunity for our institution to conduct some international consultations in order to prepare a new draft of Electoral Code that harmonizes the Romanian realities and the international standards and European best practices in the field.

I am convinced that we are going to have two days full of very interesting presentations and all the participants are going to have a significant contribution to the outcome of this workshop: the setup of the premises of a new draft of Romanian Electoral Code.

In the end, I thank you all for your presence, for being here together with the Permanent Electoral Authority and for sharing with us your valuable experience.

Last, but not least, I thank the Venice Commission for their support to the organization of this Workshop.

Mr. Sorin Moise
General Secretary
of the Ministry of Foreign Affairs

Dear Honorary President of the European Commission for Democracy through Law,
Dear Secretary General of the Permanent Electoral Authority,
Distinguished guests,

I am very delighted to be here today at the opening of the Workshop on the „Codification of the Electoral Law", in the presence of this prestigious audience.

First of all, I would like to salute this initiative of the Permanent Electoral Authority in partnership with the Venice Commission. The reality in Romania has shown that a unification/codification of the electoral procedures, irrespective of the type of election, represents a necessity nowadays for the Romanian society.

The Venice Commission plays a highly important part in restoring the rule of law in Romania, being recognized worldwide as an instance of independent reflection.

As an advisory body of the Council of Europe on constitutional issues and matters, it is important to point out from the onset that the lines of action of the Commission are reflected in the need to observe the basic principles taken from the European constitutional legacy as well as the principles of democracy, human rights and rule of law, principles reflected in the key areas of action of the Commission such as: democratic institutions and fundamental rights, constitutional and elementary law, electoral field and political parties.

The need to codify the electoral law emerges in order to respond to the continuous challenges regarding the compliance with the said principles, but also out of the need to overcome legislative barriers regarding electoral aspects. This process comes to support the activity of the Venice Commission as well as its consolidate efforts to develop indicative documents, opinions, surveys, reports, working guidelines and best practices adopted in the members states of the Council of Europe as well as to organize conferences and workshops on this topic.

It is important to recall the importance attached by the Venice Commission to the process of codification of the electoral law. Moreover, it is worth mentioning the Commission's approach as a driver of stability and democratic reforms, not only in many member states of the Council of Europe, but in other regions as well, which need assistance in the process of transition to a democratic society.

Therefore, without departing from its goals in Europe, the Commission has developed the cooperation with the states outside the European area, and through actions conducted in its area of responsibility in countries of Maghreb, Central Asia and Latin America it has enhanced its renown of independent and unbiased body and reliable partner of competent

authorities and international organizations operating in these regions.

In fact, the Commission represents one of the most complex and efficient means of the Council of Europe, providing assistance, support and advice for establishing political and legislative infrastructure necessary in a pluralist democracy, where human rights and supremacy of law play a paramount role in strengthening the already existing democratic institutions and in building a juridical culture, both at European level and outside the European territory.

We consider that the support provided by the Venice Commission during the years is able to encourage the evolution towards a democratic society, its contribution being decisive in this respect. The Ministry of Foreign Affairs has been constantly supporting the cooperation with the Venice Commission, an example in this respect being the organization, in Romania, in October 2013, by the Romanian Ministry of Foreign Affairs in partnership with the Venice Commission, OSCE/ODIHR and the Norwegian Ministry of Foreign Affairs, of a Workshop on the topic of political parties as an important driver in the political development of the democratic society.

The organized event was intended to facilitate the exchange of expertise and know-how with the states affected by the Arab Spring that were undergoing the transition to democracy, based on a fruitful dialog among international experts in the field of strengthening democracy and rule of law, representatives of Romanian authorities, of the academic environment, experts in law and constitutional law, politicians and members of the parliament of countries such as: Jordan, Lebanon, Algeria, Morocco, Tunisia, Yemen, Egypt, Iraq, Palestine, and Libya.

Throughout the years, the Venice Commission revealed itself as a reliable friend and partner for Romania, having the possibility to analyze, in the framework of the democratic evolution of our country, both the Constitutions of 1990 -1991 and 2003, as well as other important normative acts of the Romanian legislation. At the same time, our country expresses its full confidence in the opinions and ideas expressed in following and applying the interests of foreign policy. An example in this respect is, for instance, the 2001 Report on the involvement of the states in the field of minority protection.

I may say that the Romanian public opinion is fully aware of the important and active part played by the Venice Commission as well as of the significant contribution provided by this institution to our country and I take this opportunity to express my belief that the Romanian society supports and shares the highest standard of the democratic values.

To the same extent, the Romanian authorities are committed to complying with the principles of the rule of law and the democratic values. Therefore, the free and correct development of the elections is likely to ensure the social and economic development of the society, the guarantee and compliance with the fundamental human rights and freedoms and the promotion of the values and principles of constitutional justice.

As a matter of fact, these represent undeniable fundamental principles for Romania and we want to ensure you that all our actions are intended to fully comply with these principles and they are applied in a correct and transparent manner by the Romanian authorities.

I want to emphasize that the Permanent Electoral Authority and the Ministry of Foreign Affairs have a very close relation and the two institutions cooperate in the development of legislative proposals on the organization of elections outside the Romanian borders.

One step forward, one very important step forward was made through the new law

regulating the elections for the Chamber of Deputies and the Senate and establishing a new voting system for the Romanian citizens from outside the Romanian territory. This system relies on the compliance with the established, general principles of voting: universality, equality, direct, secret and free expression. All we want is for this system to be included in the new Electoral Code as well and to be applied during all the elections where Romanian citizens from abroad vote. The fact that the procedures change depending on the type of election is complicated, unjustified both for the voters and for the organizers of the elections.

I my opinion it is necessary to have identical organizational and logistical measures and the other aspects should rely at least on common principles.

I consider that Romania has reached the level of a mature democracy able to take this step.

We need to pay timely attention to the aspects that require regulation; therefore, I salute once again the initiative of the Permanent Electoral Authority and the Venice Commission that represents an important stage in the achievement of this goal: a Unique Electoral Code.

One positive aspect is that the aforementioned new voting system will be tested during the next year's elections, with the possibility to include in the Electoral Code an improved procedure of the vote from abroad, based on the acquired experience.

In conclusion, I reiterate the fact that the Ministry of Foreign Affairs supports the efforts of the Romanian authorities, in particular the Permanent Electoral Authority and is an active support for the adoption of the Electoral Code and we deem it necessary to improve the current procedures in order to ensure the exercise, under the best conditions, of the right to vote for every Romanian citizen abroad.

Thank you very much for your attention!

09:45-11:00 Working session 1 - Codifying Electoral Legislation: Ensuring Stability

Moderators:
Mr. Péter Paczolay, Venice Commission
Mr. Csaba Tiberiu Kovacs, Permanent Electoral Authority of Romania

Keynote speaker:
Mr. Péter Paczolay
Honorary President of the Venice Commission
Former President of the Constitutional Court of Hungary

The Principle of Stability of Electoral Law

Thank you very much for organizing this important and interesting meeting. As the first speaker, I would like to put the subject of this workshop into a larger context, basically focusing on the principle of stability of electoral law.

But, before I address the documents and opinions in more details about the principle of stability of the electoral laws, I would like to say a few words on the larger context of this principle. First of all, I will mention just a few international and European standards of electoral law, in general. As we know, the way of regulating the electoral law of a country traditionally belonged to the domain of the national sovereignty and domestic jurisdiction. The drafting of international and regional standards began as a part of the international human rights movement, or human rights consciousness after World War II. Elections sit at the heart of democracy and legitimize the democratic government of a country, therefore international standards had to be set up in this field too.

Obviously, the first document was in 1948 the Universal Declaration of Human Rights that laid down the basic principles of free elections: periodic elections, universal suffrage, equal suffrage and secret ballot.

This was repeated by other documents later on, like in 1966 by the International Covenant on Civil and Political Rights. It is also important to mention the European Convention on Human Rights, that in the Protocol 1 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".

Soft international law and European rules also address the importance of electoral laws: like in 1994 - Declaration on Criteria for Free and Fair Elections or the Existent Commitment for Democratic Elections in OSCE participating states in 2003, but I think that the most relevant document is without doubt the **Code of Good Practice in Electoral Matters,** adopted by the Venice Commission.

The Venice Commission that has been mentioned also in the introductory speeches, is an advisory body of the Council of Europe on constitutional matters and, among others, its activities are belonging to the electoral field. The Venice Commission has been active since the beginning in the electoral field; it had intensive cooperation with a number of states and issued a lot of opinions on electoral laws or drafts of electoral laws.

It is very important that the Venice Commission increased its cooperation with the Office for Democratic Institutions and Human Rights (OSCE/ODHIR) and started the practice of joint opinions of the two institutions that reinforced the weight of these opinions on electoral laws.

The Code of Good Practice in Electoral Matters was adopted by the Council for Democratic Elections and by the Venice Commission in 2002. The Code is composed by guidelines on elections and related detailed explanatory report. The main message of the document is, among others, that compliance with the five underlying principles of the European electoral heritage is essential for democracy, namely universal, equal, free, secret and direct ballot. Secondly, it enables democracy to be expressed in different ways and the code also describes the possible limits on the exercise of the voting rights, but sets out also the minimum rules to be followed in limiting the right to vote. Thirdly, it concludes that it is insufficient for an electoral law to comprise rules that are in keeping with European electoral law principles, rules must be placed in their context, in the context of the given country and the credibility of the electoral process must be guaranteed in each country. The forth conclusion is that fundamental rights must be respected during the whole electoral process and then we come to the stability principle, that stability of the rules must be such as to exclude any suspicion of manipulation.

The Explanatory report goes into further details on to regulatory levels and stability of electoral law. It says that apart from rules and technical matters, rules of electoral law must have at least the rank of a statute. So, the basic and important rules with accent on technical matters should be regulated on statutory level.

The second requirement is that the fundamental elements of electoral law, in particular the electoral system proper on membership of electoral commissions, the drawing of constituencies boundaries, etc., should not be opened to amendment less than one year before an election. This principle of stability in the Explanatory note was explained further by the Secretariat of the Venice Commission in 2005, by a short document, a short declaration, that interprets the above cited text (this the one year rule), that *"the principle according to which the fundamental elements of electoral law should not be open to amendment less than one year prior to an election does not take precedence over the other principles of the Code of Good Practice in Electoral Matters"*. That means that there might be some conflict between certain principles set out in the Electoral Code and this one year rule is not an absolute rule, it might be limited by other important principles.

For example, several times the Venice Commission itself is asking for the amendments of the electoral law before the elections and this might happen even within one year, if the rule to be amended is such important. The second explanation is that *"it should not be invoked to maintain a situation contrary to the norms of European electoral heritage, nor prevent the implementation of recommendations by international organizations"*, that I have mentioned just now and that *"this principle only concerns the fundamental rules of electoral law, in particular the electoral system in the narrow sense, when they appear in ordinary laws"*.

This principle then, returns in 2003 in the document on the existing commitments for democratic elections in OSCE participating states. Here, Paragraph 2.5 speaks of this stability principle stating that *"amendments to the law may not be made during the period immediately preceding elections, especially if the ability of voters, political parties, or candidates to fulfil their roles in the elections could be infringed"*. That document repeats the proposal of the recommendation of the Venice Commission.

What is the importance of this rather short reference to the stability principle? In fact, the issue is how during the period of electoral process, beginning on the date of announcements of elections, the stability of legal regulations applicable to such elections should be safeguarded. National legislation, including the constitution, generally do not have relevant provisions stating that during the electoral process the applicable legal regulation cannot be amended. The respective literature links the principles of stability to the principles of electoral standards and even to more general constitutional principles (legal certainty, legal security, legitimate expectations, etc.), which imply the obligation of the state to secure the certainty and stability of legal regulation, to protect the rights of persons, their legitimate interests and legitimate expectations should be respected. Also, the constitutional electoral principles of the universal, equal, secret, etc. ballot, also require the stability of the electoral law.

To sum up, during the electoral process, electoral law should not be amended and new electoral laws should not be passed. The amendments passed during the period of the electoral process should be applicable only to the next elections.

Finally, lot of opinions given by the Venice Commission on electoral laws repeats these recommendations, but also the final reports by OSCE/ODIHR on elections in various countries refer to this principle.

Just an example from the Polish parliamentary elections in 2011, the OSCE/ODIHR assessment mission report underlines that the electoral law, the Electoral Code, was adopted and amended before the elections, or similarly on the Romanian parliamentary elections in 2012, the OSCE/ODIHR report underlines that amendments to electoral laws should be enacted well ahead of an election, through a public procedure in accordance with good practice and OSCE commitments.

The electoral observation mission on my country, in Hungary, in 2014, said that the legal framework should be reviewed to address past and present OSCE-ODIHR recommendations. Legislative reforms should be undertaken in advance of elections, opening inclusive consultations between all election stakeholders.

Finally, at the end of 2014, regarding the Ukrainian parliamentary elections, the OSCE/ODIHR final report states that consideration should be given to undertaking a comprehensive electoral reform and the reform should eliminate undue restrictions on the candidates. Electoral reform need to be undertaken well in advance of the next elections and the process should be

transparent and inclusive.

So, the above outlined activities testify that the Venice Commission and OSCE/ODIHR provide theoretical and practical assistance in a wide range of matters related to elections and, among others, regarding the standard of the stability of electoral laws.

However, let me finish with a quotation from a report on the electoral law and electoral administration in Europe from 2006: „However, it should be borne in mind that electoral laws alone cannot guarantee democratic elections. *The democratic character of elections depends largely on the responsibility of the authorities to properly implement the electoral law, and the commitment of all other election stakeholders (voters, candidates, parties, media etc.) to conduct democratic elections."*

Thank you very much!

Keynote Speaker:
Mrs. Elena Simina Tănăsescu
Presidential Advisor
Department of Constitutional and Institutional Reform,
Presidential Administration of Romania

Codifying or Consolidating the Electoral Laws? The Ongoing Quest for Accessibility, Clarity and Predictability in Electoral Matters

Thank you chairperson for the introduction and allow me to thank the organizers of this workshop for the kind invitation addressed to the Presidential Administration. I would also like to show my appreciation for the fact that we are continuously exchanging ideas with the Permanent Electoral Authority.

Congratulations to the Electoral Authority for the topic it has chosen, which is most relevant for the current situation in Romania. As all of you know, Romania has adopted in 2015 a new set of electoral laws, partly replacing previous ones and partly adding new normative substance to the existing framework. Against this background, the debate on the codification of electoral laws is not new in Romania. As far as I know, the Electoral Authority has prepared a draft electoral code already some three years ago.

The idea of codifying legislation is not new. It marked the history of organized society from its beginnings. It started with the oldest code of laws known to mankind - Ur-nammu - dated around 2050 B.C. and it continued with the most quoted Code of modern Europe (the Napoleonic) adopted in the beginning of the XIXth century.

All these previous codifications have ingrained in themselves at least two core values, stability and change, in a paradoxical way. On one hand, codifications refer to a piece of written legislation made by a clearly identified legislator and not by a myriad of previously existing practices and customs. It refers to a piece of written legislation which takes into account all laws, statutes and administrative acts regulating a specific domain, making them a little bit more stable. It is not mandatory for these codified laws to be kept in force forever, but at least this induces the idea of the stability of the law. On the other hand, codifications imply a new start, the beginning of a new legal order, of a new organized and predictable future. This is the idea of change in the current order of things. Therefore, from a teleological point of view, the essence of codifying is that it brings change and it grants stability to that change. All these ideas are well-known nowadays and have become common practice for smart legislators

Concerning the topic of our debate, I believe that we need to reach a certain balance between stability and change with regard to electoral laws, at least when we talk about codification. Therefore, the essence of codification paradoxically deals both with stability and change, by granting some stability to the very change that it brings.

However, in my presentation I would like to focus on two other more pragmatic issues.

First, I would like to differentiate between *codifying* and *consolidation* of legislation. Second, I am going to deal with the *purpose* of the codification: why this tendency for codifying electoral legislation? If the real purpose of codification is to ensure the efficiency of legislation on electoral matters, then, probably, we should understand what exactly legislation`s efficiency refers to. Whether we talk about mere simplicity or we talk about true efficiency of legislation we still have to ask ourselves why we need it.

Consolidation and codification

Consolidation of the legislation simply means combining into one single document, eventually in a booklet, several pieces of legislation, sometimes of various binding force, together with all subsequent amendments made to those legal acts. Consolidation of legislation doesn`t imply adoption of new rules or amendments, it doesn't mean changing the content or the form of the existing legal acts. It just means a purely declaratory, unofficial simplification and sometimes systematization of existing legislation.

The advantage of consolidation is that users can easily find the legal rules which apply to them or which should be applied by them. The disadvantage is that it doesn`t allow for a full restructuring of the legal norms and, therefore, sometimes, contradictory provisions may subsist.

Codification means something different. It means bringing together one or several normative acts and all their subsequent amendments in a single new legal act which actually is the result of a new, full legislative procedure. Codification means that a new single act replaces all previous acts regulating a specific domain. Also, it means the improvement of those previous acts as the new single document brings them up to date. As a result, amendments or even total revisions are absolutely necessary, hence, codification is an *official systematization and simplification of legislation.*

The choice between consolidation and codification is free and it depends on the political priorities of the government of any given state and, albeit at a lesser extent, on rules on formal legislative drafting there existing. None of them is better than the other one. But we should ask ourselves why we need systematization of legislation. Do we really need to start a complex process of codification? Can we just live with what we have? Or do we just need to think about the consolidation of the current legislation?

Irrespective of these choices, both consolidation and codification have to obey to certain basic rules in order to comply with the principle of the state governed by the rule of law. In the particular area of electoral matters, as specialized bodies within the Council of Europe have relentlessly explained and as the ECHR has established in its constant case law, there are three overarching requirements which have to be fulfilled: accessibility, clarity and predictability of electoral legislation.

Accessibility

Allow me to present a statistic which is relevant for Romania: since 1992 when the first electoral law on parliamentary elections has been adopted, there were 36 partial or total revisions regarding only the law on parliamentary elections. A new law was adopted this year and already some changes have been declared necessary in order to introduce the new procedure of the postal voting. Now think about it: we also have a law on presidential elections, a law on local elections, a law on elections for the European Parliament, a law on referendums and number of acts of secondary legislation which detail these primary provisions. This level of complexity is something we all got used to, although, at times, the

number and frequency of revisions tend to be quite high and sometimes successive changes display contradictions in their normative content.

Despite being acknowledged as a potentially "collateral damage" of the state governed by the rule of law, legislative inflation can sometimes become a danger for the rule of law, leading to uncertainty and lack of accessibility and transparency of electoral rules in place. Therefore, the question is what can it be done in order to render electoral rules a bit more accessible to voters, candidates and election officials all the same? First of all, rules should be written in a single document or presented in simpler documents. Second, they should be properly explained and intensively promoted, including via Internet and other new/modern technologies.

The result should be growing public confidence in elections and, at the same time, sufficient flexibility in order to accommodate emerging issues.

Why do I believe that we still have some work to do in this area? Well, let me give a very short example. Romanians living abroad have been told that starting with the next elections they may use postal voting. However, in order to do so, Romanians living abroad have to register in a special registry, a different one from the one existing for the Romanian citizens. The registration is compulsory, which makes sense, otherwise you cannot know how many envelopes and where to send them. But Romanians living abroad are not aware of the fact that, if they do not register at all, they will not be able to vote at all. Ex officio registration which is the rule on the national territory no longer applies abroad. I am not sure if all the citizens living abroad have been and will be properly informed of all the rules they have to fulfill in order to be able to vote. And this is a clear example of why accessibility of legal rules matters. If people don't know the exact content of the law they have to obey in order to vote, I'm not sure that the electoral legislation can truly become efficient.

Clarity

Proper understanding of electoral rules can be facilitated by a high degree of clarity regarding those very rules, thus allowing for limited possibilities biased interpretations. Moreover, prolix or elliptic writing of electoral rules may lead to arbitrary implementation, which also endangers the rule of law. Therefore, electoral rules have to be so clear that electors understand and respect them, political actors and electoral authorities effectively implement them, and courts apply them and infer from general rules practical consequences for all cases under their scrutiny. The expected result should be growing public comprehension of electoral mechanisms and procedures and, therefore, a growing confidence in the electoral process as a whole.

Let me, again, make a small comment with regard to the situation in Romania. Many of you here are probably aware of the case Grosaru v.Romania (2010), where Romania has been held responsible for the lack of clarity of electoral rules. The European Court of Human Rights considered that, on one hand, there is a lack of clarity of Romanian electoral rules pertaining to the distribution of mandates among representatives of national minorities and, on the other hand, there is a lack of effective remedies available for people that would like to complain about those unclear rules. While I am to say that the new law on parliamentary elections has indeed brought quite some clarity with regard to the aspect pertaining to the distribution of mandates, further clarity is still needed with regard to the ex ante and ex post judicial review. In other words, Romania does not display clear rules as to where actually, interested persons thinking that they have won some mandates yet discovering later on that

they didn't, can actually engage in an argued debate in front of a third impartial party.

Predictability

We have just heard a very nice presentation, thank you Mr. Paczolay for that, regarding the importance of the stability of electoral legislation. Now, stability is not an absolute value, stability is not a must in itself, but it remains a very important element when we talk about electoral rules. It is one essential element bringing confidence to the public concerning the electoral legislation.

It is also true, and we have also heard judge Paczolay mentioning this before, that changes in the legislation might become necessary, but frequent or too frequent changes in the electoral legislation might create loose administrative practices, also because implementation authorities do not have the time needed to get used to a rule and get to have established practices confirmed by results. Of course, such a practice also endangers the rule of law. Concerning electoral matters, the institutional and political actors, be them political candidates or administrative bodies, or even the president of the remotest electoral commission in any given circumscription, have to know the law they have to apply, otherwise they will be confused, thus prone to errors. Stability of legislation allows for a greater predictability of human behavior, thus inducing confidence of the entire society in processes governed by those rules. In electoral matters, stability and predictability of legislation ultimately may even increase public participation.

The conundrum between necessary up-dates and effective predictability in electoral matters found one possible solution - that we have heard before from judge Paczolay - in a well-known recommendation elaborated by the Venice Commission, namely the Code of electoral good practices. Thus, only main electoral rules (i.e. at least the electoral system, the composition of electoral commissions, and the drawing of constituencies) have to be most stable, but even the yardstick of the Venice Commission is not excessively rigid: those most stable rules should not be changed less than one year prior to the voting day. Per a contrario, they can be changed before. And if that is the most stringent requirement of stability, it can be safely inferred that other electoral rules can be changed even less than one year prior to the voting day. One should always be able to make a reality check when analyzing electoral legislation.

Once again, this might be relevant for the specific case of Romania, particularly regarding postal voting, where we have recently seen, I would say, an aggressive approach towards the issue. Everybody hurry to change the law one year before the parliamentary elections next year when, in fact, the postal voting doesn't fall within those categories that the Venice Commission has stated they have to be as stable as possible.

Another solution to promote predictability of electoral legislation is to encapsulate main provisions in primary (not secondary) legislation. This would make sure that changes may only happen through an act of Parliament and not through delegated legislation at the mercy of the incumbent Government.

We have been talking here quite a lot about codification and consolidation referring to rules and legislation. However, we have to be aware of the fact that, beyond legal rules, there are also morals, and customs, and habits, and practices, and beyond all of these there are the people as such. Alexis de Tocqueville has very nicely put it almost two centuries ago: "There is no country in the world in which everything can be provided for by the laws, or in which political institutions can prove a substitute for common sense and public morality".

Conclusions

Obviously, I once again congratulate the Permanent Electoral Authority for taking the initiative to codify the electoral rules. We definitely need codification, not just a mere consolidation.

However, now that we have answered to the questions of *what* and *why* it is time to ask ourselves what should be codified.

I do not have very detailed recommendations, just a few broad and basic elements to offer. Thus, when we talk about codification we have to make sure that we have common rules regulating some of the basic aspects, mainly those common to any type of elections: the exercise of the right to vote, the composition, organization, attributions and functioning of electoral commissions and bodies to supervise them and all electoral processes which are identical irrespective of the peculiarities of each election (e.g. the voting day, the counting of votes, the transmission and registering of documents pertaining to vote, etc.). European soft law nowadays puts a strong emphasis on the importance that a public authority insulated from political influence and specifically dedicated only to electoral matters could have for the management of the entire electoral process and as caretaker of electoral issues in-between elections.

An electoral code should impose specific rules for each type of elections (presidential, parliamentary, local, European Parliament and referendums) with regard to, among others, the electoral systems used, the attribution of mandates, majorities needed in order to validate the voting, etc.

Last but not the least, the entire electoral process (decisions, actions, inactions, and administrative operations undertaken before, during and after the elections) should be open to judicial review from independent courts of law, under a procedure which should grant celerity. At the end of the day, in the absence of an independent judicial (and not administrative) review, that key principle we were talking about, the rule of law, could become mere propaganda.

Why do we need all of this? In order to make sure that *no vote will be left behind*. I think that is important when we want to be a true democracy. Codifying electoral legislation helps us to get there.

Thank you very much for your attention!

Keynote Speaker:
Mr. Cristian Leahu
Director of Legislation, Parliament Liaison and Election Dispute Resolution Department,
Permanent Electoral Authority of Romania

Introduction to a theory of election law - codification and stability

The existence of a legal order unacquainted with elections is highly improbable. Elections are present in almost all branches of the law: parliamentary law regulates the election of chamber and committee presidents; commercial law may contain rules of the election of CEOs; labor law dictates on how employee representatives are elected; canonic law regulates the election of the Pope, while international law also contains provisions regarding the election of different representatives within international organizations.

The common denominator of these elections is their mechanism, which is neutral from an axiological standpoint and instrumental in its nature. This mechanism is also juridical because its purposes and methods are established entirely by law, as the intromission of a ballot in a ballot box is not a natural behavior. All elections are juridical because the existence and observance of strict rules, enforced by a judge, are included in their nature: for example, a fraudulent election ceases to be an election.

The usage of elections and referendums, linked to the occidental concept of democracy, led to the apparition and development of a group of norms regulating the organization of electoral processes. This group of norms evolved into what later came into its own separate area of law with its own principles, theories of interpretation and autonomous scholarly debates.

Defining electoral law is a difficult task, but however challenging, it is the first stepping stone to its codification. Defining electoral law via an intentional definition means to identify the genus and the difference, or, otherwise put, to find the necessary and sufficient conditions for a juridical norm to belong to electoral law, while an extensional definition of electoral law implies listing everything that falls under the scope of this concept. For obvious reasons, an extensional definition of electoral law would be almost impossible, while defining electoral law via genus and difference would be far more feasible.

All conceptual approaches have the merit of emphasizing the fact that electoral law is comprised of an ensemble of norms regulating electoral processes.

Therefore, I would say that electoral law is an autonomous branch of public law which regulates electoral rights, organization of electoral processes and election administration. Electoral law is based on specific legislation - legislative criteria, the existence of electoral bureaus and/or jurisdictions - jurisdictional criteria as well as on a specialized doctrine which operates with its own scientific language. Electoral law, which developed on a corpus of former constitutional and administrative norms, has a specific substance, its autonomy

as a branch of law deriving from the fact that it regulates a separate area of social relations, on the basis of distinct and specific principles. What is so specific about this area of law is its object, which is simultaneously construed as consensual and conflictual. While electoral processes are nowadays equated with democracy and peace it is not less true that they are also the stage for intense political, social and legal conflict.

The norms which govern the two dimensions of electoral processes - constitutive and prophylactic - form the electoral law. Electoral law is divided into substantive law and procedural law. Substantive electoral law comprises provisions on fundamental rights such as the right to free and fair elections, the right to vote and to be elected, infra-constitutional rights like (the right to be registered in the voter list, the right to conduct election campaigns, the right to file election complaints and so on), negative and positive obligations of the state and the last but not the least on the electoral system, per se. Procedural electoral law regulates election complaint adjudication and electoral operations such as election constituency boundary delimitation, voter registration, setting-up polling stations, election management, election campaign and campaign financing, candidate registration, voting and tabulation of results.

After this brief, thumbnail sketch of electoral law theory it would appear that the codification of this particular subject of law is possible. The answer to what is electoral law should provide answers to how it should be codified. However, its codification, a suitable intellectual activity with its logical formalization, must be accompanied by an equally important activity, which is, to determine in advance the effects of the codification. In the words of Pierre Bourdieu, a legislator should not substitute the choice of logic (the code) with the logic of choice (the practice). When looking at the codification of electoral law from this perspective it is clear that an electoral code is also social construct, not only a glass bead game of the legislator.

Romanian electoral law is a branch of the public law undergoing a continuous evolution which benefits from a higher mobility than that of other branches of law if we consider the frequency of legislative events which took place during the past 25 years. Its formal sources even if characterized by a large diversity of normative levels and an apparent lack of material unity have their ultimate source in the people sovereignty principle and are channeled by legality, equality, integrity, transparency and accessibility principles. International standards in electoral matters and constitutional traits of electoral rights and processes represent further elements in the identification of electoral law principles without being confused with them.

Principles of Romanian electoral law constitute prerequisites for both the law-maker and the judge and have the potential to ensure the juridical security for all participants in electoral processes. They prove their utility especially in the perspective of election law codification and in the case of objective lacunae of electoral law.

The evolution of Romanian electoral law demonstrates the transience of electoral rules and emphasizes the lack of an overall legislative policy. Also, such a legislative instability constitutes a recurrent argument in the Constitutional Court jurisprudence and Permanent Electoral Authority's reports to the Parliament. Both institutions have recommended multiple times that the whole electoral legislation pertaining to the elections of parliament, president, European elections, local elections, national and local referenda be examined and concentrated in an electoral code, whose general and special provisions should ensure,

congruent to constitutional principles, the organization of democratic, fair and transparent elections.

The code has a form which can carry a specific power over laymen due to its symbolism and its potency to transfigure any legal provision. In Romania, for example, the codification of electoral law is perceived by the general public as a reform capable to guarantee authenticity of elections and to change the political class.

While this projection of Romanian society's expectations on a body of law resembles a religious belief, the benefits of a Romanian electoral code are undeniable in terms of stability, clarity, accessibility, concision, coherence, comprehensiveness and predictability. Any electoral code capable to provide for measures which will gain a high level of public trust when tested in real life conditions, would be unamendable. This is why I deem that the link between codification and stability is really a link between efficiency and legitimacy.

Keynote Speaker:
Mrs. Cezara Grama
Legal Advisor,
Expert Forum, Romania

The Need of an Electoral Code in the Context of Assuring the Predictability and Stability of the Legislation

Within this brief presentation, I will try to tackle the topic of electoral law in Romania considering the experience acquired by Expert Forum Association during the presidential elections of 2014. As implied by the title of this presentation, we are discussing the matter of predictability and stability and I will try to answer two questions:

a) What are the current issues of electoral legislation, from our perspective?

b) Why do we consider the Electoral Code to be a solution for this issue?

I will start with the general principle of legality, as stated in the Romanian Constitution and with the principle of legal certainty which, without being focused solely on constitutional norms, is a fundamental principle of the rule of law. Being the result of the jurisprudence developed by the Constitutional Court of Romania, these principles are related to the quality of legislation in a state and to its consideration of citizens, as their main user, who should be able to understand and follow their evolution.

Bearing in mind that the decisions regarding the electoral process are not consistent, and that rules change as they go, it can be easily noted that the principle of legal certainty is not observed. Hence, this affects the stability and predictability of electoral legislation and of citizen access to the electoral process.

Legislative inflation, the absence of a centralising location for the entire legislation, accessible to the public, may determine a lower level of information for voters and of their understanding of legislation. The role of public institutions with regards to informing voters on the rules of the election process is diminished. The importance of stability in electoral regulations is stressed by the Code of Best Practices in Electoral Matters, adopted by the Venice Commission, showing that the stability of law is a vital element for electoral process credibility, essential for the consolidation of democracy.

Frequent changes in norms can confuse the voter. Hence, the voter may conclude, correctly or not, that the electoral right is solely a tool to be used by those who hold the power and that the voter's vote is no longer an essential tool in deciding the result. However, this is not far from the situation of the Romanian voter, especially after the elections of 2014.

The main problem lies in the high number of regulations covering the organisation of elections. Frequently, amendments are made by emergency ordinances, shortly before elections.

In 2014, EFOR conducted an investigation with regards to emergency ordinances

adopted for amending electoral laws, to their number and to the extent of compliance with the prohibition of making amendments, less than one year before elections. Each of these laws was amended by emergency ordinances, less than 6 months prior to elections.

Ambiguity of the law

A large number of Decisions for law interpretation are adopted by the Central Electoral Offices during each round of elections. This proves that, although legislation is consistent, ambiguity remains, particularly in terms of holding elections. The Decisions for the interpretation of law, issued by the Central Electoral Offices are not a solution, since there is a certain level of continuity from one Electoral Office to another. Each time elections are held, a different Electoral Body is established, without requiring compliance with the law interpretation Decisions made by previous offices.

There have been problems with different interpretations from one election to another, such as, in case of filling out of the affidavit forms during the elections of 2014, by which the voter declares that no prior vote was casted nor will be casted from this point on. Initially, during the first round, the voter would fill-out, sign and date the form only before the electoral office and, later, during the second round, by decision of the Central Electoral Office, the voter could fill-out the form outside the polling stations and sign it before the members of the Electoral Office.

Similarly, the accreditation of voters during the elections; during the European Parliament elections of 2009, the deadline for submitting the application for accreditation was 5 days before the elections. In case of the European Parliament elections of 2012, the deadline for submitting the application for accreditation was no later than 2 days before the elections, and, in 2014, one week before the elections, there was no decision on this matter. In 2014, accreditation applications from Argeş and Dâmbovița counties were rejected for grounds of late submission, but the Decisions were appealed according to the administrative law by different non-governmental organisation. The law was interpreted differently by each electoral office. In this regard, the issue on the lack of uniformity becomes more than obvious and, moreover, the lack of vision within the entire existing electoral legislation, as well as the need of adopting a harmonising electoral code.

Hence, the electoral code could address several of the current issues of electoral legislation.

First of all, what does electoral code mean? We refer to a document bringing together regulations on organising all types of elections, both with regards to operations, and to the electoral system. In addition to reducing the number of legislative acts, codification would accomplish a systematisation of electoral matters in a new legislative act, based on separating general rules from special rules.

Romanian legislation on electoral matters is highly unstable. The electoral code solution was also supported and recommended by the Constitutional Court of Romania, not only by us, through the Decision no. 51 of 2012, stating the 'need to re-examine the entire electoral legislation on elections to the Chamber of Deputies and the Senate, and for the President of Romania, on elections to the European Parliament, as well as on elections to the local public administration authority, and to outline it in an electoral code containing joint and special provisions to ensure a democratic, fair and transparent voting process, compliant with constitutional principles'.

Contrary to the Constitutional Court Decision, to the international recommendations

and to the recurrence of issues arising with each round of elections, no electoral code has been adopted so far. Social realities show that, at least in 2014, our heavy and ambiguous legislation allowed the Electoral Offices to adopt questionable decisions, leading to major difficulties for the voters. These irregularities resulted even in criminal complaints filed by citizens who were unable to exercise their voting rights. Such problems can be avoided by drafting rules which leave less room for interpretation and which are less contradictory.

The code is a tool which could potentially bring valid and uniform solutions for all types of elections, for the problems we face repeatedly: antifraud measures, standard procedures for organising and running elections, transparency of procedures and observer rights or functional mechanisms for finding and identifying irregularities. Many of the amendments brought to the legislation within the last year are welcome, but they are not sufficient. The absence of unity is a loss of time and money for the state and for the citizen. Furthermore, it may result, as it happened in 2014, in preventing the exercise of constitutional rights.

Even though the Parliament commission amending electoral laws has operated within the last year under the name of the Electoral Code Commission, it considers the Electoral Code as the whole set of existing laws, not as a unifying body. Our neighbours from the Republic of Moldova and Bulgaria managed to implement such regulations. We are currently unaware of the faith of this electoral code, but strong and real political will is required to adopt such electoral code. This would solve the problems we face during each round of elections.

From our perspective, the new legislation and the electoral code should bring the clarity, transparency and professionalism required to organise elections in an EU Member State.

11:15-12:45 Working session 2 - Codifying Electoral Legislation: Main Principles

Moderators:
Mr. Oliver Kask, Venice Commission
Mr. Cristian Leahu, Permanent Electoral Authority of Romania

Keynote speaker:
Mrs. Lefterije Luzi
President of the Central Election Commission of Albania

Implementation of the main principles in the Electoral Code of Albania, a guarantee of independent, impartial, professional and transparent electoral bodies

Elections are essential for the proper functioning of a democratic system. Democratic elections are elections that are based on five key principles: equal, free, secret, direct and periodic elections.

Conditions for implementing these principles are:

* respect for fundamental rights,
* electoral law and sustainable by laws,
* the organization of elections by an impartial, independent and professional body.

Just in this last condition but very important and difficult to implement in countries that have a fragile democracy, I want to focus and share with you the Albanian experience.

Some history on the sanctioning of the fundamental principles in the Constitution and the Electoral Law

In the post communist period elections in Albania are held periodically, every four years for local government units and the general parliamentary elections. Until 2000 for each election or referendum, Albanian Parliament approved the law on the organization of elections, which include the electoral system, the number of seats in elected bodies, the formula for the allocation of seats, formation and functioning of election commissions, registration of candidates, rules for financing of electoral subjects, election complaints system etc.

The Constitution of the Republic of Albania approved by referendum in 1998, sanctioned the universal democratic principles, the basic rules for the management of the electoral process, to elected bodies, as well as the principle of sovereignty of the people, through the right to vote and the right to be elected. Governance is based on a system of elections that are free, equal, general and periodic.

Every citizen who has reached the age of eighteen, even on election day, has the right to elect and be elected. There are excluded from the right to vote citizens declared by a final court decision as mentally incompetent. Prisoners who are sentenced and thus deprived of freedom have only the right to elect. The vote is personal, equal, free and secret.

The electoral system for the Assembly, is a regional proportional system, which is based on division of the country into election zones. The Constitution has determined that areas coincide with the administrative division of one of the levels of administrative - territorial organization, called “Qark”. Proportional election system aims that the outcome of the elections for political parties or electoral subjects to be in proportion to the total number of votes won in the election in each constituency.

Proportional electoral system allows to voters the right to only one vote for the political party he prefers. Therefore, the election results remain realistic and in proportion to the number of votes obtained by each political party or electoral subject.

The representative bodies of the basic units of local government are municipal councils and mayors. The territory of the Republic of Albania is divided into 61 local government units, which are municipalities.

Mayors and councils are elected directly by the voters residing in the municipality.

The system of elections to local government bodies is a mixed system between regional proportional system for the election of councils and majority system with one round for the election of the mayors of the municipalities.

The year 2000 made the big difference in which for the first time was unified the electoral law. Pursuant to the principles enshrined in the Constitution, the Parliament adopted the Electoral Code, which regulates the procedures for the organization of general, local elections, rules on the establishment and functioning of the electoral administration and other laws that regulate the organization of political, territorial division of the Republic of Albania etc.

Can we say nowdays that the electoral body in Albania is impartial, independent and professional?

Certainly referring also to international practice, it is difficult to find a perfect model of creation and functioning of electoral bodies, but each electoral commission in its activities should refer to international standards, which are based on a system of free, equal, general

and periodic elections, personal, equal, free and secret vote.

One answer to the question of how we can achieve free elections accepted by all is that the electoral bodies that organize the election administration must prove independence, impartiality and professionalism in their work

Has the management body in Albania reached the desired requested level?

The Indipendence of the MB

Conditions that electoral law should provide for an independent electoral body is the composition and method of discharge of the members as well as its permanent status

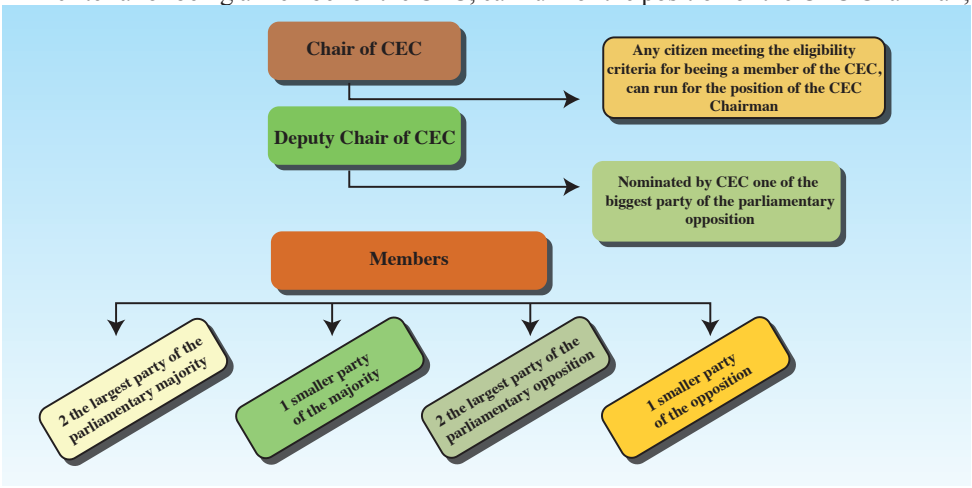
Composition

The Central Election Commission of Albania is the highest independent, permanent state body in charge of the administration of elections.

The formula for the establishment and operation of the CEC, sanctioned in the Electoral Code, provides somewhat impartiality and professionalism. Amendments in the Electoral Code of 2012, in the procedures of electing the Chair of CEC, were courageous for the mentality of the time leading to the first steps in consolidatation of the principles of impartiality and professionalism in the composition of the CEC.

Members of the CEC are nominated by the parliament:

- 3 members are nominated by the largest party of the parliamentary majority;
- 3 members are nominated by the largest party of the parliamentary opposition;
- The nominating subjects introduce not fewer than two candidates for each vacancy and have a legal obligation to select one candidature from each gender;
- The seventh member who is the Chairman of the CEC is elected by Parliament, once the procedure of appointing the members is complete. Any citizen meeting the eligibility criteria for being a member of the CEC, can run for the position of the CEC Chairman;



- Upon its constitution at its first meeting, the CEC elects one of the members of the CEC as the Deputy Chair, on the basis of the nomination of the biggest party of the parliamentary opposition.

Early termination of the mandate of CEC member

The mandate of CEC member and of the chair shall end before its expiry when he/she:

a) engages in political activity at the same time he/she exercises the duty of CEC member;

b) reaches the age of retirement;

c) dies;

d) resigns from office;

e) is found guilty by a final court decision for the commitment of a crime;

f) by acting or failing to act he/she places at risk the activity of concerning the preparation, supervision direction and verification of all aspects related to election or referendum, as well as to the declaration of results;

h) is absent, without a resonable cause, at two consecutive meetings or in an election period for more than 5 days;

Termination of the mandate of a member of the CEC is done by decision of the Assembly, upon the proposal of the CEC. The CEC decision on the proposal for dismissal requires a qualified majority, having voted 5 members.

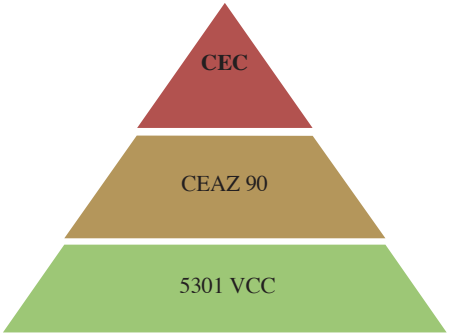
In this way the Electoral Code gives assurances to member of CEC to exercise his/her duty independently, and not influenced by the will of political parties for his dismissal.

Commissions of second and third levels

Members of the Electoral Commissions of the second level are appointed by the CEC based on proposals of political parties, respecting the balance of representation among political parties of majority and opposition.

The same procedure is followed for the appointment of election commissions of the third level (Voting Center Commissions and Couting Teams). These commissions are appointed by CEAZ-s (Commissions of Election Administration Zones)

CEC → CEAZ 90 → VCC 5500



Independence, an important principle to the development of the electoral process, can't be ensured at maximum by the election administration of the second and third level for reasons such as composition, dismissal and replacements due to the will of policy makers, for lack of legal guarantees for safeguarding the exercise of duty.

Considering that the composition of election commissions plays a key role in the independence of bodies that manage and administer elections, Albanian politicians must find the will to an electoral reform which provides complete independence of the election administration at the second and third level, through appointments not based on proposals

of political parties.

Impartiality of the Management Body

One of the most sensitive issues for the functioning of the electoral administration is "impartiality", which means freedom in actions and decision-making, unaffected by the directives of the political parties or the state authorities.

The task of election management institutions, is to ensure that every aspect of the electoral procedure is conducted in an impartial and professional way.

Rules for the Organization and Functioning of the CEC determined by the Electoral Code of the Republic of Albania and the internal regulations, which are by-laws and approved by the CEC.

Underlying the functioning of the CEC as a collegial body is the decision-making process, the validity of acts which, as regards the procedural side, is defined in detail in the Electoral Code.

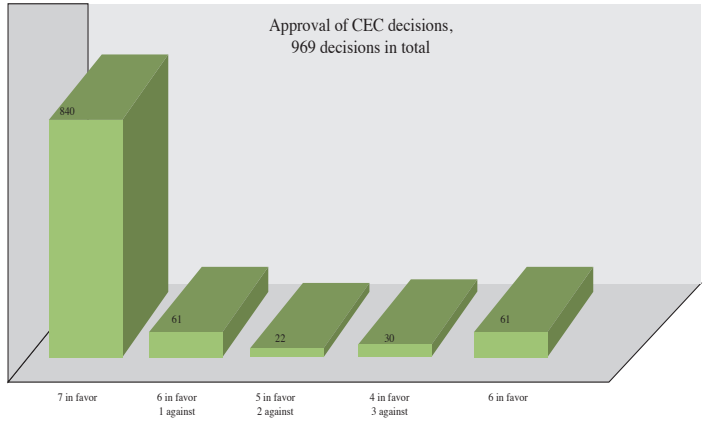
Rules for the Organization and Functioning of the CEC are determined by the Electoral Code of the Republic of Albania and the internal regulations, which are by-laws and approved by the CEC.

The basis for the functioning of the CEC as a collegial body is the decision-making process, the validity of acts which, as regards the procedural side, is defined in detail in the Electoral Code.

CEC decisions are valid when the majority of members vote in favor except some decisions exhaustively expressed by the Electoral Code, the approval of which requires the vote of a qualified majority, 5 members. This is only a legal specification on the validity of the decisions of the CEC. Certainly during the decision-making process has decisions which are voted by 7 votes, or five votes in favor and 2 against and decisions, which are voted 4 in favor and 3 against.

CEC has issued 969 decisions in the last local elections for local government bodies out of which:

- 840 decisions are approved with 7 votes in favor;
- 61 decisions were approved with 6 votes in favor and 1 against;
- 22 decisions were approved with 5 votes in favor and 2 against;
- 30 decisions were approved with 4 votes in favor and 3 against;
- 61 decisions were approved with 4 votes while only 4 members were on duty.



This way of taking decisions, is indication of the diversity of opinions, and personal belief of any member of the CEC. But also decision-making where the minority has a different opinion from the majority, is a feature of democracy and the right to express different opinion.

These provisions are in the Electoral Code for the decision making of commission to a lower level.

Electoral Code giving the electoral commissions at all levels the right of expression of their will in the exercise of legal duties therough decision making establishes the principle of balanced control. Decision can be appealed to the commission of a higher level, or in the Electoral College, according to the procedural rules set out in detail in the Electoral Code. (check and balance).

Professionalism

Selection Criteria

From one election to another, positive achievement are found not only in the consolidation of electoral legal regulations, but also in increasing professionalism and the sense of responsibility of institutions that administer electoral processes.

Even though political balances in the composition of the electoral body is important, the criteria for appointment of CEC members are not less important.

Criteria for appointment of the CEC members defined/determined in the Electoral Code are primarily based on merits.

Any Albanian citizen with the right to vote may be appointed a member of the CEC provided that the candidate fulfils some criteria:

* is older than 35 years old;
* holds a higher education degree;
* has a professional experience over 10 years of work in law public administration/ administration of elections or as a director of non-profit organizations that have as an object of their activity the protection and promotion of human rights and freedoms or the democratic elections;
* has not been a member of any political party, deputy or member of the Armed Forces and State Police in the last 5 years.

The Chair of the CEC has got a 4-year mandate while members of the CEC have a 6-year mandate with the right to be re-elected and exercise their duty full time.

Their function is incompatible with any other political, public or private duty or function, with the exception of teaching. Before taking office, an elected member of the CEC takes an oath before the Assembly in a public ceremony.

The Electoral Code also provides professional criteria, for the members of the second level. In addition to the conditions for being a voter, CEAZs members should be highly educated, not punished for committing any crime, and have not taken any disciplinary measures in the previous electoral processes

Despite the efforts made, absolute independence of elected bodies is achieved if their members are from nonpartisan proposals. Professionalism will get increased if their professional training skills for the elections will be conducted by an independent authority which will be functioning under the supervision of CEC.

Of great importance is the CEC initiative, supported by international partners for the establishment of a Training Centre for Electoral Countinous Training and Education based on law following the successful models in countries with related/approximate features. This Training Center in its mission has also voters education that will conduct strengthening the electoral culture in general, and specifically will prepare and certify the human resources that can get engaged as tomorrow's election commissioners. Procedural guarantee cannot be provided without a sustainable Electoral Code and at the same time a package of consistent bylaws which prescribe rules and procedures of the internal rules and regulation of CEC activity

Internal rules and procedures of CEC

Rules for the organization and functioning of the CEC are determined by the Electoral Code of the Republic of Albania and in the Internal rules and procedures, which are by-laws approved by the CEC. The Electoral Code and Internal rules of procedure on the organization and functioning of the CEC and its administration, ensure important principles as transparency, impartiality, independence, participation, contribution and equal rights of electoral subjects in decision-making processes, continuous improvement of tools of communication between election administration and citizens, promoting institutional capacity building.

Transparency and publication

One of the strategic objectives of the CEC and its legal obligation is transparency in every stage of institutional activity, and the taking of measures to ensure the publication of draft acts, acts of CEC and timely reports.

CEC publishes in the official website notice of meeting, agenda, together with project-acts, any act approved by CEC, decision or instruction, the financial reports of political parties and auditors, along with donor lists. CEC organizes public hearings and meetings at the same time ensures its publication online on the web, in real time. The information published on the official website is easily accessible and organized into clear sections and well oriented to the public.

In the age of the internet and electronic technology developments, the official website of the CEC is a rich source of information and transparency of the activity of the institution.

Central Election Commission through the official website and monitors LED (big screens), directly related to the Data Center of the CEC, reports results online in the last

elections, the results which were reported by the media and followed by the public in real time. This led to the public accurate and correct information with the preliminary results without causing any confusion in the information transmitted.

Financial Autonomy of CEC

An important element for the independence of the body administering the election is its financial independence. CEC has its own financial independence as stipulated in the Electoral Code. The budget of the CEC constitutes a separate budget line in the state budget. In the budget of an election year, the Assembly shall make available to the CEC funds for the preparation, conduct, supervision, and other aspects of the electoral process. In case the budget year is not an election year, to the CEC are made available sufficient funds for the functioning of this institution, and for the exercise of its responsibilities under the law. The CEC administers the funds made available as public funds as well as the other funds from legitimate sources in the elections, according to the financial laws and regulations in force.

The financial activity of CEC is always public.

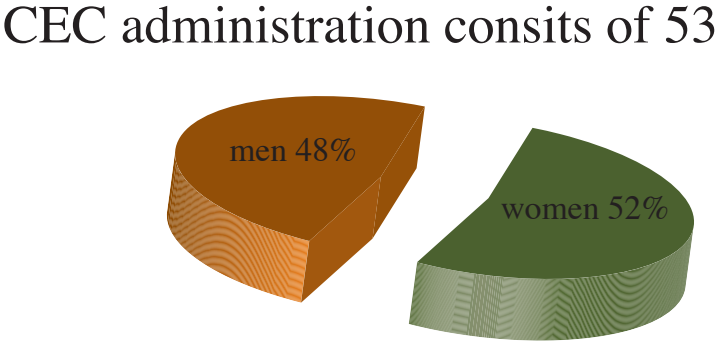
Central Election Commission, for the functioning and performance of duties arising from the law has its own administration composed of civil servants.

The Central Election Commission has the legal power to approve the structure, organogram and salary scale of its administration.

At the top of Administration is the Secretary General who is appointed by the CEC. The performance of administration is clearly set out in detail in the internal Rules and regulations of the CEC, and in job descriptions, as acts issued in accordance with applicable law.

The administration, in fulfillment of its functional duties is guided by the principle of professionalism, motivation, effectiveness, cooperation and transparency of activity, services and activities of the institution.

The structure of the CEC administration consists of 53 employees out of whom 28 are women and 25 are men. In the election period, on the basis of the planning for additional human resources to each sector of the administration, CEC employs about 300 part-time employees who work for several months.



In this context for the consolidation of the independence of the institution, the upcoming electoral reform in Albania should strengthen the role of the CEC by providing budget and sufficient human resources to conduct timely and efficiently the competences granted by the law.

CEC has begun to organize, roundtables and workshops to analyze every aspect of the electoral process that has just passed, pushing Albanian policy makers in this way for a substantial electoral reform, based on professional and technical criteria for elections. So embracing of best experiences for electoral reform of the countries participating in this event is of special significance for us.

Thank you!

Keynote speaker:
Mr. Daniel Marius Morar
Judge,
Constitutional Court of Romania

Electoral Law in Romanian Constitutional Court Jurisprudence,

Electoral laws have frequently been subject to constitutional inspections. The relatively new jurisprudence, starting 2010, is used for reference purposes, in view of the criticism and of the recitals issued by constitutional courts, being focused on emphasizing several obligations of the lawmaker in this matter, as determined by finding a number of amendments to the electoral legislation and the deficiencies in the electoral system, identified during the Parliament elections of 2008, as well as the presidential elections of 2009. In this jurisprudence, the Constitutional Court emphasized the need to re-examine the entire electoral legislation, mentioning the deficiencies and the principles to be considered by the lawmaker for remedy purposes and, additionally, constantly stressed the need for stability in the laws adopted on this matter, as an expression of the legal certainty principle.

Thus, in 2010, the Court issued the *Decision no.61 as of January 14th,2010,* published in the Official Gazette of Romania, Part I, no. 76 as of February 3rd, 2010, according to which the legislation in force (Law no. 35/2008 for the elections to the Chamber of Deputies and the Senate) 'has a number of faults and, as such, requires reconsideration from the perspective of the Parliament elections of 2012, allowing, in all matters, the organising and running of democratic elections in Romania'. In this regard, the Court suggested the lawmaker, as legal grounds, to correctly assess the financial, political and social realities of the country, the role of political parties in the electoral process, as well as the need of Parliament rationalization. Given this context, the Court recommends regulating a particular type of voting, adapted to the conclusions drawn and which tallies to the types of voting found in most European states. Furthermore, the Court stressed the need to re-examine the entire electoral legislation on elections to the Chamber of Deputies and the Senate, and for the President of Romania, on elections to the European Parliament, as well as on elections to the local public administration authority, and to outline it in an electoral code containing joint and special provisions to ensure a democratic, fair and transparent voting process, compliant with constitutional principles[1]. Moreover, the Court noted that *'within the focus of electoral legislation review, increased attention is required for granting Romanian citizens, with voting rights but residing abroad, and not only, the possibility to exercise voting rights, within a special procedure, including electronic vote, to be carried out in correlation with the voting hours, according to official Romanian time'*.

1. See also the Decision no. 39 as of December 14th, 2009, published in the Official Journal of Romania, Part I, no. 924 as of December 30th, 2009

Further on, the *Decision no.682 as of June 27th, 2012,* published in the Official Gazette of Romania, Part I, no. 473 as of July 11th, 2012, the Court emphasized that 'since the quality of political representation depends increasingly on technical issues such as the electoral system, the choice of such system must reflect the realities and the specific situation of the state, the change in voting type, since this is not only a change in assigning terms for deputies and senators, but also *a new concept on the entire electoral system'*.

The Best Practices Code in Electoral Matters - Guidelines and explanatory memorandum, adopted by the European Commission for Democracy through Law, during the 52nd Plenary Session (Venice, October 18th-19th, 2002), was constantly used in the Constitutional Court jurisprudence as a benchmark establishing a series of standards which the domestic law must meet. With regards to the legal force of the Code provisions, the Court noted, through Decision no. 51 as of January 25th, 2012, published in the Official Gazette of Romania, Part I, no. 90 as of February 3rd, 2012, that 'this document does indeed have no binding character, but its recommendations are coordinates for democratic vote, and under this document, states - characterized as part of the same type of regime - can express their free option on electoral matters, according to the fundamental human rights, in general, and, particularly, of the right to be elected and to elect'. Nonetheless, the Best Practices Code in Electoral Matters is deemed as relevant international document, as well, in the jurisprudence of the European Court of Human Rights (for instance, the Decision ruled in Petkov et al vs. Bulgaria as of June 11th, 2009 or the Decision ruled in Grosaru vs. Romania as of March 2nd, 2010).

We hereby aim at presenting some of the principles acquired from the Constitutional Court jurisprudence with regards to electoral law matters. The constitutionality inspection was also focused on the analysis of electoral laws, as well as on certain special provisions, and it addressed both the criticism on extrinsic unconstitutionality issues, as well as the criticism on intrinsic unconstitutionality issues in the rule of law.

I. In relation to criticism on extrinsic unconstitutionality issues, the Court stated as follows:

- The regulation of certain provisions which for a legislative solution inconsistent with the will expressed by the people by referendum infringes the constitutional provisions of art.1, art.2 and art.61.

Pursuant to Decision no. 37 as of November 26th, 2009, published in the Official Gazette of Romania, Part I, no. 923 as of December 30th, 2009, the Constitutional Court acknowledged compliance with the procedure on organising and running the national referendum on November 22nd, 2009 and confirmed its results on the two matters of national interest: creating a single-chamber Parliament and reducing the number of Members of the Parliament to a maximum of 300.

The first legislative regulation in the matter of parliament elections, after confirming the referendum results, aimed at conducting an *a priori* constitutionality inspection. Thus, by the Decision no.682 as of June 27th, 2012, the Court observed the unconstitutionality of the law falling under the scope of inspection, demonstrating that the 'referendum, regardless of its nature - decision making or advisory - such as the national referendum of 2009, is a method of exercising national sovereignty'. Art. 2 of the Constitution provisions in this respect that 'the national sovereignty shall reside within the Romanian people, being exercised by means of their representative bodies, resulting from free, periodical and fair elections, as

well as by referendum.' With regards to this text of the fundamental law, the Constitutional Court states that 'it expresses the will of the Romanian Constituent Assembly, according to which, within representative democracy, national sovereignty shall indeed reside with the Romanian people. However, it cannot be exercised in a direct, immediate way, at individual level, being exercised indirectly, by mediation and by electing representative bodies. The method of establishing the latter expresses the national sovereignty manifested by the will of the citizens, resulting from free, regular and fair elections, as well as by referendum'.

The Court pointed out 'that the absence of a procedure for further action in case of the consultative referendum is not deemed as lack of effects to this referendum. It would be inadmissible, under any rule of law, to ignore the will of the people, expressed by a large majority (here, 83.31% of the valid votes), by the elected representatives of the people. […] Hence, even though, in theory, the elected representatives of the people are free to decide differently from the will of the people, in practice, they comply with this will'.

Consequently, 'the difference between a consultative referendum and a decision making referendum does not rely, mainly, on whether the will of the people is complied with or not-elected officials cannot ignore the will of the people, since this is an expression of national sovereignty -, but in the nature of the referendum effect (direct or indirect). As opposed to the decision making referendum, the consultative referendum has indirect effect. It requires intervention from other bodies, most often legislative bodies, to implement the will expressed by the election body'.

- The lack of reasoned grounds for the legislative act determines the infringement of the Constitution provisions comprised under art.1 paragraph (5), according to which, 'in Romania, the observance of the Constitution, its supremacy and the laws shall be mandatory, as well as of art.147 paragraph (4), according to which the decisions of the Constitutional Court are in general binding.

On May 22nd, 2012, the Parliament adopted the Law on amending and supplementing art. 48 of Law no. 35/2008 for the elections to the Chamber of Deputies and the Senate, and for amending and supplementing Law no. 67/2004 for electing local public administration authorities, of Law no. 215/2001 on the local public administration and of Law no. 393/2004 regarding the status of local elected officials. The Explanatory Memorandum accompanying the draft act only stipulated that the amendments to the Law no. 35/2008 'aim at eliminating discriminatory elements, by regulating the term for candidates to becoming a Member of the Parliament having obtained the largest number of valid votes in the uninominal college for which they applied'.

By the *Decision no.682 as of June 27th, 2012,* the Court acknowledged that the provisions of art. 6, Law no. 24/2000 on the legislative technique norms for drawing up legislative acts, republished in the Official Gazette of Romania, Part I, no. 260 as of April 21st, 2010, as further amended and supplemented, establish the obligation to substantiate legislative acts. Pursuant to paragraph (1) of art. 6, Law. 24/2000, the solutions comprised in the legislative act draft 'shall be well grounded, taking into consideration the social interest, the legislative policy of the Romanian state and the requirements for correlating it with the whole set of domestic regulations, as well as for harmonising national legislation with the EU legislation and the international treaties Romania is a party to, as well as with the jurisprudence of the European Court for Human Rights', and, pursuant to paragraph (2) of the same article, 'in laying the foundations of a new regulation, one shall proceed considering the present

and prospective social desiderata, as well as the shortcomings of the legislation in force'. Considering the approach of the legislature as groundless pursuant to legal requirements on the legislative procedure, nor given the facts noted by the Court in its jurisprudence, namely to address the financial, political and social realities of the country, the role of political parties in the electoral process, as well as the rationalization of the Parliament, the constitutional court remarked the unconstitutionality of the criticised law, overall.

- The amendment of electoral laws within less than one year before elections infringes the principles provisioned by the Constitutional Court in implementing art.1 paragraph (5) of the Constitution, construed according to the provisions of the Convention for the Protection of Human Rights and Fundamental Freedomsg the Best Practices Code in Electoral Matters adopted by the Venice Commission.

Legislative instability in electoral matters, determined by the amendment of this legislation, particularly, during election years, has been found not only as a legal uncertainty factor, but as a cause of deficiency hereto, acknowledged upon its implementation. By the Decision no.51 as of January 25th, 2012, published in the Official Gazette of Romania, Part I, no. 90 as of February 3rd, 2012, the Court admitted the unconstitutionality objection of the Law for organizing and running elections to the local public administration authorities and elections to the Chamber of Deputies and the Senate of 2012, as well as for amending and supplementing title I of Law no. 35/2008 for the elections to the Chamber of Deputies and the Senate amending and supplementing Law no. 67/2004 for electing local public administration authorities, of the Law no. 215/2001 on the local public administration and of Law no. 393/2004 regarding the status of local elected officials and it sanctioned the amendment of electoral legislation in a year of elections, by the criticized law, of the provisions of art.1 paragraph (5) of the Constitution, so that the amendments brought by law have generated 'additional difficulties to the authorities appointed for its application, in terms of adaptation to the new established procedure and the technical operations that it involves', 'difficulties in exercising voting rights, difficulties which may result, in the end, in restraining exercise of this right'.

II. With regards to the criticism on intrinsic unconstitutionality matters, the Court stated the following:

- A different representation in the Parliament with regards to the ethnical structure of electoral districts (counties) infringes the provisions of art. 62 paragraph (2) of the Constitution.

The law amending and supplementing art. 48 of Law no. 35/2008 for the elections to the Chamber of Deputies and the Senate, and amending and supplementing the Law no. 67/2004 for electing local public administration authorities, of Law no. 215/2001 on the local public administration and of Law no. 393/2004 regarding the status of local elected officials brought a new amendment: *'In the event that no candidate of electoral competitors obtains a term according to paragraph (1), in a county where the number of inhabitants from the Romanian community or a national minority exceeds 7% of the county total population, according to the latest census, the candidate with the best results from among the electoral competitors of such community shall be granted a term in the Chamber of Deputies. This term is assigned in addition to the number of terms corresponding to said county.'*

By the *Decision no.682 as of June 27th, 2012,* ruled following an *a priori* inspection, the Court noted that the phrase 'under electoral law', to which the constitutional provision

of art.62 paragraph (2) refers to, means the regulation for assigning a deputy seat to which citizen organisations of national minorities which failed to obtain the number of votes for representation in the Parliament are entitled to, and it cannot be construed as allowing them, under the electoral law, to obtain a larger number of deputy seats other than by 'universal, equal, direct, secret and freely expressed' vote. Whereas, according to the criticised legal provisions, citizen organisations of national minorities which fail to obtain the number of votes for representation in the Parliament may obtain a larger number of deputy seats. This number is not established under the principle of representativeness, but considering the ratio of national minorities or of the Romanian community within the electoral district, with the minimum 7% threshold, respectively, set forth on a random basis by the legislature. The nature of this circumstance may violate the provisions of art. 4 paragraph (1), designating that 'the State foundation is laid on the unity of the Romanian people and the solidarity of its citizens' and of art.62 paragraph (2) of the Romanian Constitution.

- In case of termination of a deputy or senator term, only the political forces with electoral vocation shall be eligible for by-elections, namely the ones who also participated to general elections and which, based upon the voting results, are represented in the Parliament; electoral law may stipulate the requirements for applying as an independent candidate, but it cannot exclude an independent candidate from the electoral process, in case of by-elections, without infringement of the fundamental rights granted by the Constitution, according to art.37.

Art. 48 paragraph (17) of the Law no.35/2008 for the elections to the Chamber of Deputies and the Senate, and amending and supplementing Law no. 67/2004 for electing local public administration authorities, of the Law no. 215/2001 on the local public administration and of the Law no. 393/2004 regarding the status of local elected officials: *'(17) Only political parties and citizen organisations of national minorities which failed to reach the electoral threshold stipulated in this title, during general elections, individually or in a political or electoral alliance, shall be eligible to participate in by-elections. By-elections shall be carried out in one round, and the candidate with the best results shall be declared winner.'*

By the *Decision no.61 as of January 14th, 2010,* the Court noted that 'parliamentary by-elections shall be held in case of termination of the term for a Member of the Parliament. Said elections are held for filling-in vacant terms, however, in compliance with the Parliament structure established after the last general elections. Under the sovereignty principle and according to the will of electors, as expressed during general elections, compliance with the same condition for meeting the electoral threshold is required in this stage of by-elections, subsidiary and complementary to general elections, based on which any political party obtained representation in the Parliament. The admission of an application to by-elections from a party with no representation in the Parliament required the amendment of its political configuration, conflicting with the vote expressed by the electoral body during general elections, which led to establishing the supreme representative body of the Romanian people, with a particular political structure, which can be solely amended in the cases and under the conditions provided for by law'.

The Court acknowledged that this legal condition, in addition to the general requirements for the right to be elected, allowing an individual to be elected for a term as deputy or senator was grounded by 'their importance, by the role of representative bodies in exercising the sovereign power of the people and by the idea of a responsible and efficient representation'.

Thus, we cannot claim that the provisions of art.48 paragraph (17) of Law no. 35/2008 infringe the right to be elected, in its essence, but it conditions its exercise to meeting another requirement, equally applicable to candidates of parliament by-elections.

By the *Decision no.503 as of April 20th, 2010,* published in the Official Gazette of Romania, Part I, no. 353 as of May 28th, 2010, the Court showed that 'meeting the electoral threshold indicates a certain level of representativeness for political parties, imposed by the principle of sovereignty. However, for independent candidates, such condition would be absurd, being replaced with the request for submitting the list of supporters […]'. Therefore, for general parliament elections, the legislature stipulated this preliminary condition, required for submitting the independent application, thus, together with the exercise of the right to be elected. Nonetheless, during parliament by-elections, the legislature stipulates under the category of competitors to this electoral stage only political parties and citizen organisations of national minorities having reached the legal electoral threshold during the general elections, individually or in a political or electoral alliance. 'Hence, this does not assume setting boundaries or circumstances for exercising the right to be elected, but is cancellation by non-recognition, legal non-regulation.'

The Court noted that, although 'the criticised legal text does not explicitly and directly stipulate the exclusion of independent candidates from parliament by-elections, the phrase *'only the parties and the organisations',* which is restrictive and imperative, logically excludes any other interpretation. Although taking the form of a legislative omission, the unconstitutionality fault found cannot be ignored, since such omission is the one generating an *eo ipso* infringement of the constitutional right to be elected. Hence, the Constitutional Court, under art. 142 of the fundamental Law, guarantees the supremacy of the Constitution, which assumes, among other, full compliance of law with the Constitution and the control of constitutionality of the laws. In conclusion, electoral law may set forth the requirements for eligibility of an individual as independent candidate (establishing a financial deposit, a certain number of supporters), but, in case of by-elections, it cannot exclude an independent candidate, under any circumstance, without infringing the fundamental constitutional right set forth by art. 37.

- Organising two categories of election rounds on the same date infringes the right to be elected, provisioned by art. 37 of the Constitution; a cumbersome voting procedure, determined by the large number of voting ballots, as well as different public authorities on which the voters should express their option, at the same time, may result in preventing the exercise of their voting right.

Art. I, thesis one of the Law on organizing and running elections to the local public administration authorities and of elections to the Chamber of Deputies and the Senate of 2012, as well as amending and supplementing title I of Law no. 35/2008 for the elections to the Chamber of Deputies and the Senate, and amending and supplementing Law no. 67/2004 for electing local public administration authorities, of Law no. 215/2001 on the local public administration and of Law no. 393/2004 regarding the status of local elected officials stipulated: *'(1) Notwithstanding the provisions of art.26 paragraph (1), art. 38 paragraph (1), art.69 paragraph (1) and art.93 paragraph (1) of the Law no. 215/2001 on local public administration authorities, republished, as further amended and supplemented in 2012, the elections to the local public administration authorities shall take place on the date of elections to the Chamber of Deputies and the Senate, set forth by Government Decision, upon the*

suggestion of the Ministry of Internal Affairs and of the Permanent Electoral Authority.[…]'

By the *Decision no.51 as of January 25th, 2012,* the Court noted that 'there are situations when a candidate failing to win a term as local official (mayor or county council chairman) shows intent to participate in national elections for a term as Member of the Parliament (deputy or senator), which is perfectly possible, however, only if the elections are held on different dates.' The criticised law stipulated that, in the event of organizing and running elections to the Parliament on the same date as the elections to the local public administration authorities, an individual is prohibited from being both a candidate for the position of mayor and for the term of deputy or senator, at the same time, as well as for the position of chairman of the county council and for a term of deputy or senator, which leads to restraining the right to be elected for said individual. Once more, 'this regulation shall cause difficulty which, in the end, shall restrain the exercise of this right. Hence, by the holding elections to the Chamber of Deputies and the Senate on the same date with elections to the local public administration authorities, citizens shall be required to achieve a much more complex task […]. The complexity of voting operations may result in excluding voters who, regardless of their will, shall be unable to vote during the time interval affected by the exercise of voting rights, until the closing of voting boxes.' Therefore, the voting procedure must remain as simple as possible, to fully allow voters to freely express their will and thus provide effective voting rights and free choices.

- The principle of election regularity, namely that the term of a representative assembly should not exceed a particular time frame set forth by the Constitution or by the law.

Art. I, thesis two of the Law on organizing and running elections to the local public administration authorities and of elections to the Chamber of Deputies and the Senate of 2012, as well as amending and supplementing title I of Law no. 35/2008 for the elections to the Chamber of Deputies and the Senate, and amending and supplementing Law no. 67/2004 for electing local public administration authorities, of Law no. 215/2001 on the local public administration and of Law no. 393/2004 regarding the status of local elected officials stipulated: '(1) Notwithstanding the provisions of art.26 paragraph (1), art. 38 paragraph (1), art.69 paragraph (1) and art.93 paragraph (1) of the Law no. 215/2001 on local public administration authorities, republished, as further amended and supplemented in 2012, the elections to the local public administration authorities shall take place on the date of elections to the Chamber of Deputies and the Senate, set forth by Government Decision, upon the suggestion of the Ministry of Internal Affairs and of the Permanent Electoral Authority. *'The acting mayors, county council chairmen, local advisors and county advisors shall serve their term until the newly elected officials are validated'.*

Democratic governance requires regular decisions from the people, through the electoral body, so that the elected representatives reflect the will of the people, informing them on the political, financial and social changes occurring during a particular interval. The Court stated, through *Decision no.51 as of January 25th, 2012* that, given the importance of this principle, exception - leading to the extension of terms for elected officials beyond the limits provided by law - are strictly and exhaustively provided by the Constitution and by the law and concern extreme situations, of particularly different nature, such as the state of mobilization, war, siege or emergency, natural disaster, extremely serious disaster or debacle. Consequently, the causes of term extension, which are not covered by any of the situations that would justify, according to the Constitution, the extension of terms for

elected officials, infringe the principle of election regularity and the provisions of art.1 paragraph (5) of the Constitution, which sets forth the obligation of compliance with the Constitution, its supremacy and with the laws.

- The type of round for electing a local official determines the legal regime applicable for such term.

Art.9 paragraph (2) letter. h1) of the Law no.393/2004 regarding the status of local elected officials stipulates that: *'(2) The position of a local or county advisor shall be rightfully terminated before expiry of the normal term validity, under the following cases: […] h[1]) the loss of membership to a political party of an organisation for national minorities for which the individual was elected.'*

The Court constantly argued (*Decision no. 280 as of May 23rd, 2013,* published in the Official Gazette of Romania, Part I, no. 431 as of July 16th, 2013, *Decision no.761 as of December 17th, 2014,* published in the Official Gazette of Romania, Part I, no. 46 as of January 20th, 2015) that the sanction with termination of a term, regardless of how the membership to a party is cancelled (resignation or expulsion), only applies to local and county officials, since they are elected by a list voting system. Hence, the vote expressed by the electoral body considered the political party, as a whole, namely the list submitted by the party, not individual candidates, which also determined the political configuration of the local/county council, reflected by the number of terms obtained by the political parties. A contrary legislation solution - which would not condition the termination of a local or county advisor term by the loss of membership to the organisation for national minorities for which the individual was elected - may only be accepted provided that the type of round for electing local or county advisors is modified, where no such regulation on any other type of round exists. By fact, the situation is different in case of mayors and county council chairmen, in respect to which the round is uninominal, given that the Court motivation considered the constitutionality of termination of a mandate (resignation from the political party), without anticipating that the legislature could not exclude or change this method of termination. Thus, if for the local or county advisors the termination of mandate as a result of losing membership to the political party for which the individual was elected is an implicit and direct requirement of art. 8 paragraph (2) of the Constitution, the same conclusion cannot be made with regards to mayors or local council chairmen, where the legislature decided to terminate the mandate in case of resignation from the political party, without such option being derived (due to the uninominal round for which they are elected), implicitly or directly, from art. 8 paragraph (2) of the Constitution.

The Court also noted, by the *Decision no. 915 as of October 18th, 2007,* published in the Official Gazette of Romania, Part I, no. 773 as of November 14th, 2007, that the above-stated provisions 'aim at preventing the political migration from one political party to another, providing stability within the local public administration, to express the political configuration, as resulting from the will of the voters'.

On the other hand, noting that, in the case of local advisors, without making a distinction on whether or not the membership to the party is attributable, the measure of expulsion from the party results in an extremely severe legal effect - termination of the term, the Court acknowledges that the failure to appeal, before the court of law, such measure ordered without verifying compliance with the statute and statutory procedures is contrary to the right of access to a court of law and the right set forth by art.37 of the Constitution shall be

deemed as lacking the legal content guaranteed by the rule of law and by the democratic law (See the Decision no.530 as of December 12th, 2013, published in the Official Gazette of Romania, Part I, no. 23 as of January 13th, 2014).

- The obligation to exceed a certain threshold does not infringe the constitutional principle of equality before the law and public authorities.

Art. 96 paragraph (1) and (2) of the Law no. 67/2004 for electing local public administration authorities specifies: *'(1) For assigning the terms of advisor, the district electoral office sets forth the electoral threshold for the district, comprising of 5% of the total votes expressed hereto. In case of political alliances or electoral alliances, the 5% threshold is supplemented by 2%, for a second member of the alliance. For alliances having at least 3 members, the electoral threshold shall be set to 8%.*

(2) The terms are assigned only considering the political parties, the political alliances and the independent candidates who succeeded in meeting the electoral threshold stipulated under paragraph (1).'

Establishing an electoral threshold 'is justified by the need of providing voters with a representativeness degree in respect to future local advisors, certifying that they shall promote, within the local council, the interests of a sufficiently important number of citizens who, upon voting, deemed that their elected officials could adequately promote the interests of the local community' *(Decision no.252 as of May 6th, 2014,* published in the Official Gazette of Romania, Part I, no. 533 as of July 17th, 2014).

The Court stated that instating the obligation to exceed a certain threshold does not prevent the constitutional principle of equality before the law and public authorities if the competitors are an independent candidate, on the one hand, and a political party, on the other hand, namely an individual entity and an associative body established based upon a special law - Law no. 14/2003 on political parties -, which, pursuant to art. 8 paragraph (2) of the Constitution contributes to defining and expressing the political will of the citizens. In the event that, according to art. 2 of Law no. 14/2003, republished in the Official Gazette of Romania, Part I, no. 347 as of May 12th, 2014, political parties promote the national values and interests by their activity, undeniably, the range of actions which the political party is able to carry out, by its organisation form, based on the right of free association, cannot be compared to that of a single individual, an independent candidate, being broader. For this reason, naturally, the legislature should condition the participation of independent candidates in assigning terms by an electoral threshold to be reached, hereby guaranteeing representativeness.

In conclusion, given the recommendations made and the principles stated in its jurisprudence, the Constitutional Court, in case of potential complaints by way of unconstitutionality exceptions, shall be required to analyse the extent to which the organic legislature has complied with constitutional requirements in adopting the new electoral laws (Law no. 115/2015 for electing local public administration authorities, amending Law no. 215/2001 on the local public administration, as well as amending and supplementing Law no. 393/2004 regarding the status of local elected officials and Law no. 208/2015 on the elections to the Senate and the Chamber of Deputies, as well as for organising and running the Permanent Electoral Authority).

Keynote Speaker:
Ms. Nana Kalandadze
Programme Officer,
International IDEA

Promoting Gender Equality in Electoral Processes

- A central hypothesis: streamlined, coherent electoral codes may promote enhanced access, understanding, scrutiny and public review of the applicable legal framework by all, including contestants, voters, observers and other relevant stakeholders.
- New norm creation as part of the codification? Does codification require comprehensive review of relevant laws? Or if not required, is it likely that codification process and related discussions may lead to increased public scrutiny and public input into the substance of the new code?

Promoting responsiveness, inclusivity and accountability of elected institutions

- Public confidence and trust in elected institutions shows declining levels across the world, and Europe is not an exception.
- Promoting legitimacy of elected institutions through increased openness, inclusivity and outreach to all segments of the population, particularly to the politically marginalized sections of society.
- Declining levels of political party membership support for political parties in general, and the voter turnout.
- Political parties seem to be at the center stage of this public dissatisfaction.

Promoting equal rights and opportunities in elections

Subjects of regulation:
- Political parties as key gatekeeprs of political participation and representation;
- Electoral authorities/EMBs;
- Electoral justice institutions.

Global and regional trends

- Women globally comprise about 23 % of elected parliamentarians - about 10 % increase from 1995;
- 45 countries have reached or crossed the threshold of 30 %, while around 70 countries remain below the 15 % threshold;
- Regional trends in Central and Eastern Europe - between low 10%s to high 30 %s - has largely stayed similar over the past decade (electoral systems and special measures).

Creating a level playing field for women and men in elections

- At the global level - UN CEDAW Convention, Article 7, General Recommendation no. 23 *''To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government''.*
- Council of Europe Code of Good Practice in Electoral Matters - Legal rules requiring a minimum percentage of persons of each gender among candidates should not be considered discriminatory; PACE Res 1489 (2006); CM Rec. 2003.
- OSCE commitments - ministerial council decision 07/09:

"consider possible legislative measures, which would facilitate a more balanced participation of women and men in political and public life and especially in decision-making."

Gender and electoral systems

- **district magnitude** (the number of representatives elected in one electoral district);
- **the electoral formula** by which the winner of a seat is chosen;
- **the ballot structure** which determines whether the voter votes for a candidate or a party.

The evidence so far suggests that PR systems with well designed rules are friendlier to gender balance in politics, then other forms:
2014 results - PR systems resulted in 25 % women, mixed - 18 % and majority/plurality - 14 %.

Promoting equal rights and opportunities in elections

- 68 countries globally provide gender-based rule in the candidate nomination or composition of the highest elected body of legislation - quota rules, gender parity rules, minimum targets, recommended approaches;
- 44 from these relate to legislated candidate quota or gender parity requirements as part of the electoral laws at national or sub-national levels;
- 12 countries with legislated candidate quotas require a strict alternation between female and male candidates on candidate lists for at least one level/house within the legislature (known as zipper or zebra systems);
- a significant number of these measures remain insufficient to transform the political and electoral landscape into a level-playing field for women to compete and garner success in large numbers;
- 34 countries (57 per cent) stipulate sanctions for non-compliance in the form of rejecting the entire list or refusing to register the section/candidates on the list that conflict with the provisions of the law; only eight countries (13 per cent) provide for a financial sanction;
- 22 countries globally provide for a measure linking the provision of public funding for political parties, including for political campaigns, with a certain gender-based criteria - either as a sanction for non-compliance with gender quota provisions or as an additional incentive.

Gender and political finance

- Individual contributions overwhelmingly comprise the most important source of financing for all candidates, both women and men.
- The average size of individual donations to most female candidates continues to be smaller than the average donation to male candidates.
- The vast majority of large donors to political campaigns are men.

- Female candidates generally depend upon female donors for financial viability and win monetary support from men only as their odds of election approach certainty.
- Women who win raise significantly more money than women who lose, while male winners collect only marginally more money than their losing counterparts.

Differential norms contained in different laws

- Often gender equality and non-discrimination laws provide for broad principles of equality in political and public life, but fail to be reflected in electoral legislation.
- Variety of practices at different levels with no consideration of actual needs (national vs. sub-national).

Outlook and recommendations

- Inclusive dialogue around legislative reforms on elections.
- Holistic approach to strategies for political empowerment of women and promoting gender balance in political and electoral fields.
- Positive obligation to enact declarations of will through concrete action.

14:00-15:30 Working session 3 - Codifying Electoral Legislation: the Procedure

Moderator:
Mr. Marian Muhuleț,
Permanent Electoral Authority
of Romania

Keynote Speaker:
Mr. Gaël Martin-Micallef
Legal Officer at the Elections Division
of the Venice Commission

Harmonisation, a key word
Strengths and advantages of a unified electoral code

Dear Mr. Chairman,

Dear colleagues from the Permanent Electoral Authority of Romania and from central election commissions,

Ladies and Gentlemen,

It is a great honour for the Venice Commission to co-organise this special event and for me to be here today with you to participate in this important debate.

This third working session focuses on the procedure to codify electoral legislation. In the first part, I will briefly introduce the principle of stability that has been exhaustively developed by Péter Paczolay in the first working session. In the second part of my presentation, I will present for your consideration the weaknesses of having separate electoral laws as well as the strengths of codified electoral legislation. For this purpose, I will quote a few countries where the Venice Commission issued opinions on electoral legislation with a particular focus on Georgia, where the Venice Commission, jointly with the OSCE/ODIHR, assisted the lawmakers in codifying the electoral legal framework; and Ukraine, where the challenge remains to unify the electoral legislation.

The principle of stability of electoral law

When it comes to the principles, the Code of Good Practice in Electoral Matters of the Venice Commission is the reference document of the Council of Europe. The Code of Good Practice is an internationally recognised non-binding document. As underlined this morning by different key-note speakers, the Code of Good Practice establishes key principles in the electoral field and conditions for implementing these principles. In spite of being a non-binding document, the Code of Good Practice has been recognised by the Committee of Ministers of the Council of Europe, endorsed by the Council of Europe's Parliamentary Assembly and quoted in a number of decisions of the European Court of Human Rights.

When addressing the conditions for implementing the key principles of the European Electoral Heritage, the Code of Good Practice recommends that electoral rules have at least the rank of a statute, meaning that they should be regulated at the legislative level or at a level higher than ordinary law. Moreover, the fundamental elements of electoral law, which include, among other elements, the electoral system and the composition of the electoral administration, should not be open to amendment less than one year before an election.

Ensuring stability and establishing key principles in law for holding democratic elections may not be sufficient to ensure smooth electoral cycles. Codifying electoral legislation appears indeed as a key element to ease the organisation of smooth elections, notably for electoral management bodies. The procedural aspects of electoral legislation are of upmost importance to ensure such smooth electoral cycles.

We are now talking about procedures, but what do procedures mean? In the context of this workshop, procedures should be understood as the procedural aspects of elections in a broad sense. They include all the rules aimed at organising elections. Procedures therefore include, inter alia: voter registration, candidate registration, duration and organisation of the electoral campaign, financing of political parties and campaigns.

Separate laws for each type of elections imply a number of rules of diverse nature and potentially conflicting ones. This has a direct impact on the work of electoral commissions while organising elections, especially in situations where different electoral processes overlap.

Weaknesses inherent to sparse electoral laws v. strengths of a unified electoral legislation

Let us now quote a few opinions of the Venice Commission on the issue of unifying electoral legislation, some of them jointly issued with the OSCE/ODIHR, complementing the references made earlier today by Péter Paczolay.

Regarding Ukraine, the Venice Commission recommended on several occasions, jointly with the OSCE/ODIHR, to unify the existing electoral laws. In this spirit, the draft Election Code submitted in June 2010 to the Venice Commission by a working group of the Verkhovna Rada - the parliament of Ukraine - was welcomed. The opinion states that *"The Venice Commission welcomes the commitment of the Ukrainian authorities to reform the electoral legislation and adopt an electoral code that will unify all electoral laws of Ukraine."*[1] Unfortunately, Ukraine still has different electoral laws with sometimes contradicting provisions. Since 2010, the Venice Commission and the OSCE/ODIHR reiterated their concerns.

1. CDL-AD(2010)047, para. 58.

In the joint Opinion of 2011 on the draft Law on election of people's deputies of Ukraine, the Venice Commission and OSCE/ODIHR stated that: *"[…] at times the draft law is overly complex and could be improved by stating provisions more clearly so that they are clearly understandable to all stakeholders in an electoral process. The complexity of the draft law reinforces the need for codification of all election legislation into a single unified law."*[2]

Similarly, the 2013 joint Opinion on the draft amendments to the laws on election of people's deputies and on the Central Election Commission and on the draft Law on repeat elections of Ukraine underlines the *"need to adopt a single unified electoral code to ensure that uniform procedures are applied to all elections."*[3] The opinion also states that *"[t]he draft amendments concern only the elections for the parliament in Ukraine. It, therefore, does not meet […] the Venice Commission['s] long-standing recommendation that all electoral rules should be codified in a single unified electoral code to ensure that uniform procedures are applied to all elections. […] Unified electoral codes can facilitate the realisation of [the key principles of the European Electoral Heritage] by ensuring consistency in legal text and implementation of law."*[4] The Venice Commission once again reiterated this recommendation in another opinion on Ukrainian electoral legislation in 2013.[5]

Georgia adopted a unified electoral code in 2002. In its opinion of May 2002, the Venice Commission welcomes the harmonisation of the electoral legal framework of Georgia: *"the new electoral law of Georgia integrates the previous legal acts on presidential elections, parliamentary elections and elections for the organs of local self-government into one document. This new form - defining at first general conditions for all elections and then adding specific provisions for all relevant types of elections - has a great advantage: it basically enhances the transparency of the legal framework and, to a certain degree, enhances "democratic efficiency", since it provides equal organisational standards for all election types. It results in a stronger emphasis on democratic equality and transparency, and one of the advantages gained is that the organisation of the system of election commissions can be provided for in a comprehensive and effective manner."*[6] It is interesting to note that in this opinion, the Venice Commission also refers to the codification of the electoral legislation in Armenia, done a few years earlier, in 1999.

Another example: Moldova. In its opinion on the Election Law of the Republic of Moldova issued in January 2003, the Venice Commission concluded inter alia that *"the unification of the whole electoral legislation has to be welcome."*[7]

In conclusion, I wish to reiterate the importance of adopting a unified electoral legislation. A unified and harmonised electoral legislation will be crucial to clarify law and to avoid risks of inaccuracies and conflicting rules. Codification participates in stability of law and efficiency of electoral processes. Last but not least, harmonising electoral legislation will ease its accessibility for and understanding by political parties, candidates and voters.

Thank you for your attention!

2. CDL-AD(2011)037, para. 128.
3. CDL-AD(2013)016, para. 13, extract.
4. Ibid., para. 23.
5. CDL-AD(2013)026, para. 13, 23.
6. CDL-AD(2002)9, para. 8.
7. CDL-AD(2003)1, para. 100.

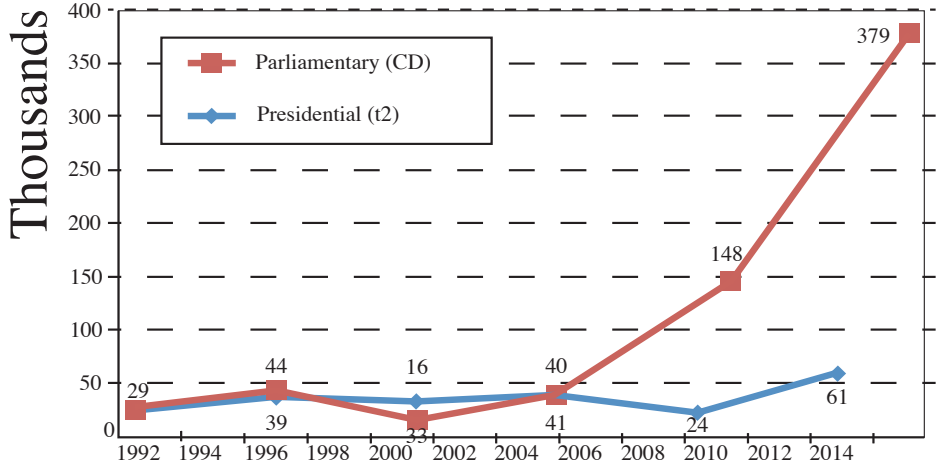
Keynote Speker:
Mr. Mircea Kivu
Member of the Autonomous Group
of Participative Democracy, Romania

The Paradigm Change Regarding the Vote of Romanian Citizens Living Abroad

I am referring to what I call a paradigm shift regarding the vote of Romanian citizens living abroad, which appeared particularly after the parliamentary elections of June, this year.

In fact, we are dealing with two paradigm shifts. One is independent of legislative changes and relates to the magnitude of the vote expressed by Romanian citizens living abroad. Traditionally, (the first twenty years of free elections), the vote expressed by Romanian citizens living abroad was purely symbolic, since it generally amounted to less than 1 % of the total number of votes. Its emblematic role was to illustrate the position of Romanians living abroad and their differences in opinion as opposed to the opinions of Romanian citizens living in Romania.

Figure 1: **Voter turnout abroad (1992-2014)**



First, the votes casted abroad played an important part in the elections, hence a significant political role during the presidential elections of 2009. Back then, one of the candidates won the elections held in Romania (obtaining more votes than his national competitor in round II), and, it can be stated, that the difference between the votes casted abroad for candidate Băsescu and candidate Geoană amounted to approximately 85,000. Lastly,

candidate Băsescu won the elections with a difference of 70,000 votes. However, stating that candidate Băsescu won due to the votes casted abroad would be a mere speculation, as it would be to say he won because of the votes from areas with increasing numbers of Hungarian population. The figures in areas with Hungarian population also illustrated a substantial vote in his favour, but we recall that, starting with 2009, votes from citizens living abroad are a political stake. In fact, from a negligible quantity, the vote of citizens living abroad becomes decisive, particularly during presidential elections.

Chart 1 shows the progress since 1992 in the number of votes casted abroad. We note that, within the first 5 years, these were similar to waves on a lake, without great variation, approximately less than 50,000 votes. As of 2009, this number increases dramatically to almost 150,000 in the presidential elections of 2009 and to 380,000 in the presidential elections of 2014. Hence, we observe a boom in the interest in elections of Romanian citizens living abroad.

How can this increase in the number of votes be explained? I believe we must look for an explanation in the changes of the Romanian diaspora structure. Traditional diaspora, until 1991, is represented by individuals leaving Romania mainly for political reasons. At that point, the individuals were leaving for good. This was a final rupture. In general, if you decided to leave Romania before 1989, you usually knew that you would never come back and there would be no way of contacting your family, your friends from here, or you could contact them seldom; for this reason, the interest of those individuals in the events taking place in Romania was less immediate. There was a less affective, symbolic interest, but a less practical one.

A new diaspora appeared, namely that of the individuals who left Romania after 1991, particularly for financial reasons, but temporarily, as opposed to the previous wave. This is also subject to debate, since, in fact, most migrants leaving after 1991, intended to return after a while, but research shows that most of them gave up or repeatedly postponed the idea of returning to Romania, and for most of them, their migration was final. However, from a mental perspective, psychologically speaking, for these individuals, the idea of returning remained. This is the reason why they still feel connected to the events, to the life in Romania and vote in a larger proportion than the previous wave of migrants. In addition, most of the 'new migrants' left part of their family here, own properties here, more reasons to show active interest towards Romania.

Naturally, little by little, the ratio of the two types of migrants from the Romanian diaspora is being reversed. If, until 2000, most of the migrants had left before 1990, now, little by little, they become the majority of recent migrants, with active connections to Romania, as shown also in the increased voter turnout.

We shall overview the progress of legislation in respect to the votes of citizens living abroad, being of great importance, as well. There have been three intervals, three main categories of regulations on the vote of citizens living abroad. During the period 1990-2004, legislation was extremely lax. Any individual entering a polling place organized abroad, who could show a Romanian I.D. (passport or identity card) could vote. There were no restrictions. During that interval, Romania had the most permissive legislation on voting abroad.

On the other hand, the legislation in question did not stipulate any Parliament representation of Romania abroad, there were no terms for deputies or senators to be

explicitly assigned to Romanian abroad. Votes expressed abroad would be collected in one of the districts of Bucharest municipality, but the number of Parliament terms assigned was in fact corroborated with the number of Romanian citizens living in Bucharest. Basically, we were not dealing with the so-called 'diaspora members of the Parliament'.

In 2008, when the list voting system was changed into uninominal voting, a first change occurred, namely only Romanian citizens with residence or domicile abroad could vote. Hence, individuals transiting through a foreign country could no longer vote. Furthermore, as a novelty, the Parliament representation of citizens in diaspora was instated. Four deputy colleges and two senator colleges to represent Romanian citizens abroad were established. This was the situation until 2014.

In 2015, we have what I call the second paradigm shift. Which are the changes brought by the legislation of 2015, hence adopted a few months ago?

Firstly, there is the Electoral register of Romanian citizens with domicile or residence abroad, and secondly, there is voluntary registration of citizens in the Electoral register. Practically, individuals are automatically registered in the Electoral register for Romanian citizens residing in the country, as opposed to the Electoral register from abroad, where citizens must submit an application, personally or by mail, requesting registration in the Electoral register.

This application is of essence, and it must be drafted between April 1st and the end of August, provided that parliamentary elections take place at the end of November. For registration in the Electoral register, an individual must make proof of residence abroad based upon a document issued by foreign authorities (this would be a peculiar feature of legislation, since it conditions the exercise of a right granted for Romanian citizenship by submitting a document issued by a third-party foreign state). It shall also be noted that registration in the Electoral Register is valid for a single electoral poll, hence only for one round of elections, and not for the following.

A change also occurred in terms of voting stations. As regulated by the previous legislation, voting stations would be organised in embassies, consulates and cultural centres, but in addition to the latter, new voting places are established for each 100 voters registered in the Electoral register, therefore the creation of a new voting station is conditioned by the registration of citizens in the Electoral register. Moreover, only the citizens registered in the Electoral register may vote at these voting stations. Other citizens living abroad who have not registered may only vote in embassies and consulates, the voting stations they could use before. What I find important here is that you need to make the decision to vote, to attend the vote at a voting station abroad, three months before voting, and you must implement it by submitting an application.

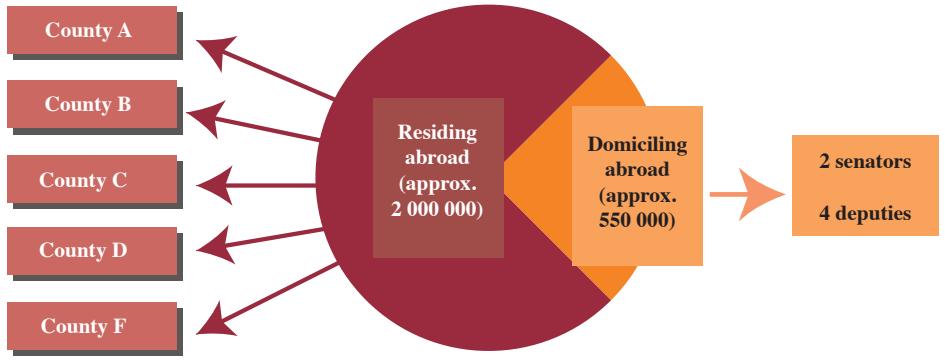
With regards to Parliament representation of Romanian citizens abroad, things are particularly obstinate. Under the new law, an electoral district is established for citizens living abroad. Four deputies and two senators shall be elected by these districts, as in the past. Things become complicated when dealing with the representation norm, which, for national districts, is 73,000 inhabitants for a deputy and 128,000 inhabitants for a senator. We have the concept of 'inhabitant', which is different from the one of citizen and different from the one of voter.

By law, 'inhabitant' shall refer to the population with permanent residence, as reported by the National Institute of Statistics. What does this imply? The Members of Parliament

from district 43, a district representing citizens with permanent residence abroad, shall only mean a quarter of the total number of citizens living abroad, since three quarters of them only reside abroad and live there temporarily - this is usually the case of individuals working in different countries of the European Union.

The peculiarity I referred to earlier is that the citizens residing abroad, the ones who are temporarily abroad, are in fact represented in the Parliament by deputies and senators from the counties where these individuals have their permanent residence, but they vote for Members of the Parliament who represent citizens living abroad; this is an ambiguity of the law. According to Figure 2, approximately three quarters of voters abroad are represented by deputies from their counties of residence and only one quarter of the voters are represented by the two senators and four deputies elected abroad. There is room for debate. There was even an attempt of notifying the Constitutional Court, since it is believed that citizens living abroad do not benefit from equal rights of representation in the Parliament, as other citizens do, because, according to the legal norm, the approximately 555,000 Romanian citizens living abroad should elect about seven deputies and four senators. But this discussion shall only remain theoretical, since the Ombudsman does not seem to be in any hurry to notify the Constitutional Court on this matter.

Figure 2: **Parliament representation of Romanian citizens living abroad**



What are the practical implications of such changes? As I was saying, the ratio of votes from abroad is increasingly higher. In 2016, we will have parliamentary elections, without significant impact, namely almost close to zero, because, regardless if 50,000, 500,000 or 5,000,000 voters will come to vote, two senators and four deputies shall be elected only. They shall not significantly influence the configuration of the future Parliament.

The true political stake comes together with the elections to the European Parliament and for the President of Romania, which are single district elections and where, indeed, a large number of votes collected abroad could decisively influence the configuration of our representation in the European Parliament, or the future President of Romania. Then, by the voluntary registration of a significant number of voters to the parliamentary elections, we should have reduced congestion in the voting stations after registration. The question is whether a significant number of voters shall register to the Electoral register for citizens living abroad.

As previously stated, we shall have a relatively reduced voter turnout, but I do not expect a turnout comparative to the one of presidential elections during the following parliamentary elections and, hence, no incidents similar to the ones faced during the presidential elections of 2014 shall occur. No citizen will be refused before being able to exercise the right to vote in the voting stations. For the legislative change to reach its expected result, namely to generate a reduction of congestion in voting station abroad, so that citizens are able to correctly exercise their voting right, a massive campaign to inform citizens living abroad on the need to register to the Electoral register is required.

We shall see the extent of using voting by correspondence in Parliament elections. This law is currently under debate in the Parliament and, depending upon its entry into force, it shall or shall not be implemented in the Parliament elections of November. However, the exercise of the right of voting by correspondence is also conditioned by registration in the Electoral register.

We already know that this change, taking place in July (5 months have already passed since), was little publicized. Currently, the change in the method of registration for voting of citizens living abroad is not known to a significant number of individuals, or in Romania, and, even less to the stakeholders, who live abroad and have limited access to Romanian mass-media. These citizens are unaware of the change in the law concerning them directly, and the extent of this amendment.

We know that citizens living abroad find out about the elections only during the actual election period, when they start to discuss on the candidates, but this is already too late, because the law states that they should register to the Electoral register within three months before the date of elections, namely before the candidates are submitted. Since they are not informed, they shall automatically deem that their mere presence at the voting station, on the day of elections, is sufficient for voting. Indeed, they shall be able to vote even if they come on the day of elections, without being prior registered in Electoral register, but they will risk queues, as they did on November 2014, or they may be required to travel for hundreds of kilometres to the nearest consulate or embassy voting station. Then, there is another element related to national ethos - we know that in Romania, the following saying is still active: ‘Don’t do it today, if you can leave it for tomorrow’. We very well know that Romanians tend to choose going on the last day, before penalties are applicable, to pay their taxes, to collect their health insurance cards, etc. Without a supported information campaign, they will probably do the same thing when registering to the Electoral register for citizens living abroad.

This is why I deem it necessary to start implementing right now - because there is little time until April, when registrations to the Electoral register will be open - a professional information campaign, focusing on Romanian citizens abroad, carried out mainly via Internet, since this is the communication means which most of them prefer. They do not read newspapers; they do not watch Romanian television stations. It must be a professional campaign and it should provide a good connection between the people creating it and the non-governmental bodies established by the Romanians leaving abroad.

There is also the perspective of 2019, when we are expected to reach a unified electoral code, meaning an expansion of voluntary registration to elections to the European Parliament and the elections for the President of Romania, which raises issues particularly with regards to the referendum, where prior registration is out of the question (given the short timeframe

between the announcement of the vote and the actual vote during the referendum). And maybe, for this reason, we should consider the possibility of expanding registration not only for one electoral voting, but, potentially, for an entire electoral cycle of 5 years. The codification of electoral laws would be a great occasion to adopt a definition of the total number of voters which would also solve the disturbing issue of 2012, that of constituting a quorum for referendum and integrating remote voting with the voluntary registration principle.

Thank you!

15:45-17:30 Working session 4 - Comparative Experience

Moderator:
Mrs. Elena Calistru,
Funky Citizens Organisation,
Romania

Keynote Speaker:
Mr. Andrii Krasnoshchok
Head of legal department Unit
Central Election Commission of Ukraine

The Ukrainian Electoral Legislation

The proclamation of independence of Ukraine in 1991 became a motive force for implementation of democratic institutes for state development. The Constitution of Ukraine set forth Ukrainian people as the only source of power in Ukraine, which sovereign will manifests institutes of direct and representative democracy.

The institute of elections is one of the most important forms of direct democracy. Legitimization of state power and its representation, incipience and development of civil society are basic for democracy institutes and mechanisms and may be realized as a consequence of elections.

The main foundations of organization and procedure for conducting/of holding elections are stated on constitutional level in Ukraine, like in the states-member of the European Union. In particular, the main principles of electoral law are established by the Constitution of Ukraine (article seventy-one). They are: elections to bodies of state power and bodies of local self-government are free and are held on the basis of universal, equal and direct suffrage by secret ballot. A free expression of will is guaranteed for voters. Additionally certain provisions of the Constitution of Ukraine determine the age, attaining which the right to elect and to be elected to bodies of state power appears, general grounds for restriction of suffrage, dates and terms of elections.

In spite of the majority of the states-members of the European Union, electoral system

for parliamentary, presidential and local elections is not laid down by the Constitution, but by special laws.

The Constitution of Ukraine (article 5) sets forth two forms of democracy - direct and representative. Direct democracy is related to different forms of direct will of Ukrainian people, territorial communities or other communities of Ukrainian citizens, determined by law.

The forms of direct democracy are the ways and instruments of exercising power directly by people or by part of them, which exclude transferring power authority to any other bodies or persons. Under the Constitution of Ukraine the main forms of democracy are elections and referendum (article 69).

Such form of democracy as elections is one of the ways to form bodies of state power, bodies of local self-government or other institutions by people. First of all, that regards creating representative bodies of legislative power - parliaments, institute of president, bodies of local self-government.

In constitutional law elections mean the way to form bodies of state power, bodies of local self-government or to grant official with authority by voting of entitled persons and summarizing the results of such voting by established majority of votes with the term that two and more persons have the right to stand as a candidate. The demand of alternativity is important since it defines democratic character of elections and lets separate elections from appointments made by collegiate body.

The procedure of elections is established by legal provisions, which together make up electoral law.

By subjects elections are divided into elections to bodies of state power and bodies of local self-government, in particular elections to the Verkhovna Rada of Ukraine, election of the President of Ukraine, election of deputes of the Verkhovna Rada of the Autonomous Republic of Crimea, elections of deputes of village, settlement and city councils, village, settlement and city heads.

By time of holding elections are divided into regular, pre-term, repeat and interim/by-elections.

Electoral law is the system of legal provisions, which govern the formation of representative bodies and elections of officials. There are two kinds of right in electoral law: to elect and to be elected. A person, entitled to vote, is called voter, all voters of a state together are called electoral body.

Electoral system is a system of social relations having regard to formation of representative bodies through elections.

Elections and electoral systems are divided into several types depending on subjects, time and procedure of elections and other circumstances.

General characteristics of Ukrainian electoral system

At the present time the issue of choosing electoral system that is a kind of determinant in the formation of representative bodies, is becoming more topical for the state development.

Ukrainian electoral legislation is not stable, and the issue of searching the most optimal electoral system is not resolved yet. For the time of independence some parliamentary elections, held without changing electoral system and procedure of their regulation, have been rather exceptions, than rules. Different types of electoral system have been

implemented for short period of time, such as majority system of absolute majority, mixed majority-proportional system, proportional system with strict lists and mixed system as previously stated.

Continuous discussions dedicated to understanding electoral system are taking place in Ukraine, but attention concentrated on researching its individual elements is not enough.

The term **"electoral system"** is used in two senses - broad and narrow.

In broad sense electoral system means/is about/the system of social relations regarding to elections of public authorities and procedure of its formation. These relations are governed by the provisions of constitutional law and together make up constitutional institute of electoral law.

In narrow sense electoral system means a kind of method of distribution of deputy mandates among candidates depending on the results of voter's or other entitled person's voting.

There are three main types of electoral system, which are different by the procedure of summarizing results of voting:

Majority electoral system provides voting for a candidate in election district and declaring him/her to be elected on base of majority of votes received. Parliamentary elections were held by this system in seventy-six states (the United Kingdom, France, the USA, states of Latin American, Africa and Pacific Basin). This system is traditional and the most acceptable for states with so-called two-party system, where two strong political parties are.

Majority systems may be of absolute and relative majority. The first one means that the candidate, who receives fifty percents of votes and one, wins. On elections on the basis of the second one the candidate, who receives more votes than his/her opponents, even if it is less than fifty percents of votes, becomes a member of parliament.

Proportional electoral system provides voting for lists of candidates from political parties or other political forces and distributing seats in parliament (deputy mandates) proportionally to votes, given for lists. At present elections on the basis of proportional electoral system are held in forty-eight states in the world, including twenty-four European states (Spain, Portugal, Austria, Sweden, Finland, Norway, Belgium). As a rule, this electoral system is used in states, where several influential parties act, but historically none of them has stable majority in parliament.

There are several types of using proportional electoral system: voting for ordinary list and voting for strict list (surnames of candidates are placed by alphabet in ordinary list, whereas in strict list they are placed by priority).

Mixed electoral system is a kind of combination of majority and proportional electoral systems Mixed electoral system is spread in Europe: Germany, Italy, Hungary, Poland; and recently has been using also in Lithuania, Georgia and Russia. Mixed electoral systems are used in states, where research and incipience of electoral systems are in process or necessity of achieving a compromise between the principle of parliamentary representation of political forces and governmental stability occurs.

The easiest way of mixing is lineal one: a part of parliament is elected by majority principle, and the other - by proportional principle (Germany, Lithuania, Georgia, Slovenia). Another variation of mixed electoral system is structural mixing: one chamber of parliament is elected on the basis of majority system, and the other - on the basis of

proportional system. These types of electoral systems are spread in Australia, Italy, Poland.

Formation of modern Ukrainian electoral legislation is being influenced by international law standards. Partly this facilitates the democratization of political and legal processes. However, unfortunately, aforesaid standards are not fully implemented, that is why national legislation changes so frequently. There are plenty reasons for this situation, beginning with peculiarity of political reality in Ukraine and ending with constant volatility of government.

In general, reforms of electoral legislation should not be considered as another attempt of changing laws in favour of one political force, but as a passing to completely new level of legislation, that regulates legal relations in extremely important for modern democratic state area.

A new law "On Election of the People's Deputies of Ukraine" was enacted on 17, November, 2011 and laid down that the People's Deputies of Ukraine should be elected by the citizens of Ukraine on the basis of universal, equal and direct suffrage by secret voting based on mixed (proportional-majority) electoral system.

Elections to the Parliament of Ukraine are held by lineal mixing which means that 225 (two-hundred twenty five) deputies from 445 (four-hundred forty five) deputies are elected on the basis of proportional electoral system in nationwide multi-member election district under electoral lists of candidates from political parties, while the other 225 (two-hundred twenty five) deputies are elected on the basis of a simple majority system in single-mandate election districts.

Using this type of electoral system does not let avoid one of the key disadvantages of majority electoral system - a necessity of interim elections/by-elections in the case of termination of powers of a deputy elected in one of the districts. Hence, interim elections/by-elections of people's deputies of Ukraine are quite frequent in some single-mandate election districts.

Elections of the President of Ukraine, as the form of direct democracy, are considered to be the expression of Ukrainian people's will regarding replacement the position of the President of Ukraine by voting.

There are several types of presidential elections. Under the Law "On Election of the President of Ukraine" elections of the President of Ukraine may be regular, pre-term and repeat.

Regular elections of the President of Ukraine shall be held in connection with termination of the constitutional term of the powers of the President of Ukraine, that is every five years. Pre-term elections of the President of Ukraine shall be held in connection with pre-term termination of the powers of the President of Ukraine in cases, stipulated by the Constitution of Ukraine. Under the Constitution of Ukraine (article one-hundred eight) the powers of the President of Ukraine terminate prior to the expiration of term in cases of: 1) resignation; 2) inability to exercise his/her powers for the reasons of health; 3) removal from position by the procedure of impeachment; 4) death. But these grounds enter into force in compliance with procedures stated by the Constitution.

Repeat elections of the President of Ukraine shall be held in compliance with Law in two cases: 1) up to/no more than two candidates for the position of the President of Ukraine were included on the ballot paper and none of them was elected: 2) all of the candidates for the position of the President of Ukraine included on the ballot paper withdrew their candidatures prior to the day of voting or the day of repeat voting.

Repeat voting shall be held in the case if more than two candidates for the position of the President of Ukraine were included on the ballot paper and none of them was elected as the results of voting on the day of voting. In accordance with Law, the Central Election Commission shall adopt a decision to hold repeat voting on the same day, fixing it in the minutes of the results of voting.

Terms of regular elections of the President of Ukraine are stipulated by the Constitution (article one-hundred three), nevertheless any elections of the President of Ukraine are called by the Verkhovna Rada of Ukraine. The Verkhovna Rada of Ukraine adopts a decision on calling the elections of the President of Ukraine.

Regular elections of the President of Ukraine shall be held on the last Sunday last month of the fifth year of the term of the President's of Ukraine authority (article 130). As opposed to the previous terms (one-hundred eighty days) at this time the Verkhovna Rada of Ukraine calls regular elections of the President of Ukraine no later than ninety days prior to the day of voting. The process of the elections of the President of Ukraine starts ninety days prior to the day of voting.

A new Law "On the Local Elections" was adopted in Ukraine on 14, July, 2015.

Local elections are free and based on universal, equal and direct suffrage, by secret ballot, provided by the Constitution of Ukraine and aforesaid Law.

Elections of deputes of village and settlement councils are based on majority system of relative majority in single-mandate election districts; considering that a territory of a village (several villages, whose residents joined into a village community voluntarily), a settlement or joined village or settlement community, formed in compliance with the Law "On Voluntary Union of Territorial Communities", is divided into aforementioned districts.

Elections of deputes of the Verkhovna Rada of the Autonomous Republic of Crime, region, district, city, district in city councils are based on proportional system in multi-member election district under electoral lists of candidates from local organizations of political parties; considering that the multi-member election district is divided into territorial electoral districts and coincides with the territory of the Autonomous Republic of Crime, region, district, city, district in city in compliance with current administrative-territorial system or territory of joined city community formed under the Law "On Voluntary Union of Territorial Communities".

Elections of city head (if the amount of voters of such city is ninety thousands and more) are based on majority system of absolute majority in unified single-mandate election district, which coincides with current administrative-territorial system or territory of joined city community.

Elections of village, settlement and city head (if the amount of voters of such village, settlement or city is less than ninety thousands) are based on majority system of relative majority in unified single-mandate election district which covers a territory of a village (several villages, whose residents joined into a village community voluntarily), a settlement or joined village or settlement community, a city.

Elections of starosta are based on majority system of relative majority in unified single-mandate election district which covers a territory of relevant locality (village or settlement).

Taking everything into account, electoral legislation of Ukraine shows gradual, albeit uneven, way of Ukrainian people to democracy, evolution of realization of basic principles of electoral law, accompanied by conversion from one electoral system to another.

Keynote Speaker:
Mr. Alexandru Simionov
Member of the Central Election Commission of Moldova

The Electoral Legislation of the Republic of Moldova

I would like to thank the organisers for their initiative and for inviting me to attend and to present the experience of the Central Electoral Commission with regards to its pathway towards codifying electoral legislation. As in the case of Georgia, Moldova was part of a totalitarian system, with no pluralism, no multi-party system and, thus, in the late 90', with the initiation of the process of independence, it was marked by the introduction of essential and important changes in the Soviet legislation of that time, which was still applicable and mostly relates to introducing the multi-party system of the political system of Moldova.

Therefore, the elections of 1990 have been the first partially democratic elections, given that political parties and the social political movement were allowed. If I were to refer solely to the independence period, then, until the codification of electoral legislation by adopting the old electoral code, the election system was regulated by 5 legislative acts, 5 organic laws focused only on the organisation of referendums, presidential elections, local elections and parliamentary elections.

In addition, there was also another law on the revocation procedure for the village and commune mayor. The adoption of said law, at that time, was motivated be several trends in organising the administrative-territorial reform process of Moldova. By strictly focusing on the law of referendums, this law was never applied. This is the truth. It was intended for a referendum in 1993, but it was not held, therefore this law can no longer be applied.

The legislation regulating the election of the legislative body, the Parliament, was adopted 1993 and, in essence, this was the law that stipulated the number of deputies in the Parliament. Although the provision of this law, reflected in the Constitution of 1994, would require one deputy for 28,000 voters, it was decided on 104 deputies. The law assumed the implementing of an electoral system of limited proportional representation, by creating multiple districts. Once again, this system could not be applied, on the one hand, because the administrative-territorial reform failed to be carried out and, on the other hand, given the conflict with Transnistria. Implementing this system would have led to giving up the territory. From a political point of view, the intent was to not implement the proportional system on closed party lists, still existent.

What new element did this law bring? This law set forth the structure of the Central Electoral Commission, comprising of 7 judges and 16 representatives of social-political organisation parties taking part in the parliamentary elections. The Commission duties would cease immediately after validation of deputy terms. The commission was temporary.

So, institutional memory was lost, with the Commission apparatus approved by the Government for the 90 days of elections.

In respect of local elections, the law of 1994 introduced the election system by proportional representation, but, at the same time, the grounds of organising the administrative reform were set in 1998, when the new county system was brought to Moldova.

Each type of ballot was regulated by a particular law. The elections of 1996 were organised under the law on presidential elections of Moldova. By this law, the American tradition for setting the election date was taken over. It did not last long. In 2000, by amending the Constitution, the direct election of the president was excluded, since the country president was elected by the Parliament.

The year 1997 was an important year for the Commission, since this year, on November 21st, the Electoral Code was approved. This was a substantial workload done in the period 1996-1997, requiring involvement both from the political stakeholders and the civil society, as well as from the international organisations.

The project was a success, since political stakeholder acknowledged the relevance of having a structured legislation, which would exclude conflictual norms, so that participation in elections would become easier for them, as political competitors.

I would like to mention that the adoption of the Constitution in 1994 had direct impact, as it set the grounds for holding elections by organic law.

What benefits does codifying electoral legislation bring? Well, in reforming the electoral area in Moldova, this codification has been a decisive step, for various reasons.

I shall start by saying that it implemented a single legislative act for all types of electoral ballots. It promoted uniformity and correlation of regulations on organising and running elections in Moldova, it removed the inconsistencies between the provisions of laws regulating the electoral process, it standardized all electoral procedures prior regulated by various legislative acts, it led the establishing the Central Electoral Commission, as permanent and autonomous body and it allowed obtaining the Commission's independence from the political system. Although the electoral code stipulates that the commission members are assigned by the parties in the Parliament, according to the principle of proportionality, although the current legislative framework provides a considerable level of independence for commission members.

The mere existence of the electoral code, as codified legislation, does not imply lack of intervention hereto. There is also a statistic of political intervention in the amendment of the electoral code, showing 48 interventions on amending and completing the electoral code. Only 51 of the articles in the electoral code were left unaffected. These articles refer to electoral principle, hierarchy, time and place of voting. The political system interfered whenever it deemed necessary.

In this respect, this is a matter related to political opportunity aspects, but also to the political will of the legislature in adopting certain norms according to the international standards.

This should be a topic for other similar debates, namely for discussing the aspects of political involvement.

How does this scale between the political opportunity, political interest and general interest used to express the existence of a political will look like?

Additionally, with regards to the aspects related to concepts and to amending electoral

legislations, the recommendations of the European Council and of the Venice Commission in the Best Practices Code in Electoral Matters are very important. These regulations are more than relevant, especially given the recent experience of the Republic of Moldova, when, around the local elections of this year, the Parliament adopts an important set of changes to a series of legislative acts, which include even the electoral code on funding for political parties.

Unfortunately, the political system, with certain considerations reflecting political opportunity and limited political will, has left this legal draft somewhere on a shelf, and now, on the eve of elections, suggested it as an emergency. This is how several amendments to the legislative procedure have been brought, in essence, reducing the value of this document. Hence, these amendments should have been applied both by the Central Electoral Commission, as well as to the political stakeholders and electoral competitors voting this draft of law. The Central Electoral Commission interfered by regulations at the level of instructions and regulations supporting the creation of the regulatory framework required for implementing said provisions. For this reason, it is important that these changes in the legislative framework are done in due time and, in case of the electoral system, at least one year before elections, as opposed to six months, for other regulations.

Given its level of autonomy, the Central Electoral Commission makes efforts to continue the improvement of the legislative and regulatory framework that regulates elections, by submitting proposals to the Parliament, in this regard, and conducting post-election assessments. This aspect which relates to the national political situation, particularly the political will, is of great importance in this process.

Keynote Speaker:
Mr. Daniel Duţă
Director of Management, Monitoring and Electoral Logistics Department, Permanent Electoral Authority of Romania

"There is no electoral system truly good or the best. The validity of an electoral system translates in the capacity to follow explicitly defined goals and, in a democracy, they have to be supported by general approval as much as possible" - ***Gianfranco Pasquino***[1]

An European Electoral System in the Context of EU's Political System

Whether we are talking about creating a new electoral system or only about remodelling an existing one it is obvious that we are in the presence of a political system. The political system determines the electoral system and the latter resets, reboots during electoral events the political system.

In other words, the configuration of an electoral system is important to determine the political system on which its specific effects will manifest.

Of course, some authors contest the quality of a political system of the European Union itself, just as others say that the phrase *"electoral system"* in reference to EU is a source of controversy[2], but the fact remains that when we speak of an electoral system the presence of a political system is implicit.

This analysis will try to answer several questions concerning the possibility to configure a uniform and integrated European electoral system and the shortcomings of such an approach, especially in the context when the political system to which we refer is an *"unidentified political object"*[3].

The premise I start from is that the European Union is already a political system, although there is controversy and doubt about the community entity's future political status. Currently, the difficulty of analysing the possible configuration of a homogeneous, integrated, European electoral system, lies in the fact that the political system to which we refer and from which the decision to harmonize substantial and procedural election rules should come, remains an uncertainty.

Up to now, the European electoral system adapted itself step by step to the political changes, but we have to keep in mind that it can also represent an effective lever in influencing the European political system.

In this respect, one of the hypothesis used in this analysis is that, by configuring a uniform and integrated electoral system, in which the electoral operations, norms and procedures are

1. Pasquino, Gianfranco, Curs de ştiinţă politică, European Institute, Iaşi, 2002, p.150.
2. Diamantopulos, Thanassis, Les systemes electoraux aux presidentielles et aux legislatives, Edition de l'Universite Libre de Bruxelles, Bruxelles, 2004, pp.13-14.
3. Landau, Alice, De la CEE à l'Union Européene , Publibook, p.13, Paris, 2006 apud Turşie, Corina, Parlamentul European şi Tratatul de la Lisabona. UE către un regim parlamentarizat?, Sfera Politicii, no. 147, May 2010.

based, regulated and monitored by a European electoral authority, would increase the chances to considerably reduce the democratic deficit, improve the turnout and, by consequence it would consolidate the legitimacy of the European Union.

Even some recent studies[4] that argue that the exercise of identifying a single electoral system for EU is useless and ineffective, approach in the same pragmatic manner the possibility to use the electoral system as a tool for addressing the democratic deficit.

I believe that the effort to model a uniform and integrated electoral system may generate positive results, especially if the process will not limit itself only to identifying ways to translate votes into mandates, but it will also be extended in the sense of harmonizing the whole set of electoral operations, procedures and rules that are specific to the EP elections.

Ideally, the analysis has to have to possibility to cover as many aspects related to the electoral system as possible, but the focus should be on those elements that can improve, in a relatively short timeframe, the quality of the electoral process, the turnout and the implicitly the degree of legitimacy of the Union in terms of the principles of the electoral heritage (gender, fair representation of minorities, equality of the votes, consolidation of the party system etc.) and also in terms of technical and institutional aspects (European electoral roll, European voter's card, electronic voting, European Electoral Authority).

In this context I have developed a qualitative analysis of the electoral system of the EU and, by using the comparative method in terms of aggregating the common characteristics of the electoral systems of the member states, I have compiled a *"roadmap"* for the electoral system of the Union (in correlation with its political system).

Dieter Nohlen's analysis[5] on the concept of electoral system shows that *stricto sensu* it establishes the "norms through which the voters can express their political preferences and which makes possible that their votes are translated into seats in the parliament (in the case of parliamentary elections) or in governmental positions (in the case of elections for president, governor, mayor etc.)."

I believe that in the case of my analysis it is of special interest to use *largo sensu*[6] the term electoral system, with the significance of electoral regime, understood as "a set of rules that govern the conduct of elections and the designation of winners."

In this respect, I believe that there are enough arguments to use a holistic approach in analysing the electoral system of the European Union, in order to cover the full scope of the issue of electoral law (voter registration, the conditions for acquiring and exercising the right to vote, nominating candidates and submission of candidacies, the development and financing of the electoral campaign, distribution of seats, electoral management bodies, procedures for exercising the right to vote, representation of women and minorities, including election procedures etc.).

I will begin by highlighting that direct European elections have been organized in order to create and consolidate pan-European political parties and to ensure the representation of European citizens.

Unfortunately, these goals were not fully realized, so ever since the very first direct European elections (1979) took place they have been labelled as *second-order elections*[7].

4. Marian, Claudiu, Influenţa sistemelor electorale asupra democraţiei Uniunii Europene, CA Publishing, Cluj-Napoca, 2013, pp.21-22.
5. Nohlen, Dieter, Gramática de los sistemas electorales - Una introducción a la ingeniería de la representación, 2012, Tribunal Contencioso Electoral Republica de Ecuador, Consejo Nacional Electoral de la República del Ecuador, Instituto de la Democracia. 2012, Ecuador, available at http://rimel.te.gob.mx/WebApplicationTrife/busquedas/DocumentoTrife.jsp?file=19843&type=ArchivoDocumento&view=pdf&docu=19349, p.3.
6. Diamantopulos, Thanassis, work cited, p.135.
7. Reif, Karlheintz. Schmitt, Hermann, Nine Second-Order National Elections. A Conceptual Framework for the Analysis of European Election Results, European Journal for Political Research, vol. 8 (1980) 3-44

There were two main reasons that led to labelling European elections as second-order ones: one is related to form - the organization of election campaigns, and another on the merits - the stake of the European elections[8].

In terms of organization of election campaigns it has been argued that the European elections *"have been conducted primarily at the national level, due to the fact that they are organized and conducted by national political parties"*[9] which make up candidates list, electoral programmes and finance the electoral campaigns.

In regards to the stake of European elections it was highlighted that *"it is insignificant, and has a national character rather than a European one"*. There is no European stake because, unlike national elections where the parliamentary majority determines the government, at the European level there is no such dynamic.

The procedures for the European Parliament elections are both governed by European legislation, which defines the common norms for all member states, and by specific national provisions, which may vary from one state to another.

The Community Acquis in the Field of Elections

The common provisions establish the principle of proportional representation and some incompatibilities with the mandate of MEP. Elections must be based on the principle of digressive proportionality[10] and use either the list system or the single transferable vote[11]. Many other important aspects[12] such as the electoral system used and the number of constituencies, are regulated by national laws.

The European elections from the 25th of May 2015 were the first ones since the entry into force of the Lisbon Treaty through which the European Union strengthened its democratic foundations and granted EU citizens a greater role as political actors in the Union. Furthermore, the Lisbon Treaty affirms the role of Parliament as the democratic representative assembly of the Union.

The provisions of Articles 20, 22 and 223 of the Treaty on the Functioning of the European Union (TFEU) constitute the legal basis for the European elections.

National Legislation of the Member States in the Field of Elections

In regards to the electoral system used, the European elections must be based on the principle of proportional representation and use either the list system or the single transferable vote (Council Decision 2002/772/EC, Euratom). Member states may opt for voting based on a preferential list system in accordance with the procedure they adopt.

Regarding the threshold a member state may set a minimum threshold for the allocation of seats,

8. Turşie, Corina, Reforma alegerilor europene pentru 2014. Provocarea listelor transnaţionale, Sfera politicii, no. 162, 2011 - Parties and elections, p.83.

9. Hertner, Isabelle, Are European Election Campaigns Europenized? The Case of the Party of European Socialists in 2009, Government and Opposition, vol. 46, no.3 (2011), p.321. For a more detailed explanation on how European electoral campaigns are conducted primarily at a national level see Mair, Peter, The limited impact of Europe on National party system, West European Politics, vol. 23, no. 4, 2000, pp. 27-51.

10. The proportional system means that for each electoral competitor is allocated a number of mandates in proportion to the votes received. Proportional representation involves list voting and a single round. Proportional representation involves a dual operation. The first operation consists in the allocation of seats according to electoral coefficient, and the second operation the redistribution (allocating mandates not distributed initially through the distribution of electoral remainders).

11. 2002/772/EC, Euratom: Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom, Official Journal of the European Communities L 283, 21/10/2002, available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002D0772&from=EN

12. The European Parliament: Electoral Procedures, Fact Sheets on the European Union, 2015, available at http://www.europarl.europa.eu/ftu/pdf/en/FTU_1.3.4.pdf

which cannot exceed 5%. Belgium, Denmark, Estonia, Finland, Germany, Ireland, Luxembourg, Malta, Portugal, the United Kingdom, Slovenia, Spain and the Netherlands don't have a threshold, Cyprus has a threshold of 1.8%, Greece one of 3%, Austria, Italy and Sweden have a 4% threshold, meanwhile the maximum threshold of 5% is in Croatia, France, Latvia, Lithuania, Poland, the Czech Republic, Romania, Slovakia and Hungary.

Concerning national constituencies, at the EP elections the territory of the majority of member states forms a single constituency, but four member states (France, Ireland, Italy and the UK) divided the national territory in several regional constituencies.

There are also constituencies based on purely administrative interest or used exclusively for the distribution within party lists in Belgium (4), Germany (16 and only for the political alliance of Christian Democratic Union of Germany and Christian Social Union in Bavaria CDU/CSU), the Netherlands (19) and Poland (13). In Belgium, a place is reserved for choosing a representative of the German minority.

In respect to electoral rights they can be exercised as follows:

1. The right to vote is exercised starting from the minimum age of 18, except in Austria where the minimum age is 16 years.

a) Non-national voting in the host country

Every citizen of the Union residing in a member state of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the member state in which he resides, under the same conditions as nationals of that State[13]. It is important to note that the concept of residence is different from one state to another[14].

b) Non-national voting in origin state

Some states limit the electoral rights of their own citizens who live abroad.

Hence, in the United Kingdom, are entitled to vote citizens residing abroad for less then 15 years.

Belgium, Denmark, Greece, Italy, and Portugal the right to vote is only for non-resident nationals who live on the territory of another EU member state.

Austria, Finland, France, Spain, Sweden and the Netherlands grant their nationals the right to vote no matter their country of residence. Germany grants this right to citizens who reside in another country for less than 25 years. In Bulgaria, Ireland and Slovakia the right to vote is granted to citizens of the Union who have the domicile on their national territory.

2. The right to be elected

In addition to the requirement of being a citizen of an EU member state, common to all member states (except the United Kingdom, where some Commonwealth citizens have the right to participate in elections to the European Parliament), conditions may vary from one country to another. In most member states the minimum age for being elected is 18 years old, except Belgium, Estonia, Greece, Ireland, Latvia, Lithuania, Poland, Czech Republic, Slovakia and the United Kingdom (21 years old), Romania (23 years old) and Italy and Cyprus (25 years old).

In Luxembourg, a national of another member state has to have been a resident for 2 years in order to be elected to the EP elections. Also, the list may not include a majority of candidates who

13. In accordance with Article 22 para. (2) from the Consolidated version of the Treaty on the Functioning of the European Union, Official Journal of the European Union 326, 26/10/2012, available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=en

14. In Estonia, Finland, France, Poland, Romania and Slovenia voters have to have a stable domicile or residence on the electoral territory, in others (Cyprus, Denmark, Greece, Ireland, Luxembourg, UK, Slovakia and Sweden) voters have to live regularly there, while for some (Belgium and Czech Republic) voters have to be registered in the Civil registry.

do not have Luxembourg citizenship. In most member states that is a requirement of residence as a condition for being eligible at elections.

In Denmark, Estonia, Germany, Greece, Czech Republic, Sweden and the Netherlands only the parties and political organizations may submit nominations. In other member states, applications may be submitted if they meet a certain number of signatures or groups a number of voters, and in some cases, a financial deposit is required.

In France, Germany, Greece, Portugal, the United Kingdom and Spain voters can't change the order in which candidates appear on electoral lists.

On another hand, in Austria, Belgium, Denmark, Finland, Italy, Luxembourg, the Netherlands and Sweden the order on electoral lists can be changed through transferable votes. Voters from Luxembourg can even vote candidates that appear on different lists, and in Sweden they may add or exclude names from the list. The list system is not applicable in Ireland, Northern Ireland and Malta.

In terms of allocation of mandates, most member states use the D'Hondt electoral formula to allocate seats. Germany uses the method by division based on the traditional truncation method named Sainte-Laguë/Schepers, while in Italy according to the "method of whole electoral quotas and largest remainder", and in Ireland and Malta preferential uninominal voting system with transferrable votes (STV Droop).

Validation of election results and election campaign rules are made by the national parliament in Denmark, Germany and Luxembourg.

In Austria, Belgium, Estonia, Finland, Italy, Ireland, United Kingdom, Czech Republic and Slovenia this is done by the courts, while in Germany there are both options.

In Spain the validation of electoral results is made by the Central Electoral Bureau, while in Portugal, the Netherlands and Sweden this task is assigned to a validation committee.

In France the Council of State is competent to rule on disputes concerning elections, but the Minister for the Interior also has the right to do so on the grounds that the legally stipulated forms and conditions have not been observed.

In most member states the rules on election campaigns (permitted funding, broadcasting time slots and publication of poll results) are the same as those applying to national elections.

In respect to filling seats vacated before the expiration of the mandate, in Austria, Denmark, Finland, France, Italy, Luxembourg, Portugal, Romania and the Netherlands, the seats vacated by resignation are allocated to the first unelected candidates on the same list. In Belgium, Germany, Ireland and Sweden they are allocated to substitutes. Furthermore, in Spain and Germany, if there are no substitutes it is taken into account the order of the candidates on the lists. Meanwhile, in the United Kingdom by-elections are held.

In Greece, the seats vacated are allocated to substitutes from the same list, and if there are not enough substitutes by-elections are held.

It is important to note that in some member states, such as Austria and Denmark, the MEPs have the right to return to the European Parliament if the reason for vacating the seats is ceased to apply.

As shown in the analysis above, while the European legislation establishes common norms for the European Parliament elections there are notable differences in the national legislations in respect to many essential aspects, such as establishing constituencies, allocation of mandates, norms for conducting the electoral campaign, the right to elect and to be elected etc.

Therefore, although there is talk of the need for electoral reform in Europe, the ultimate goal is not necessarily uniformization in itself, but rather that improvement of the *de facto status quo* of the European elections regarding in terms of its gaps and deficiencies by identifying and implementing uniform electoral procedures for all member states.

For the purpose of establishing uniform electoral procedures, the objectives are:

- Emphasizing the democratic nature of the European elections;
- Strengthening the concept of European citizenship;
- Improving the functioning of European Parliament;
- Strengthening the legitimacy and effectiveness of the European Parliament;
- Ensuring increased equality between Union citizens in electoral terms.

In this context, a first coherent and progressive reform of election rules since their introduction in 1976, is the one proposed by Andrew Duff.

In its report on a proposal for a modification of the Act concerning the election of the Members of the European Parliament by direct universal suffrage of 20 September 1976[15] Andrew Duff mentioned the need to organize a Convention on electoral reform with the purpose of analyzing, in a democratic and comprehensive way, the complex series of interrelated issues in terms of voting rights, turnout, composition, privileges and voting system, or even to review the differences and anomalies occurring between different national electoral systems[16].

Although encouraging an increased turnout should be a major objective of the electoral reform, there are some proposals - for example, lowering the voting age - which may not contribute to achieving this goal, but it will still have an inherent value.

Duff appreciates that the main purpose is to strengthen the European dimension of the European elections. An important role in this regard should have the public opinion and the media by getting involved in the formulation of policy options regarding the future of the EU and of the European political parties.

The report mentioned also suggests that in addition to the 751 elected MEPs in traditional national and regional constituencies there should be an added 25 deputies in the 2014 Parliament elected from a single pan-constituency (in this regard there should be an optional vote on a second ballot paper), which would increase its representative capability, hence reflecting the amendments introduced by the Lisbon Treaty which states that MEPs are now "representatives of the Union's citizens" and not *"representatives of the peoples of the States"*[17].

These lists are supposed to be composed of candidates resident in at least one third of the States and to respect the gender balance. To this end the European political parties would have responsibility in terms of selecting candidates, establishing their order on the lists and in ensuring the electoral competition. On the other hand, the report proposes, firstly, the mandatory creation of regional or territorial constituencies within the larger states, and, secondly, the compulsory use of

15. Report on a proposal for a modification of the Act concerning the election of the Members of the European Parliament by direct universal suffrage of 20 September 1976 (2009/2134(INI)), Committee on Constitutional Affairs, Rapporteur: Andrew Duff, A7-0176/2011, available at http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2011-0176+0+DOC+PDF+V0//EN

16. For more details on the differences of member states electoral systems see Annex V to the Explanatory Statement: European Parliament: Current Electoral Practice in Member States of the Report on a proposal for a modification of the Act concerning the election of the Members of the European Parliament by direct universal suffrage of 20 September 1976 (2009/2134(INI)), Committee on Constitutional Affairs, Rapporteur: Andrew Duff, A7-0176/2011, available at http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2011-0176+0+DOC+PDF+V0//EN

17. Article 14 para. (2), Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, Official Journal of the European Union, C 306, 17 December 2007, available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2007:306:FULL&from=en

the preferential semi-open list system.

Other reform proposals stated in the Duff report are:

- To introduce a regular review practice in respect to the distribution of the 751 seats before the end of the forth year of parliamentary mandate, in the sense of allowing a redistribution of seats according to the official figures established by the Eurostat;
- To create conditions for EU citizens living in another state to elect and be elected;
- To limit the national threshold at 5%, and for the European Union constituency to have no threshold;
- To create an EU electoral authority whose purpose will be to manage and oversee the transnational list election and resolve appeals;
- To reduce the voting program for the weekend in order to increase interest in voting and to reduce cases of negligence due to premature disclosure of results (changes are required in Ireland, the Netherlands and the United Kingdom);
- To bring forward the timing of elections from June to May in order to expedite the election of the new Commission;
- To have a uniform minimum age for voters and candidates;
- To establish a uniform supranational regime of privileges and immunities of MEPs;
- To extend electronic voting in an effort to mobilize voters and facilitate voting.[18]

The latest electoral reform proposal is that put forth by MEPs Jo Leinen and Danuta Hübner. Similar to Duff, these two believe that improving the electoral process in Europe is needed to introduce a uniform electoral procedure, both in terms of form and substance, in order to bring an added value to the organization and conduct of elections, especially in terms of reducing the democratic deficit.

In this regard, Leinen and Hübner identified the need for the following uniform procedures:

- Increasing the visibility of the European political parties;
- The introduction of a common minimum deadline in terms of establishing national list of candidates;
- The introduction of a threshold for the allocation of MEPs mandates of at least 3% and at most 5% for countries where the list system is used and which have more than 26 seats in the European Parliament;
- The introduction of a common deadline of 12 weeks for establishing the lists of candidates by the European political parties;
- Allowing EU citizens residing in countries other than the EU to exercise their right to vote in European Parliament elections;
- Harmonizing the legal voting age to 16 years;
- To have a day of voting common at the European level, with simultaneous timing for closing of all polling stations in order to better reflect the joint participation of citizens throughout the Union and to underline that the EU is founded on representative democracy;
- To introduce measures to promote gender equality in all aspects of the European electoral process;

18. Report on a proposal for a modification of the Act concerning the election of the Members of the European Parliament by direct universal suffrage of 20 September 1976 (2009/2134(INI)), Committee on Constitutional Affairs, Rapporteur: Andrew Duff, A7-0176/2011, available at http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2011-0176+0+DOC+PDF+V0//EN

- To increase the use of electronic and postal voting in order to increase participation[19].

One aspect to be highlighted in regards to the proposal of the two MEPs is the importance given to establishing uniform procedures aimed at electoral competitors. Whereas Duff put more emphasis on technical issues, Leinen and Hübner underline the importance of reinforcing European political parties in forming European political awareness and in expressing the will of EU citizens, as well as the public mission conferred[20].

For Leinen and Hübner, creating a transparent link between the national parties for which citizens of the Union vote and the European political parties that national parties are affiliated to should allow European political parties to express in a more direct way the will of EU citizens and should have a major impact on the transparency of the decision-making process at EU level.

In this regard, they recommend to indicate on the ballot papers used in elections to the European Parliament the European political party affiliation and to facilitate the information provided to the voters in terms of affiliation of national party to European political parties. To increase the transparency of EP elections and to strengthen at the same time, the responsibility of political parties participating in the European electoral process as well as the confidence of voters in this process, national parties should make public before the election their affiliation to a European political party.[21]

Although different, I believe that both set of electoral procedures identified by Duff and by Hübner and Leinen, in terms of uniformity have a high potential to bring added value to the European electoral process.

Of these, the one with the greatest potential to improve it is to establish a European electoral management authority. This would ensure not only an improved electoral management at the European level, but also the implementation of the uniform electoral procedures and an appropriate monitoring of this process.

However I believe that there are other procedures should be uniformized, but also optimized. Here I refer to the exchange of information designed to ensure that citizens can not exercise their right to vote or to be elected in the same election in several Member States.

A series of reports[22] from the European Commission on the implementation of Directive 93/109/EC have identified weaknesses in the way the mechanism for preventing multiple voting and candidacies functions, that are caused, in particular, by the fact that the personal data that member states of residence notify to member states of origins in accordance with the Directive are insufficient under the Directive. Also these weaknesses are generated by differences in the

19. Report on the reform of the electoral law of the European Union (2015/2035(INL)), Committee on Constitutional Affairs, Rapporteurs: Jo Leinen, Danuta Maria Hübner, A8-0286/2015, available at http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2015-0286+0+NOT+XML+V0//EN

20. As stated in Article 10 para.(4) from the Consolidated version of the Treaty on the Functioning of the European Union, Official Journal of the European Union 326, 26/10/2012, available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=en, and in Article 12 para. (2) from the Charter of Fundamental Rights of the European Union, Official Journal of the European Union 326, 26/10/2012, available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=RO

21. Nogaj, Monika. Poptcheva, Eva-Maria, The Reform of the Electoral Law of the European Union. European Added Value Assessment Accompanying the Legislative Own-Initiative Report (Co-Rapporteurs: Danuta Hübner and Jo Leinen), European Added Value Unit , Directorate for Impact Assessment and European Added Value, Brussels, 2015, pp.14-15, available at http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/558775/EPRS_IDA(2015)558775_EN.pdf

22. For more details see Report from the Commission to the European Parliament and the Council on the application of Directive 93/109/EC - Voting rights of EU citizens living in a Member State of which they are not nationals in European Parliament elections (COM/97/0731 final) available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:51997DC0731&from=RO, Communication from the Commission on the application of Directive 93/109/EC to the June 1999 elections to the European Parliament - Right of Union citizens residing in a Member State of which they are not nationals to vote and stand in elections to the European Parliament (COM/2000/0843 final) available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52000DC0843&from=RO, Report from the Commission - Report on the election of Members of the European Parliament (1976 Act as amended by Decision 2002/772/EC, Euratom) and on the participation of European Union citizens in elections for the European Parliament in the Member State of residence (Directive 93/109/EC)

electoral timetables of the member states. A consequence of these shortcomings was that a large number of EU citizens who have registered to vote in their member state of residence could not be identified by their member states of origin.

In the context of Directive 93/109/EC, most member states have already established a single contact authority[23] for the exchange of data on voters and candidates. Also, the dates in which electoral lists close are very different from one member state to another, ranging from two months to five days before Election Day. It would be advisable for member states to submit the data on voters in a timeframe in which the national provisions from member states of origins can still allow taking the necessary measures.

In closing, I want to emphasize that through setting up an integrated and uniform electoral system in which the operations, standards and election procedures are established, regulated and monitored by a competent European Electoral Authority, the chances to considerably reduce democratic deficit would augment, the voter turnout would increase, and consequently, the legitimacy of the European Union will be strengthened.

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23. The efficiency of the mechanism would increase if all member states would establish such authority.

09:30-11:00 Working session 4, continued - Comparative Experience

Moderators:
Mr. Kåre Vollan, Venice Commission
Mr. Cristian Leahu, Permanent Electoral Authority of Romania

Keynote Speaker:
Mr. Kåre Vollan
Election Expert,
Venice Commission

Unifying electoral legislation, a way to avoid inconsistencies and malfeasance

Content
1. Areas covered by laws
2. Risks of separate laws
3. Possible Structures

Areas currently covered by laws
- Election Administration
- Voter Registration
- Local Elections
- Parliament elections (Each House)
- Executive Elections
- Referenda
- Election Complaints

Problems by separate laws
- Extra work in maintaining the legislation - same issue is covered in several laws
- Need separate instructions
- Different training of large number of staff within the same processes for different elections

Risks with keeping separate laws
- Instructions may be wrong
- Polling staff follow what they are used to, not the correct instruction
- Practise may be wrong, officials may take wrong decisions
- Improvements may be done only for some elections, not all

Examples of common processes where duplication is a problem
- Process in polling station
- Counting procedure
- Re-consolation of protocols

Possible structures
- One single consolidated law
- Separate laws for Election Administrative body, Voter registration and disputes and appeals, but a single for local, parliament, European Parliament and executive elections, and for referenda

Common Sections in a Consolidated Code, each with a risk of inconsistency without a unified code
- Election Administration
- Distribution formulas!
- Voter registration
- Nomination, administrative part
- Process for delimiting constituencies
- Campaign regulations, including Code of Conduct
- Voting from abroad (external voting)
- Finance regulation
- Polling
- Counting
- Aggregation of results
- Publication of results
- Observing election
- Party Agents
- Election offences
- Complaints and Appeals

Separate sections for
Elections of
- Each house of Parliament
- President
- Local bodies
- European Parliament
- Referenda

The election specific sections
- System of representation, including constituencies (with reference to distribution formulas)

• On referenda: Consultative, binding, initiation, formulation of the subject, quorum (turnout), requirement for majority (e.g. simple majority)
• Right to vote (citizenship, age, residency, external voting…)
• Right to stand for elections
• Nomination of candidates
• Ballots
• The forms for counting, etc.
What about party regulation?

Often a separate law:
• Registration
• Finance
• Internal democracy
• Auditing
• Reporting
• Code of Conduct

But: Nomination requirements, Campaign regulation, Campaign finance, CoC for election campaign often in election law

Keynote Speaker:
Mr. Constantin-Florin Mitulețu-Buică
Vice-President of the Permanent Electoral Authority of Romania

Unifying the Romanian Electoral Legislation

Ladies and gentlemen, distinguished audience,

My name is Constantin-Florin Mitulețu-Buică and I am the vice-president of the Permanent Electoral Authority.

I am honoured to be here, today, before you, on this important event.

It is my pleasure to introduce a series of elements related to the importance of the electoral reform in the context of the political-administrative reality specific to the Romanian society and state.

First of all, it is appropriate to provide the reason for which such approach on the importance of an electoral code is necessary, given the matters of political-administrative nature of the recent years.

We start from Decision no. 51 as of January 25th, 2012 according to which the Constitutional Court stressed out: 'the need to re-examine the entire electoral legislation on elections to the Chamber of Deputies and the Senate, and for the President of Romania, on elections to the European Parliament, as well as on elections to the local public administration authority, and to outline it in an electoral code containing joint and special provisions to ensure a democratic, fair and transparent voting process, consistent with constitutional principles'.

The role of codification of the Romanian electoral system was associated with the need to provide a stable democratic context to exercise the voting rights. Thus, the concern of the Permanent Electoral Authority on uniform regulations existed and still remains. The current legislative framework on electoral matters is grated by numerous legislative acts: Law no. 67/2004, Law no. 393/2004, Law no. 370/2004, Law no. 35/2008, Law no. 33/2007, Law no. 115/2015, Law no. 208/2015, Law no. 334/2006 and G.D. no. 749/2007.

Each of these legal provisions regulates differently each category of elections: local, parliamentary, to the European Parliament, frequently amended acts, and a series of other regulations have been adopted for their assignment.

Hence, the need of an overall re-examination of electoral legislation and its coverage by an Electoral Code is a priority for the Permanent Electoral Authority. We consider that by regulating all categories of elections: local, parliamentary, presidential, to the European Parliament, in a Single Code, as well as the organisation and running of the referendum shall determine the increase in quality for the election product, both in terms of its organisation, and in respect of citizen trust in the transparency of this process.

The adoption of an electoral code would bring unitary regulation, starting from the fundamental

principles set forth by the Constitution of Romania and by the international documents in the area, with consequences on determining the civic attitude of citizens. The arguments of a Code are also stressed out by the Code of Best practices in electoral matters, adopted by the Venice Commission, stating that: 'stability of law is a vital element for electoral process credibility, essential for the consolidation of democracy. Consequently, frequent changes in norms or their complex nature can confuse the voter. Hence, the voter may conclude, correctly or not, that the electoral right is solely a tool to be used by those who hold the power and that the voter's vote is no longer an essential tool in deciding the result'.

An Electoral Code, as a pillar of the electoral process, would bring benefits in ensuring citizen trust in the rule of law, which must constitute one of the main objectives for the legislative act. This objective may be met by means of legislation characterised by quality and stability. The level of citizen trust in the fairness of elections is directly influenced by the state of legislation in the area.

Within the focus of electoral legislation review, increased attention is required for granting Romanian citizens, with voting rights but residing abroad, and not only, the possibility to exercise voting rights, within a special procedure, including electronic vote, to be carried out in correlation with the voting hours, according to official Romanian time.

In order to facilitate voting in diaspora, efforts are made for the postal voting, under the coordination of the Permanent Electoral Authority. Currently, over 35 countries, of which Austria, Estonia, Germany allow voting by correspondence as the only way to vote from abroad or as a broader option (for instance, personal vote and postal voting).

The coverage potential for the postal voting is unlimited, granting any Romanian from Diaspora the possibility to vote from wherever.

For this purpose, I would like to emphasize that, last week, the Electoral Code Commission unanimously approved the project on the postal voting, drafted by the Permanent Electoral Authority.

The project prepared by the Permanent Electoral Authority stipulates that the voters with domicile or residence abroad, who want to exercise their right to postal voting in parliamentary, presidential or European Parliament elections can register to the Electoral Register, selecting this type of vote.

The Permanent Electoral Authority shall exercise all due diligence, according to its attributions, to improve electoral legislation.

I want to remind you that the activity of the Permanent Electoral Authority is focused on ensuring and constantly improving the legal and organisational framework of elections, according to the legal instruments of international law, the Community acquis and constitutional provisions. Furthermore, I stress that, at international level, the Permanent Electoral Authority is an important image vector with regards to the degree of democratisation in Romania, measured by the exercise of electoral rights, equal treatment in the political competition and transparency in funding the activity of political parties and electoral campaigns.

Our institution was acknowledged by various international activities and actions and carries out an intense international activity, externally acknowledged as promoter of democracy, as well as of free and fair elections.

To sum up, I would like to highlight that the unification of electoral legislation is a topic of great interest for Romania and I am honoured by this opportunity to comprehensive approach such a broad subject, with great significance for Romanians.

Thank you for your attention.

Keynote Speaker:
Mr. Melle Bakker
Secretary-Director of the Electoral Council of Netherlands

The Loathed Need for Details in Electoral Acts

Romania is undergoing a comprehensive electoral reform. The goal of this reform is to materialize a more consistent and accessible Electoral Act. Once succeeded, a milestone is added to the constitutional history of this beautiful country.

By organizing this workshop, both the Permanent Electoral Authority of Romania and the European Commission for Democracy through Law - better known as the Venice Commission - give us the opportunity to dwell on questions that are relevant when preparing a comprehensive electoral reform. Questions about the organization of the procedure that should lead to a new Electoral Act, and fundamental questions about its content.

The last comprehensive electoral reform in the Netherlands took place in 1989. The Electoral Act got totally rewritten. In those days I worked as a legislative lawyer at the Ministry for the Interior and I had the pleasure to be one of the public servants that were involved in that process. Our main goal was not to change the electoral system, but to make the electoral law more consistent and accessible for all actors involved in the election process, voters included. However, that did not prevent us from discussing fundamental questions too. The whole process started as a technical reform, but during the process fundamental questions were inevitable. In this presentation, I will focus on one of these discussions.

When drafting electoral law, what shall be its place in the legal order? In other words: how detailed should the Electoral Act be? May it delegate making more detailed regulation and if so, to whom?

In the Netherlands the Constitution gives the main characteristics of the electoral system, and with that a very basic framework for the Electoral Act. For example the number of seats to be chosen and the term of office of the elected follow from the Constitution, just like some basic electoral principles such as direct suffrage and the secrecy of the vote. And not to be forgotten: our system of proportional representation. It is self-evident that the legislator, when drawing up an Electoral Act, must respect the Constitution.

Not surprisingly the Electoral Act that we came up with, was in some aspects very detailed, compared with other Dutch acts. Partly because of the complexity of the election law, but mostly because the Electoral Act covers the core of our electoral system and with that the heart of our democracy. In elections big interests are at stake. Therefore it is crucial that the conditions and procedures are perfectly clear to all actors involved: political parties, candidates, voters and EMBs. By conceiving a detailed Electoral Act we created the needed

clarity. Indistinctness shall be avoided.

Besides clearing clarity, having a detailed Electoral Act has some more advantages. I will mention another two of them. The first advantage comes from the fact that the materialization and amending of the Electoral Act is not possible without the approval of Parliament. Therefore conditions and procedures laid down in an Electoral Act, are democratically legitimated. That aids the acceptance of the rules.

The second advantage of having a detailed Electoral Act, is that it leaves the electoral management bodies with no room to develop their own policy when it comes to matters related to the core of the electoral system. For example: it follows from the law if a ballot paper is valid, or not. Likewise, it follows from the law when a political party can be registered, or not. The fact that electoral management bodies can only base their decisions on an Electoral Act, does leave them as little freedom of interpretation as possible. This is not only favourable for political parties, candidates and voters - as the decisions of electoral management bodies become very predictable -, but also for the EMBs themselves. The public confidence in the electoral management bodies is high in the Netherlands, because there is no public debate about the rightness of their decisions as they almost all follow strictly from the law and cannot be politically driven. When asked for advice about a new bill, it is one of the things that the Electoral Council of the Netherlands is very keen on. The Council does not mind new responsibilities, as long as the legislator very precisely prescribes which decision applies to which situation and does not leave any free space for interpretation. It is unwise to expose electoral management bodies to a public debate, as that can only harm their authority and reduce the public confidence in them.

Recapitulating. Having a detailed Electoral Act has at least three advantages.

- Firstly: conditions and procedures in the electoral process are fully written out, which makes the process predictable for all actors involved;
- Secondly: as the Electoral Act is a product of Parliament, the conditions and procedures in the electoral process are democratically legitimated down to the last detail; and
- Thirdly: the public's confidence in decisions of the electoral management bodies is encouraged, because it is secured that decisions of EMBs are not politically driven.

The famous former Dutch soccer player Johan Cruijff is well known for his saying: "Every advantage has a disadvantage too." Unfortunately this saying also applies here. Having a very detailed Electoral Act, covering all possible aspects of the democratic process, has undeniably advantages, but it comes with a price. I will mention three of them.

Most civilians are no lawyer. As a matter of fact, most of the staff members of our electoral management bodies are no lawyers either. Not to mention the members of the polling stations. Yes, they are well trained volunteers and sometimes have tons of knowledge. But they did not learn that by studying the official text of the Electoral Act. Even though they have a copy of the relevant articles from the Electoral Act at hand in the polling station.

Whereas the writing out of procedures and conditions in the Electoral Act in detail helps lawyers to predict what will happen in certain situations, it makes the ordinary civilian dazzle. The Electoral Act that gives clearness on electoral matters, does not give clearness to everyone. Only to those, capable of reading and understanding legal documents. For this reason, the Electoral Council of the Netherlands has published an Electoral Act in plain Dutch on its website. It lacks the details of the actual text, but it explains in an easy to read text what the essence of each article in the Electoral Act is. Furthermore we nowadays work

a lot with posters in polling stations, as they can clarify the procedure for voters in a glance.

The second disadvantage of a detailed Electoral Act follows from the lack of flexibility. Every tiny change in the electoral process requires a bill to pass parliament amending the Electoral Act. The fact that the lawmaking process is very time consuming is in itself not the problem - a change of the law must be well considered and Parliament should take its time to debate the proposed changes in depth -, but sometimes changes are regularly needed and of a non political nature. For example: each election requires its own ballot paper in the Netherlands. By consequence for each election a tiny change is made in the design of the ballot paper. At the top of the ballot paper for municipal elections is written that the ballot paper concerns the municipal elections in the city of X in the year Y, whereas the ballot paper for the election of the members of the House of Representatives keeps the same design but has another text on top of it. Requiring a change in the Electoral Act for those changes would not make sense. It would even introduce a risk, as a delay in the legislation process would put the organization of the election process under an even higher time pressure which might even result in less well organized elections.

Finally, it is worth noting that no matter how detailed the Electoral Act gets, there will always be questions about its interpretation. There is an English saying: "a fool may ask more questions in an hour than a wise man can answer in seven years". Even if you disregard the questions that flow from a negligent reading of the law, you will probably agree with me that it is sometimes impossible to foresee all eventualities that can at any time pop up in real life.

At any moment a detailed Electoral Act might look complete and comprehensive, but most times it later shows that it is not, or not anymore. Let me illustrate that with an example. In the Netherlands people whose names are on a list of candidates have to sign a declaration of consent. This declaration proves that they agreed to be on the list of candidates. When I helped drafting the Electoral Act in 1989, internet and email were not common. The question if a declaration of consent can be signed, scanned, sent by email to a political party, printed and then handed in to the central election commission, could not be foreseen. But it popped up, in the twenty-first century.

Additionally, while trying to cover all possible events, you risk to end with an Electoral Act that is so cluttered that its consistency is at risk. Especially when you amend it time after time, like we did. The Dutch Electoral Act got amended no less than 55 times since 1989. In 2014 the Electoral Council advised to start a comprehensive electoral reform. The foundation of the advise was painfully recognizable for those familiar with the electoral law reform in 1989: more consistency and a more accessible text are requested. For your information: the minister of the Interior and Kingdom Relations has decided that a comprehensive reform of the Dutch Electoral Act is out of the question, but the act will be streamlined again in the foreseeable future.

Summarizing, having a detailed Electoral Act also has disadvantages.

- Firstly: A detailed Electoral Act is less accessible for people who have no education in law;
- Secondly: The dependence on amendments of the Electoral Act in order to make even tiny changes that are in their nature non political, can make the electoral process more vulnerable; and
- Thirdly: the expectancy that a detailed Electoral Act will solve all possible questions

is nothing but an illusion.

I started this presentation posing the question how detailed an Electoral Act should be. The Electoral Act shapes the heart of our democracy. It covers the core of our electoral system and for that reason it is favourable that conditions and procedures in the electoral process are fully written out. It makes the process predictable, democratically legitimated and helps building trust in the electoral management bodies. Some of the disadvantages of an detailed Electoral Act can be overcome. The fact that the vast majority in a society cannot easily understand legal documents, can be solved by offering information via different means of communication. We have our website and an electoral helpdesk for that.

But we might also practice some restraint. We cannot prevent all uncertainties, as there will always be some. And we need some flexibility too. Flexibility when it comes to colour in some of the conditions and procedures that are already laid down in the Electoral Act. Flexibility also when it comes to matters that concern the realization of the electoral process and that are non political in their nature. For that reason, the Dutch Electoral Act delegates legislative power. As the act is a product of Parliament, this delegation of power is democratically legitimated too.

Which brings me to the second question of this presentation: to whom may the legislator delegate? From the Dutch point of view, by all means not to the central election commission! The Electoral Council of the Netherlands functions as central election commission for national elections and is a permanent advisory body for the government and Parliament on electoral matters. It carefully guards not to become a subject of a public debate as that might raise questions regarding its independence and thereupon diminish the public trust in its decisions. Whether public's suspicion is reasonable or not, does not matter in that case. Public trust arrives on foot but leaves on horseback. The electoral management bodies facilitate democracy and because of that, trust is extremely valuable for them.

Another reason not to load the central election commission with the task to draw up the last final details of the election procedure, is the lack of parliamentary supervision on the result. The central election commission in the Netherlands cannot be called for account by Parliament. And although it only concerns the last final details, and although it should concern only matters of a non political nature, it still concerns the electoral process: the heart of any democratic country. For that reason, the delegation of legislative power can only be given to the government or the Minister of the Interior and Kingdom Relations. Should there be any doubts about the arrangement of the electoral process, they are accountable. The electoral management bodies are there just to facilitate democracy, to serve the public, but always strictly applying the Electoral Act and the delegated regulation.

I am reaching the end of my presentation. Please allow me to add just one more thing. I'll keep it short. Never in the Dutch history of electoral law have there been so many simultaneous developments. I do not have the intention to list them all here. There is however one thing that I want to mention, as it is relevant for this workshop. Although you can invent a new ballot paper - to name just one actual development - and do all kinds of tests with it, you never know for sure how it will function in a real election. In fact, after careful consideration and a lot of research, there is only one way to find out. As the British say: the proof of the pudding, is in the eating. In the Netherlands big changes in the electoral process are sometimes preceded by a real life experiment. It starts with an Act that makes it under certain conditions possible to deviate in secondary legislation from the Electoral Act.

This ensures the parliamentary approval of and involvement in the experiment, although secondary legislation is much easier to amend then acts. And because of the relatively easiness by which secondary legislation can be changed, it is possible to quickly adapt the legislation if the results of an experiment demands so. In the beginning mostly a small number of experiments are held in a few municipalities. If they are successful, the experiments will be repeated in more municipalities, until a well informed decision can be made to amend the Electoral Act itself. I wanted to mention this, because it is a way to find out how detailed a subject must be regulated in the Electoral Act.

Keynote Speaker:
Mr. Rokas Stabingis
Member, Central Electoral Commission of Lithuania

The Lithuanian Electoral Legislation

It's my pleasure to be here.

The purpose of my presentation is to tell you about legislative developments in Lithuania.

Let me begin with a short introduction of the Lithuanian case. Lithuania already has a draft electoral code and the initiative for the electoral code comes primarily from the Parliament and not from CEC Lithuania. CEC acts in this case as an adviser and I consider it to be a positive sign the fact that politicians are interested in this electoral issues and I hope one day this code will be adopted.

Let me begin my presentation with a short introduction to the legal frame. The principle in Lithuania is *"one law – one election"*, so that means that we have at least four separate laws for each election – parliamentary election, presidential election, election for European Parliament and local administration election. Thus, these four laws are part of this electoral code and will be codified. Some provisions can be found in the Constitution but, of course, Constitution cannot be codified. Unfortunately, law on referenda is not included in the draft electoral code and this is a legislative problem. The law on CEC is also a separate law as it is now, but this will be incorporated into the electoral code. Of course, we have a law on financing of political parties and electoral campaigns. It is a separate law, destined for these actions. We have also a separate law on political parties, as our colleague told us this morning, but this law will not be codified.

I will now present you our reasons for codification, reasons that will be interesting to discuss with you. Consolidated electoral laws are preferred over fragmented laws for different electoral events. A codification, in my mind, guaranties the integrity of the electoral system and changes the provisions that are not consisted, precise or absolute. I could comment a little bit on this, because some of our electoral laws were adopted, let's say, 25 years ago, and the problem is that we cannot just simply amend them, therefore, from time to time, there are some mistakes made because of their intense amendments. As an example, I could tell you one case. We have now political subject integrated into

our law, it is Public Election Committee (PEC). Before that only parties could nominate the candidates list. Now, the Public Election Committee can nominate candidates list, so we started to amend the law on presidential elections and the law for European Parliament elections. Firstly, we introduced the Public Election Committee as an institute for these two laws and we changed some provisions, but later on we decided that we also need this Public Election Committee for local administration elections and, now, when we will have parliamentary elections, in 2016, there are some discussions about the introduction of this Committee. The problem is that we constantly change the laws and I could say that we have changed them in a not very systematic way, but technically as for example – if we have sentence or provisions in electoral code which says that only political parties can nominate candidates list, we changed the phrase in such manner so that the Public Election Committee can also nominate candidates. So, we did it more technically, then systematically, but sometimes some mistakes occur. For example, a mistake was connected to the law on local administration election, which says that you can nominate the candidates list so the number of candidates in that list should be not less than half, not more than twice, so that means, for example, if in Vilinius municipality we have 51 counselors, that the candidates list should consist not less than 25 candidates and not more than 102 candidates. There was a provision that Public Election Committee was not included in it and there was a final situation when this requirement was for the parties and not for PEC. CEC said that we need to look systematically on this law and PEC should respect this requirement but, the Constitutional Court said no, there is no PEC mentioned in this provision, so PEC can have as many candidates as they want and this is why I think that an electoral code should solve such problems.

Another reason is to avoid different procedures when two elections take place at the same time. And it often happens in Lithuania, because in March 2015, we had local administration elections and, at the same time, by-elections for a single member constituency of the Parliament. Here the problem is that, for example, we have postal voting in Central Post for parliamentary elections, but we don't have the same provision for local administration elections. When we had these two elections, there was a question - should we organize postal voting only for parliamentary elections? How should we act? Our decision for the last election was to organize postal voting for local elections, although the law didn't had such provisions, but we thought that it would be in the benefit of the voters as they have more options to cast their vote.

These were the reason for codification and here are some facts about our plans. 27 of June, 2013, the Parliament adopted the draft of the electoral code that had research on electoral systems, some basic provisions for each election and also, the structure of the code and the date of preparation of the draft electoral code. So, you can see here the main purpose written in this conception was to codify electoral laws and the jurisprudence of the Constitutional Court. Also, the jurisprudence of the Constitutional Court has already been implemented in the code because, as I mentioned, for PEC, the Constitutional Court says you cannot ban individuals to nominate themselves, there is a monopoly of political parties, so you need to introduce other organizations that could nominate candidates. As a result, this PEC was introduced. We followed the jurisprudence of the Constitutional Court and, in terms of preparation, we should end in April 2016.

The structure of the electoral code consists of four parts with corresponding sections

and it was interesting to hear Mr. Vollan this morning, as he mentioned 15 sections in the electoral code. This is how our structure looks like, principles of elections in the first place, terms, voter lists, candidates, constituencies, then everything about elections and in the third part there is the founding of political campaigns and final provisions. The preparation of our electoral code takes form in working groups which were created within the parliamentary committee, state administration and municipalities. I'm here today with my colleague, Mrs. Raja Mačiulytė, who works for this parliamentary committee as adviser and she is responsible for the preparation of this electoral code. As you can see, MP's, parliamentary committee advisors, CEC members and representatives of NGO's are included in this group.

Recently, the draft electoral code is in the final stage, but we still need approve and probably, the Parliament will register it for adoption next spring.

Benefits of electoral code – it will be a constitutional law, it has higher status, more difficult to amend (now is an ordinary law that you can easily change; even the elections system, because is not in the Constitution, the Constitution does not force the electoral system; it is integrated into our ordinary laws). If electoral legislation will be codified in one electoral act, there is no need to compare different laws if elections take place at the same time as I mentioned earlier. We still need to decide on the referenda law in the future, because, as you know, the law on referenda is not included in the code. Also, this brings clarity, certainty and accessibility – the voters need to have only one manual where they can find everything about elections because electoral legislation is complex and, as a colleague mentioned earlier, not all of them are lawyers. We would like to make this legislation clear, accessible for general public.

Basically, we didn't change anything while codifying, we just put all procedures together. Of course, some sections will need intervention but the principle of stability will remain the main principle.

Regarding challenges – as you can see here – different sections of this code were prepared by different voters, mainly people from the Parliament, from CEC and when we've put all this sections together we lost the coherence, we faced the problem of how to integrate different parts, not to jeopardize the integrity of the legal act. So now, we are working on that, to make the articles and the sections consistent with each other. There was a problem, the lack of methodological approach. To my mind, maybe we should have made a smaller group – 3-5 persons who could systematically prepare the code. But we still have time to make it brilliant.

Also, we have less than one year before parliamentary elections, because we will have parliamentary elections in October 2016, therefore we cannot adopt it for this year, but it can be adopted for 2018 or 2019.

We have important issues in Lithuania right now, regarding the internet voting and we have two laws pending in the Parliament about this issue. If the Parliament decides to adopt internet voting, the entire electoral code will need to change substantially due to so many provisions.

I see that in the future we will need to change the code again. It is hard to have a legislation always in change.

11:15-13:00 Working session 5 - Challenges and Perspectives for Codifying Romanian Electoral Legislation

Moderator:
Mr. Cristian Andrei
Political Marketing Expert,
The Political Rating Agency

Keynote Speaker:
Mr. Cristian Petraru
Head of Department for Organizing Electoral Processes,
Permanent Electoral Authority of Romania

Codifying Romanian Electoral Law - Historical considerations 1989-2015

December 1989. The Romanian Revolution. Communist legislation would have been null and void, hadn't it been explicitly annulled. Practically, there was no Constitution and, *de facto*, the first Romanian electoral law was the Decree-Law no. 5/1990, as a law for electing the Parliament and the President, which would remain into force until the issuance and approval of a new Constitution as a mini-Constitution. This decree-law contained elements of constitutional law. There were elements ensuring the power balance. This law contained principles which remained valid throughout the post-revolutionary period, many of them being valid to date. The principle of separation of powers in a state was clearly set forth. The position chosen at this level were decided. There were discussions on electing the president of Romania and, at that point, it was decided that the president of Romania would be elected by direct vote, in two rounds. During this round, the winner was required to obtain more than 50%+1 votes from the number of citizens registered in the electoral lists. Otherwise, a second round of ballots would be organised for the two runners-up. Moreover, the proportional electoral system on strict listed was established for the Parliament, which remained until 2008 and shall be resumed in 2016. Furthermore, this first law also states the principle of term assignment among the national minorities, according to the positive discrimination system, to say so, by which each minorities are entitled to one seat in the Parliament, in addition to the number of seats regulated. The principle of building the

electoral infrastructure is built, kept to this date, with electoral offices comprising of judges, on the one hand, and electoral competitors-political parties, on the other.

Immediately after, on March 19th, 1990, the CPUN president set the date of elections for May 20th, 1990. The first Parliament was elected. At that time, it comprised of the Chamber of Deputies and of the Senate and it was the first Parliament elected from the new Romanian democracy. After creating the new Parliament, the Law no. 5/1990 was adopted where, even though the discussions on a system of elections for the local authorities became less frequent, the idea on the following positions to be elected already started to be noticed. Although the law on local public administrative authorities was approved and rumours stated that it would remain in force until local elections, a new hypothesis arose. Local public administration authorities would be elected under a democratic system. At the same time, the new Parliament operated as a Constituent Assembly, being the one drafting the new Constitution of Romania. In 1991, on November 2nd, the Parliament completed the Constitution draft and decided to hold a referendum to approve the new Constitution. For this purpose, it adopted a law on referendum organisation, which, so far was not a general law, but a law referring strictly to that particular event for approving the Constitution. Hence, although we established the principle of consultation with the people by referendum, immediately after the revolution, to this date, there is no general law on referendum organisation. A law on organising the referendum was issued separately to approve the Constitution. December 8th, 1991 is the date of the referendum, when the new Constitution of Romania was validated and, from that moment on, a new democratic era commenced, the constitutional era.

On November 26th, 1991, namely immediately after the entry into force of the new Constitution, the Parliament adopted Law no. 69/1991, which is the first law on local public administration and, basically, during the same session, the Law no. 70/1991 on local elections was adopted straightaway. This was already a compact and complex law, with the structure of a law from a democratic electoral system. Immediately after being adopted, the date of elections was also agreed - February 9th, 1992. Therefore, since February 9th, 1992 we can discuss of democratically-elected local public administration authorities. In the event of a candidate obtaining more than 50%+1 votes from the number of voters in the first round, that candidate was declared winner. Otherwise, a second tour was held with the same competitors. It was even possible to hold a third round between the first two runners-up, should none of them obtain half plus one of the valid votes. For the elections of the local deliberative representatives, namely the local and county council, the proportional system was adopted - strict lists, and there was no electoral threshold, at that point. In the same year, on July 16th, 1992 the Parliament adopted the first law for the elections to the Chamber of Deputies and the Senate and the first law for electing the Romanian President according to the principles of the newly adopted Constitution. The new Constitution stipulated a 4 year term for the President of Romania, the terms for the Chamber of Deputies and Senate was for 4 years, and basically the two types of elections would be simultaneous. This is why, practically, the law on electing the president of Romania does not have the adequate own structure. It is based on the electoral infrastructure on elections to the Parliament, because the two types of elections would be simultaneous. On July 18th, 1992, therefore, immediately after the laws were adopted, the Parliament set the date of elections for September 27th, so you can notice that, so far, each time when a law was adopted, it would be immediately

entered into during the election period. In September 27th, 1992, the first simultaneous elections for the Chamber of Deputies and the Senate and for the president of Romania are held, on constitutional grounds. The following elections take place in 1996, when the law on local elections adopted in 1992 was effective, being significantly amended and, for the first time, the electoral threshold of 3% shall be introduced. Within the same year, on November 3rd, parliamentary and presidential elections were held, when the previous laws of 1992 would also apply, with one amendment. Furthermore, for parliamentary elections, an electoral threshold of 3% is introduced. In 2000, the local elections held on June 4th take place on the same law of 1992, this time with three amendments: all amendments were carried out slightly before the electoral period. Parliamentary and presidential elections were organised until the end of the year, on November 26th. The laws of 1992 were in effect, with 7 amendments, of which two or three actually carried out during the election period, namely after electoral proceedings started. Although we have discussed about a referendum law, from the early 1990s, it is only in 2000 that a first law of referendum was adopted, although there were already rumours on a constitutional amendment - the prerequisites of Romania's accession to EU started to appear and it was obvious for everybody that an amendment of the Constitution was required, hence a law on referendum was necessary. This was issued in 2000 - Law no. 3/2000 on the referendum - in the end, the good thing is that it was issued, that it exists. It regulates aspects related to the expression of sovereignty of the people, both nationally, and locally. The problem with Law no. 3/2000 is that it was designed as a law operating on the infrastructure of other electoral laws and, then, it was particularly difficult to hold a referendum in Romanian starting with 2000, as it is to date, because this law has remained in force. In 2003, the Constitution was amended and a referendum was organised, approving constitutional amendments. This happened on October 18th and 19th, being the first and only time in the Romanian electoral system that an election event was held for 2 days. Traditionally, in Romania, elections are organised on one day, a Sunday. On October 18th and 19th, 2003, referendum - constitutional amendments are approved. Mainly, its amendments started with the need of harmonising legislation with the perspective of integrating Romania in the EU, but the Parliament extended the range of these amendments too much, so that we can refer to a new Constitution after 2003. With regards to the essential elements of the electoral system, the length of the President's term was extended from 4 to 5 years, this being the moment when we could start thinking about separate elections for the following electoral cycle. For the first time, the new Constitution explicitly stipulated a permanent electoral authority, as a state electoral management body. There was no such body, but there was a constitutional provision recalling this institution.

Changes in substance with regards to electoral legislation started to appear in 2004.

On March 25th, a new law on local public administration authorities is issued, namely the Law no. 67/2004. The first elements related to PEA appeared on this occasion, although the PEA institution did not exist, so far. It only comprised its management. This was the first time when the PEA, by its president and two vice-presidents, entered the Central Electoral Office and, this was the moment when the PEA was established. On June 6th, 2004, local elections were held based upon the newly-adopted law, without any changes.

On September 20th, a new law for the election of the President was adopted - Law no. 370/2004 which would remain in force to date, and on September 24th, a new law was adopted for electing the Chamber of Deputies and the Senate where, institutionally

speaking, the PEA was described in the law as an institution. The voting system for the Chamber of Deputies and the Senate remained the proportional system with strict lists.

The elections for the president of Romania, to the Chamber of deputies and to the Senate took place on November 28th, 2004, based upon the new laws, with one amendment only, but a rather substantial one.

On April 25th, 2005, Romania signed the treaty of accession to the EU and, practically, upon signing the treaty, a new position was established in the Romanian electoral system, that of the Member of the European Parliament. In the treaty, Romania undertook to adopt the necessary legislation for electing the Members of the European Parliament until the actual accession of January 1st, 2007.

The Law no. 33/2007 on electing members from Romania to the European Parliament was adopted on January 16th, 2007, and on November 25th, elections to the European Parliament were held. The newly-adopted law functions with 3 substantial changes.

The year 2008 was another moment of radical change, when the Law no. 35/2008 was adopted, changing the electoral system during the elections for the Chamber of Deputies and the Senate, replacing the electoral system with strict lists used until that point, with a mixt system, specific to Romania.

The context was that of organising a referendum in 2007, when the population was asked whether they would agree to pass to a uninominal system. The referendum was not validated, because no quorum was established. However, the majority population agreed with the uninominal system, for which the Parliament, at the beginning of 2008, drafted this project and, going from the idea promoted by the referendum on the need of a uninominal system, created a legislative act where elections were held under a uninominal system, up to a point, when the system would turn into a proportional one. This system is rather complicated and created operating problems, since it was designed for two electoral cycles.

In 2008, local elections took place under the law adopted in the same year, with 4 amendments, unfortunately. November 30th, 2008 was the first time when the elections for the Chamber of Deputies and the Senate were organised separately from the presidential elections and operated under the law adopted at the beginning of 2008, with legislative amendments.

The first full-term elections for Romanian members to the European Parliament took place in 2009, the other term being partial. They were carried out according to the law adopted in 2007, with 5 substantial amendments, and, furthermore, the first presidential elections separate from the elections for the Chamber of Deputies and the Senate. The date of elections was November 22nd, and it was based on the Law no. 370/2004 with one amendment. After 2009, at the level of an already-established and functional PEA, the first discussion on the issuance of the electoral code was held. The need of an electoral code was generated, mainly, by the multiple changes and differences between the 5 legislative acts regulating the elections.

In 2010, a group of specialists at PEA level prepared the draft Electoral Code, starting from the premises that there should be a single law embedding the entire electoral system, also containing organisation elements, general notions which comprise the infrastructure, changed in the least extent possible and there should be term assignment elements, a special part, let's say, where desired, if the political factors deemed it necessary to have a change in assignment, to make changes without influencing the method of organisation and running of

elections. Throughout the year 2010, efforts were made for this extremely complex and large draft. In 2011, the existence of a certain, perfectible draft was brought to public debate and communicated to the parties and to the Parliament. We have tried to find the best solutions in terms of organisation and running of elections, but with regards to the assignment of terms, nothing substantial from the current provisions at that point was changed in the Romanian legislation. This project was forwarded to all stakeholders, allowing them the possibility to promote, to undertake, to submit to the Parliament, to bring to debate and, if applicable, to be adopted. Nobody wanted to.

The local elections of 2012 were held on June 10th, under the law of 2004, with 6 amendments, many of them being significant, but at the end of the year, elections for the Chamber of Deputies and the Senate were held under the Law no. 35/2008, with 7 amendments already. A very interesting element occurred between the two electoral events of 2012. From my point of view, this was a historical moment, changing the approach on the electoral legislative structure. The CCR issues decision no. 662 setting forth that no frequent amendments to the ballot system could be done with less than one year before elections, as quoted from the recommendation of the Venice Commission. The context of this decision is interesting, namely upon rejecting a law adopted by the Parliament in the summer of 2012, by which the electoral system switched from a uninominal mixt system into the pure uninominal system (first-past-the-post), and this was the decision by which said law is rejected. In the event that this law would have not been rejected by the CCR with the previous arguments, it would have been in effect for the parliamentary elections of 2012, and today, the opposition would consist of one person only. The rest would have been power.

2014 was the year when provisions related to the Electoral Code were integrated. It was the first time when elections based upon the Electoral Register were held under the management of PEA, with two electoral events, the elections to the EP and the elections for the President of Romania.

2015 is a new year of electoral reform, when two already extremely important and completely new laws were adopted, with new procedures, with new security elements. The Law no. 115/2015 for electing local public administration authorities and Law no. 208/2015 on electing the Senate and the Chamber of Deputies, as well as for organising and operating the PEA.

This is the year when we are discussing, at this very instance, about the possibility of introducing the postal voting.

Keynote speaker:
Mr. Adrian Moraru
Deputy Director,
Institute of Public Politic
Romania

Timetable, stakeholders and key chapters of the potential Electoral Code

This is not so much related to the Romanian Permanent Electoral Authority, I am telling it for our foreign guests as well, because according to the Romanian mentality the legislation is almost 100% dependent on political decision-makers. Well, in the end this happens because a law needs to be provided, but unlike in other fields such as integrity, anticorruption, where the responsible sectoral bodies have a much stronger voice, for reasons that I don't think we should debate or detail here, the Authority has not been able to create for itself the same position of authority in front of the politicians in order to be able to tell them at some point: we are two years away from the elections, we have to start making changes and complete them at least one year before the elections.

The Romanian presidency has intervened in an attempt to - I'm telling this in order to show that to some extent the political area and other centers are trying to put pressure on the preparation of certain changes, not necessarily codifications, to be made in time or at least on time. Now let's talk about the timeframe. I would dare to make a proposal. I believe the starting point should be those white charters of the elections that the Permanent Electoral Authority has to produce as a sort of report after every election and which continue to play a minor and hardly debated part. Maybe the Permanent Electoral Authority is to blame as well for this situation. Within 6 months from the elections we should debate on what went wrong, if we are unsatisfied with the legislation and other principles and to come up with some solutions, then within a reasonable timeframe of 6-12 months to make the necessary amendments for the next electoral cycle. Period. I think we may even introduce legal requirements blocking this period, this window of opportunity to such a period of time. Of course, the Romanian Constitutional Court started the blockage as of the date of elections and stated: if there are key things one year before the elections, you should not

give them. I think we could have if not a decision of the Romanian Constitutional Court, at least a custom or a law in this field which could clearly stipulate and even include in the constitution a provisions regarding a potential review, whereby such amendments are to be made in the first year after an electoral cycle only for the next electoral cycle, for the same type of elections. In my opinion we will not have a code in 2016. I don't think the current Romanian political environment is able to think in terms of codes. What they are able to do and have already done in other fields such as the so-called administrative code, for which they received EU money for 3 projects, 3 teams within the Ministry of Administartion prepared an administrative code, rewrote it, I don't know how many times, and it does not exist to date in order to be presented to the Parliament. So, we do not have a tradition of thinking, a mindset and overview in order to be able to codify. What I was trying to say is that in fact we have packages of laws. We take all the provisions from the legislation, from various sources and put them in between some covers and write on them: Code. This is not a code, this is a folder or a package of the respective legislations.

One very obvious thing related to the other area that I want to talk about is the area of those sections that should exist. The provisions, those on the funding of parties for instance, are obviously covering certain legislations only: for instance when we organized referenda we did not pay attention to the fact in case of a referendum the funds spent by various entities, generally speaking, not necessarily political parties, have a consistent electoral stake. We believed that in Romania referenda are traditionally organized for the approval or review of the Constitution. We found out that referenda may be organized for presidential impeachment, for proposing amendments to legislations. Through such referenda the positions and opinions of various political parties were very obvious, some of them were even pumping financial resources, but such actions could not have been monitored because the legislation on the funding of electoral campaigns had not considered covering this type of vote as well. What I mean is that the legislation on the funding of electoral campaigns, voting procedures or postal vote refers to a certain type of elections only. This is inadmissible. A law on postal voting cannot be issued for a certain type of legislation only. Of course, the answer would be that this is a political decision that in certain types of elections the postal vote cannot be used, thus preventing me from exercising a constitutional right.

In order to have a code we need to have all these details related to the organization of the campaign, the funding of political parties, the postal voting, the electoral register, the electoral staff, the media access. There are special provisions whereby the media access is regulated much more in detail and other types of elections for which it is not so much detailed or not detailed at all. I believe these things should be somehow transversal, through these legislations through all types of vote, either for local, parliamentary, presidential elections, elections for the European Parliament or for referenda. We haven't have stakes yet for local referenda, but we could have a local referendum with a very high stake in Bucharest, and the legislation on local referenda is made up of two articles, clear provisions. I think all these provisions should be reviewed and included as chapters in a code, in order for them to be applicable for every type of election.

The software and procedures of processing the election results are also different or stipulated in certain cases in secondary legislation.

As regards the secondary legislation, I also believe that an electoral code could have a political level: to be adopted by the Parliament, but the permanent electoral body to be

allowed to issues a series of secondary regulations much faster and this should be indeed be the responsibility of the Permanent Electoral Authority. During the electoral campaign the leadership of the Permanent Electoral Authority should be extended by bringing in persons mandated by the parties or by the civil society. As regards the important stakeholders in the electoral field, I believe Romania has granted to small a part to ODIHR, that branch of OSCE in charge of monitoring the elections. From my experience, this is the first structure that I would resort to without offending the Venice Commission. But I was also a member of a long-term monitoring commission and I believe the experience acquired in tens of missions of at least two months in numerous and diverse countries is enormous.

The experience acquired in the field by an institution is best reflected by OSCE and OSCE expertise has been hardly used in Romania. Moreover, when it comes to GRECO, in terms of financing for political parties we have obligations that even ourselves haven't fulfilled. We have been asked to make various changes - one of the GRECO assessment waves dealt precisely with the funding of political parties and we have not fulfilled those recommendations, haven't included in the legislation the GRECO recommendations. I believe this is another stakeholder that could significantly contribute when we start working on the code.

When do we start working on the code? I repeat, I don't think we will have a code too soon, the politicians have other issues to handle, every day, there will never be a proper time for this and unfortunately the political parties do not have specialists able to carry out this endeavor.

Unless there is a critical mass of specialists able to understand this issue, we would better not adopt anything, because we will not make any step forward.

Keynote Speaker:
Mr. Laurenţiu Ştefan
Senior Presidential Adviser
for Domestic Political Affairs,
Presidential Administration
of Romania

The Permanent Electoral Authority (PEA): challenges to its consolidation as a critical institution for Romanian democracy

Ladies and Gentlemen,

I would like to thank the organizers for giving me the opportunity to speak at this conference and share with you my perspective regarding the challenges of the process of codifying the electoral legislation.

To better convey my arguments, I will kindly ask you to take one step back to remember some of the chapters in the history of the Permanent Electoral Authority and then, another step back, to look closer at the political environment in which political parties function. As Mr. Adrian Morar mentioned earlier, coherence and discipline are essential in adopting and implementing legislation, therefore our lack of discipline in this area has many negative effects.

I would like to begin by stating that my approach combines three perspectives shaped by my various capacities. Firstly, one experience that contributed significantly to my current understanding of institutional development is related to my early professional projects, when I was an activist and a member of the civil society. Secondly, I am a political scientist and researcher and most of my studies focus on political elites. Last but not least, another perspective comes from my current position as senior presidential adviser on domestic affairs.

As chairman of the Romanian Society for Political Science back in the early 2000s, I have developed projects aiming at bringing political scientists closer to the processes of institutional consolidation. One such project that significantly shaped my approach for today's topic was the research that a team of young and enthusiastic experts conducted in 2005. It resulted in the study called "Strengthening The Institutional Capacity of Electoral Bodies: The Permanent Electoral Authority and the Central Electoral Bureau", coordinated by Mr. Răzvan Grecu. I want to emphasize that I care a lot about the Standing Electoral Authority (PEA), about the role it plays and about its consolidation as an institution.

As an academic, I dedicated my research activities to political elites and, to sum up in a nutshell the conclusions of all my studies, political leaders play a quintessential role in defining whether any reform succeeds or not. On a closer look, one will see that how leaders are elected has a critical impact on the functioning of the institutions.

As a consequence, as a presidential adviser, I focused on improving the legal framework. We worked closely with the PEA and the special parliamentary committee to amend the

electoral laws, and currently we are working as diligently as possible to get a good law on the postal voting.

These are the three perspectives that enforced and shaped the presentation which I am about to deliver. To begin with, I would like to focus on the three major challenges for the process of codification of the electoral legislation:

1) The institutional status of the PEA.
2) The defining role of the leadership in the process of capacitating the institution to deliver good results, thus gaining public support.
3) Political volatility.

I hope it is clear now why I asked your permission to remember the earlier stages of our transition to democracy and how they shaped the institutions.

Happily, the PEA is successfully on its way to consolidating its institutional status, organizing seminars, workshops, international conferences with guests from abroad and seems to have established itself as a stable actor of the Romanian institutional architecture. I would like however to return to the research I have mentioned earlier, and recall that at that point we were not too optimistic. At that point, PEA's role had not been clearly defined and some were fearful that it might be merged with another authority or dismantled. I would like to ask the audience to look at the reform programs with a vigilant eye. By taking some of our achievements for granted, especially in a country like Romania, a country which in my opinion is not yet a consolidated democracy, we forget that some processes may be reversible. Of course, my colleagues are entitled to have another opinion, but I prefer caution and agree with the speaker who last night stated that democracy is a living struggle and therefore we have to struggle all the time to keep it alive. In support of this idea, I would like to remind you that apparently solid, critical institutions have been dismantled and we can never simply assume that an institution will continue to exist within 20 - 50 years or that it will necessarily play the same important role it does today.

So, why is the PEA so important, so critical? Not only because it is the host of this conference today but because it oversees the electoral processes that are at the heart of a democratic system. Even though it is part of an important mechanism to combat money laundering or other illicit practices during electoral campaigns, I will not focus my discussion on these aspects which are not the object of today's discussion. I would rather remind you about the key role of elections to consolidate the citizens' trust in democracy and their feeling that they are correctly represented. The PEA is critical because it is at the core of the democratic system.

And returning to the second item introduced above, I would like to invite you to consider the role of leadership. As leaders change, or are changed, new leaders are appointed and there are some challenges here as well. Unfortunately, the general political environment does not give us reasons to be 100% optimistic that the institution will continue to fulfill its mission once its leadership is changed. Dismantling an institution may no longer be an option these days - for various reasons, including what may be called European pressure. However, there are other ways to emasculate an institution. For example, by appointing leaders who implicitly or sometimes explicitly have the mission to reduce or remove the institution's capacity to act effectively. One good example in this regard is the Romania Cultural Institute.

Somber as it may sound, I built this example to support my argument that the high

volatility of the Romanian political environment can negatively impact on our democratic institutional arrangements. Changes in the government, in the governing majority, in the leadership of the mainstream parties, with elections organized every two years, if not more often, determine political actors to think more in terms of being elected and reelected and much less about long term projects. Unfortunately, it has become apparent that electoral considerations are incompatible with transparency, and corrupt policies are rarely, if ever, to the public benefit.

Because this volatility has become a major characteristic of the Romanian political environment, everybody, all institutions, all the leaders have to, somehow, take all of this into consideration. So, when we talk about codifying electoral legislation, the question is, how can we do it in such an environment? The answer ought not to be "Let's not do it because the environment is complicated", but rather "We have to see and find other means, to be smart and to find ways to build networks to cope with the system's resilience to change". And, again, Mr. Adrian Moraru pointed out some of the difficulties that the civil society is confronted with when it attempts to engage political actors in long time reforms This is where I believe that the strength of a multi-actor approach becomes apparent.

Of course, one could note that I insisted mostly on the challenges and gave very few if any solutions to strengthen an institution. Even though our discussion is mainly concerned with the consolidation of the PEA, the arguments stated earlier are almost universal to any transitional democracy. Returning to the arguments on how this vulnerable situation can be overcome, my recommendation is that the PEA asserts itself in the society at large, in the political system as as a heavy specialized and indispensable institution for Romania, for the Romanian political institutions, for all these electoral processes.

Secondly, it ought to strive to defend its political neutrality because, as you know, the moment an institution is perceived as supporting, aiding or explicitly discriminating in favor of a political party, it is inevitably accepting its demise once the opposition party achieves majority in Parliament. Therefore, it survives if it remains outside these political games even though this means a lengthier process and renouncing some of the benefits an institution enjoys when it is backed by significant political support.

Thirdly, it is recommendable that the PEA engages in an open dialogue with its stakeholders, as long as it results in a legitimate cooperation. Not all dialogue with political parties is damaging as long as it includes civil society and opinion leaders among others.

Fourthly, the PEA can benefit from its extended international connections. An easily recognizable international profile will help the institution resist pressures from national actors.

I would like to end my presentation with a proposition and attempt to shift your perspective completely. Until now, all my arguments have been centered on the PEA as a defensive institution, actively trying to protect itself from various environmental forces. However, it can assume the role of an agent generating change in the environment. If fully capacitated, the PEA could play a key role in setting the standards for good, clear, transparent elections, inspiring all major actors, institutions and political parties to have a different approach, conveying the message that a shift of paradigm has taken place. This is my conclusion: by reaching some kind of stability of all electoral processes, and clearly, PEA has a role in this area, such stability will have a multiplying effect on democratic life in Romania.

Keynote Speaker:
Mr. Iulian Ivan
Director of Electoral Control, Training and Regional Activity Coordination Department,
Permanent Electoral Authority of Romania

Harmonizing and unifying the electoral legislation Permanent Electoral Authority's priorities in the coming years

In the context of the process of harmonizing and unifying the Romanian electoral legislation which begun this year, I consider extremely valuable the international expertise provided in this workshop by the representatives of the Venice Commission, the Organization for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the representative from International Institute for Democracy and Electoral Assistance (International IDEA).

These days, I had the pleasure to witness a real debate on the codification of the electoral legislation both in terms of principles, the procedure on developing and effectively implementing an electoral code and from the point of view of countries who already experience a harmonized and unified electoral legislation.

Before addressing the proposed topic, I want to thank the representatives of the presidential administration, the Foreign Ministry, the Constitutional Court of Romania, but also those from academia and civil society for the extremely important contribution they brought to the debate on the need for codifying the Romanian electoral legislation in a single act.

1. Identifying the need for codification and unification of electoral legislation

I will begin by pointing out that ensuring a coherent and stable legal framework on the organization and conduct of electoral processes and on the development of an integrated management of electoral operations were and remain priorities for the Permanent Electoral Authority (PEA).

In order to achieve them, we have made constant efforts in order for the electoral reform to be supported, on one hand through the technical expertise we gained over 11 years of functioning, and on the other through creating an appropriate framework for a real public debate with all stakeholders involved in the organization and conduct of electoral processes.

The public consultations that we have held in recent years have highlighted a number of gaps and inconsistencies in the electoral legislation, both due of the large number of acts governing the electoral field and due to the frequent changes these incurred.

As a result of these public consultations, we ascertained that the lack of a harmonized and unified legislation presents a number of disadvantages for all actors involved in the

organization and conduct of elections at all levels, and especially for voters.

Over time we found that the lack of harmonization in respect to the electoral legislation is a problematic issue at macro level. Thus, one aspect signalled both in the reports of international experts on the conduct of electoral processes and in the consultations with the institutions involved in the organization of elections, the media and the civil society was the presence of several inconsistencies between laws governing different elections and the lack of a uniform terminology for the same legal realities, principles and legal concepts.

The risk presented by these inconsistencies led to their differentiated interpretation, and also to malfunctions resulting from a lack of a permanent institutional memory.

Furthermore, this context, combined with the extremely short period given for the preparation of elections resulted in the need to adopt additional regulations in election years, both through emergency ordinances which changed electoral laws in effect and through government decision on establishing measures for the organization of elections.

At macro level the direct consequence of this practice has been a decrease in the credibility of the electoral process, one fundamental to democracy, and hence it prejudiced the electoral integrity.

Basically, the legitimacy of the electoral process is conferred by the understanding of how it is conducted in terms of operations and electoral procedures, and the role and responsibilities of each actor involved. As long as they are not clear and predictable from one election to another, the whole society will be affected.

From this perspective, the most notable deficiencies we were able to ascertain were in regards to the central and local authorities with attributions in elections, especially in terms of members of the electoral bureaus.

In previous reports on the conduct of electoral processes we have pointed out that one of the shortcomings resulting from the absence of a harmonized electoral legislation is that although the five electoral laws describe the same electoral operations, the succession, terms and concepts used differ. The result was the emergence of confusions on the fluidity and sequence of electoral operations and also controversies concerning the interpretation and application of provisions. Examples of these are numerous.

A significant deficiency found previous to the implementation of our Electoral Register project and its compulsory use for all types of elections was a lack of common procedures for preparing and updating electoral lists, for delimitation, numbering and fixing polling stations, and also on several aspects related to electoral logistics.

This led to problems with the assignation of voters due to the fact that voters did not update their identification documents although their home address no longer corresponded with the current name of the street/current number of the building. It also led to errors made by mayors in the delimitation of polling stations due to a lack of updating the names and numberings of streets and buildings, and especially to omissions and errors in electoral lists used in polling stations.

Even after the provisions regarding the Electoral Register were introduced in the law on the election of the Senate and the Chamber of Deputies, we noted several inconsistencies and proposed the legislation to be harmonized in this respect. One of these inconsistencies concerned the lack of correlation of the provisions related to other types of elections. Hence, given that the provisions related to permanent electoral lists being drawn up by the Directorate for Persons Record and Databases Management based on the National Registry

of Persons Records were not expressly repealed, the Electoral Register could have only been used in parliamentary elections.

Another aspect which we highlighted concerned the lack of correlation between the introduction of the Electoral Register with the attributions central and local authorities had in the field. Thus, the need to operate in the Electoral Register was met by the refusal of the mayors, the argument being the lack of an obligation in this respect expressly stated.

Another problematic issue up to the implementation of the Electoral Register and the Register of polling stations was the lack of fixed polling stations, with direct consequences on the electoral logistics and on ensuring the necessary funding for conducting elections.

The lack of harmonization and unification is also reflected in the electoral legislation regarding electoral bureaus. Thus their composition and their terms of being set up differ depending on the type of elections.

Also in this context, the lack of stability of the electoral legislation has been a disadvantage in terms of preparing and training members of electoral bureaus and also in how effective they exercised their activity. Hence, even though there were persons who already were presidents or vice-presidents of the polling station in other elections and were provided training, they were forced to apply rules with which they were not familiar enough given the demanding complexity of the legislation and due to the fact that there are aspects loosely regulated. According to our findings the situation is caused by insufficient training sessions related to the large volume of information, the short timeframe of the training sessions and the large number of participants (e.g. an average of 200 participants in a training session which takes place in only two hours).

Another category of actors for which the lack of unified electoral provisions is problematic are the electoral competitors. This is due to the different deadlines for each election in terms of submitting candidacies and in terms of appeals.

One last point that I want to emphasize regarding the lack of harmonization and unification of legislation is related to the issues of ensuring the transparency, integrity and security of the electoral process. This year, in the context of electoral reform, PEA supported the need for a system to monitor the turnout and to prevent illegal voting, which is currently regulated for local and parliamentary elections. Therefore, I believe that the process of harmonization and unification of legislation will benefit from extending the use of this system for all types of elections in order to ensure the integrity and credibility of electoral processes.

2. Electoral Reform and supporting a project on harmonization and unification of electoral legislation and procedures

As noted before, the disadvantages and shortcomings resulting from the absence of a harmonized and unified Romanian electoral legislation affect all categories of actors involved in the electoral process.

For this reason, following the public consultations, our own findings on the conduct of electoral processes, and the recommendations of the Venice Commission, we have supported since issuing the 2008 report on the organization of parliamentary elections, the adoption of uniform regulations for all elections and referendums in terms of electoral lists, electoral logistics, electoral bodies, the election campaign, submitting candidacies,

conduct of voting, contraventions and sanctions, electoral disputes and obligations of public authorities.

In this respect, as my colleagues mentioned, we completed in early 2011 an Electoral Code draft, which was submitted to be debated publicly, and we forwarded it to Parliament to be appropriated by its members as a legislative initiative.

In view of publicising this project and outlining a framework for public debate we organized, in 2011-2012, conferences, round tables and media appearances of our representatives in order to highlight the benefits and opportunities brought by our project.

By this I mean the clarity, consistency and predictability that this code brings, eliminating inconsistencies present in the electoral legislation and clarifying the issues which are loosely regulated.

Although perfectible, the Electoral Code draft aimed at the fluidity with which the procedures specific to the organization and conduct of elections are conducted, the stability of the electoral legislation, and at a better understanding of the electoral process by all stakeholders, especially the citizens. The direct anticipated result consisted in the consolidating and bolstering participatory democracy.

While the Electoral Code draft was not adopted, we continued to support the need for a harmonized and unified electoral legislation and, in the context of the electoral reform initiated this year by the legislature, we supported through the technical expertise offered this process.

The good cooperation we have had with the legislature in the Joint Committee of the Chamber of Deputies and the Senate for drafting legislative proposals on electoral laws, legislative proposals amending the Law of Political Parties and the Law on financing political parties and electoral campaigns, and capitalizing on our expertise and experience in electoral management has resulted in the introduction of uniform provisions on: main electoral operations and their sequence, registration in the Electoral Register and updating it, expanding the Electoral Register by registering Romanian voters with domicile or residence abroad, creating a body of professional electoral experts which will be trained continuously, the composition of electoral bureaus, boundary delimitation and the implementation of a system to monitor the turnout and to prevent of illegal voting etc.

However, we believe that the progress made in harmonizing the electoral legislation must be maintained, and the ultimate goal must be the unification of all electoral regulations and procedures in a single legislative act.

The next step is to continue the electoral reform and expand the provisions set out this year's for all types of elections. Moreover, we want to create a framework for consulting all stakeholders in the electoral process in the debate on the adoption of an Electoral Code draft.

I believe that this international workshop, organized with the support of the Venice Commission, subscribes to the missions that we assumed. It is an essential step in harmonizing, and ultimately unifying the electoral legislation and procedures.

I had the pleasure to witness the issues raised in this debate, which have offered us an international perspective on best practices in terms of harmonization and codification of electoral legislation.

I am convinced that after this debate we will capitalize on the expertise and experience shared by the Venice Commission, OSCE/ODIHR, IDEA and other electoral management

bodies, and on the views expressed by the representatives of public institutions, academia and civil society.

3. PEA's commitment after the elections of 2016: sustaining and supporting the adoption of an electoral code

In closing, I want to emphasize that our priorities in the coming years are the harmonization and unification of the electoral legislation, and the final objective in this respect is drafting an Electoral Code to be adopted by the legislature.

Hence, for the following years we made a commitment to support the harmonization and unification for all electoral processes of the provisions on:

- Main electoral operations and their sequence;
- Registration in the Electoral Register and updating the Electoral Register, including expanding the Electoral Register by registering Romanian voters with domicile or residence abroad;
- Delimitation and updating of polling stations;
- Establishing a body of electoral experts and ensuring their continuous training;
- The composition of electoral bureaus;
- Implementing the system for monitoring turnout and to prevent illegal voting.

I believe that these priorities can be achieved in the context of extending the electoral reform process already begun, by continuing a good cooperation with the legislature in the Joint Committee of the Chamber of Deputies and the Senate for drafting legislative proposals on electoral laws, legislative proposals amending the Law of Political Parties and the Law on financing political parties and electoral campaigns, and also with all institutions involved in the elections and civil society.

Our ultimate objective is to adopt an Electoral Code that would ensure clarity, consistency, predictability and stability in terms of organizing and conducting all electoral processes in Romania and to ensure transparency, integrity and the credibility of the electoral process.

Rapporteurs:
Mr. Oliver Kask - Venice Commission
Mr. Cristian Leahu - Permanent Electoral Authority of Romania

Conclusions of the Workshop

Why is an Electoral Code required, what should it include and what are its advantages and risks? These questions have been answered by more than 40 Romanian and foreign electoral experts, representatives of the academic environment, of several electoral management bodies and of international organisations, reunited in Bucharest during the period October 19th-20th 2015, within the international workshop on 'Codification of the Electoral Law', organised by the Permanent Electoral Authority (PEA), in co-operation with the Venice Commission.

The PEA initiative of holding domestic and international consultation on this topic took place during an important time for the electoral reform of Romania, which the Authority has been promoting for several years now. In 2015, it was substantially amended, with the active involvement of the PEA, the legislation on local and parliamentary elections, as well as the ones on funding the activity of political parties and of the electoral campaign. Furthermore, the law on postal voting was promoted. On the day of the workshop, the law was debated in Parliament, and later adopted by the Parliament and enacted by the President of Romania.

The codification of electoral legislation has been the main objective of PEA since 2011, when the institution prepared an electoral code draft, which remained a draft, given the lack of response from political decision-makers. Regrettably, the international workshop on this topic was not of interest for some stakeholders, since they did not send any representative to this event.

However, this event, as well as all international actions held by the PEA, rejoiced extensive international attendance and appreciation.

Within the last years, the Authority has organized and hosted international conferences and workshops in Romanian, on electoral topics of great relevance, such as the participation of women in elections and the integrity of election processes. The Venice Commission decided to host, in Romania, in 2017, the 13th European Conference of the Electoral Management Bodies.

The greatest success of the PEA involvement in the international activity of electoral management bodies was the election of Ana Maria Pătru, president of PEA, as president of the Association of European Election Officials (ACEEEO), in 2013, and, in 2014, her appointment as president of the Association of World Election Bodies (A-WEB), starting with 2017.


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