

Studies and Articles



**Thirty Years of Democratic and Free
Elections in Slovakia: Can Really Everyone
Vote?**

Marek Domin¹

Abstract: The objective of the paper herein, on the 30th anniversary of the first democratic and free elections after the fall of the totalitarian regime in Slovakia, is to assess whether or not the right to vote in the Slovak Republic really belongs to everyone. The subject of the examination are four categories of persons whom the Constitution of the Slovak Republic and the laws formally grant the right to vote, but in various ways restricted or still restrict the practical exercise of this right. These groups are as follows: prisoners, intellectually disabled people, persons located abroad and persons who may pose a risk to public health. Not only the valid legal regulation, but also the decision-making activity of the Slovak Constitutional Court, will be the subject of the analysis of the first two categories. The conclusion of the article also includes suggestions and recommendations aimed at ensuring that the right to vote in Slovakia to be truly universal, or in other words, recommendations aimed at ensuring an opportunity to vote to everyone whom the Constitution and laws grant the very right.

Keywords: Obstacles to the Exercise of the Right to Vote; Right to Vote; Universal Suffrage; Voting During a Pandemic; Voting from Abroad

1. Introduction

Slovakia, as well as Romania and other Central and Eastern European countries, has experience with non-democratic or authoritarian political regimes. One of the key factors by which democratic regimes can be distinguished from non-democratic ones is the existence of democratic and free elections. The right to vote applied in such elections can be described as the most important individual right used to create political legitimacy of the society (Cibulka, 2014, p. 124). Of course, even in non-democratic regimes, the right to vote formally exists, but elections in

¹ Associate Professor, PhD, Department of Constitutional Law, Faculty of Law, Comenius University in Bratislava, Slovakia, address: Šafárikovo námestie 6, 814 99 Bratislava, Slovakia, Corresponding author: marek.domin@flaw.uniba.sk.

such regimes can hardly be described as democratic and free. One of the most recent cases is, for example, the case of presidential election held in August 2020 in Belarus.

In November 1989, after more than 40 years of the Communist Party hegemony in former Czechoslovakia (which also included the Slovak Republic of present-day), the so-called Velvet Revolution occurred. Democratic and free elections were one of the primary demands of this revolution. Although parliamentary bodies at various levels had been elected in Czechoslovakia even before 1989, these elections were more of a plebiscite, as only one candidate ran in each constituency, resulting in the lack of actual electoral choice. Thus, the elections in that period were rather a way of manifesting the position of the ruling party and without informative value about the public opinion (Spáč, 2010, p. 46). The social and political changes started in November 1989 were followed by constitutional changes, including changes in electoral legislation. Finally, in June 1990, the first democratic and free parliamentary elections, since those of 1946, were held. Therefore, in 2020, we Slovaks (but also Czechs) are commemorating their 30th anniversary.

Democratic and free elections are unthinkable without certain qualities of the suffrage. If the right to vote is not universal, equal or exercised by secret ballot, there is no point in speaking on democratic and free elections. All three above-mentioned principles of the suffrage, including the principle of direct election, are also recognized by the Constitution of the Slovak Republic (hereinafter the "Constitution"). Article 30.3 of the Constitution, which lists the above-mentioned principles, states the principle of universal suffrage in the first place. It cannot be considered a coincidence. Despite the undeniable importance of other principles of the suffrage, considerations about its equality or secret ballot lose their meaning without the guarantee of universal suffrage. The principle of universal suffrage tells us about who the right to vote should belong to. Universal suffrage can be characterized as the right to vote belonging to every person forming a part of the political community concerned (for example, a state or a municipality), who is mentally competent to administration of the public affairs of that political community by exercising the right to vote (Domin, 2018, p. 84).

More than thirty years after the first democratic and free elections following the collapse of the totalitarian regime in Slovakia, it might seem that the development in the field of suffrage is practically finished. Both the Constitution and electoral laws grant the voting right to everyone who has reached the age of 18. In the case of nationwide elections, i. e. elections to the National Council of the Slovak Republic (Slovak Parliament) and elections of the President of the Republic, citizenship of the Slovak Republic is also a requisite for the right to vote. On the contrary, in the case of elections to bodies of territorial self-government, specifically elections to bodies of municipalities and bodies of self-governing

regions, the requisite of citizenship is replaced by permanent residence¹. Although there are some shortcomings in each election, no one can deny the democratic and free nature of elections in the Slovak Republic. However, can everyone who meets all the formal requisites for granting the suffrage really vote in the elections in Slovakia? In this paper, we will focus on four selected groups of people who were prevented or even still are prevented from exercising their right to vote.

2. Prisoners' Right to Vote

One of the groups of people for whom the exercise of the right to vote is questionable, not only in Slovakia but in wider European context as well, are prisoners, i.e. persons serving an imprisonment imposed for committing a crime. Prisoners' voting rights in Slovakia have undergone a fundamental development, which includes not only changes in legislation, but also the case-law of the Constitutional Court of the Slovak Republic (hereinafter "CC").

The exclusion of a certain category of prisoners from exercising the right to vote, even though they meet the requisite of citizenship/ permanent residence and the requisite of age, was recognized by all Slovak electoral laws adopted after 1989, with an exception of the 1999 Act on Election of the President of the Republic. The exclusion of prisoners from exercising voting rights was implemented through so-called obstacles to the exercise of the right to vote. The impossibility of exercising the right to vote for prisoners was also assumed by the original wording of the currently valid Act on the Conditions for the Exercise of the Right to Vote, no. 180/2014 Coll. (hereinafter the "Electoral Code"). However, the personal scope, i.e. the circle of prisoners affected by the impediment to the exercise of the right to vote, has changed.

The CC has dealt with an obstacle to exercise of the right to vote concerning prisoners twice in total. In both cases, there was a proceeding under Art. 125 of the Constitution on the conformity of legal acts. Therefore, the task of the CC was to assess whether the law establishing an obstacle to exercise of the right to vote concerning prisoners is in compliance with the Constitution and international treaties binding the Slovak Republic.

¹ The elections to the European Parliament (hereinafter "EP") are a specific case. Although there is a requisite of citizenship, in these elections, the right to vote belongs to both citizens of the Slovak Republic and citizens of other member states of the European Union. In both cases, however, persons are required to have permanent residence in the territory of the Slovak Republic.

The first decision of the CC dealing with an obstacle to the exercise of the right to vote concerning prisoners was delivered as *PL. ÚS 6/08* (February 11, 2009). At the time when that decision was adopted, the obstacle in question was formulated more generally, namely as “*the execution of an imprisonment*”. Thus, all convicted persons placed in prison, regardless the committed crime, were excluded from exercising their voting rights. The CC stated in the decision, in particular under the influence of the landmark decision of the European Court of Human Rights (hereinafter “ECtHR”) delivered in the case of *Hirst v. UK*, that there was no relevant interest in denying all prisoners the right to vote. Hence, the CC declared the provision of then electoral law, according to which no one who was serving an imprisonment could take part in the elections, unconstitutional and violating Art. 3 of Protocol no. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter “the Convention”).

In response to the CC's decision, the National Council eased the obstacle to the exercise of the right to vote concerning prisoners in then electoral laws and replaced the wording “*the execution of an imprisonment*” with “*the execution of an imprisonment imposed for committing of a serious crime*”. This new wording was also introduced to the Electoral Code adopted in 2014, which replaced all previous electoral laws¹.

However, even the outlined shift in the legal regulation of the obstacle concerning voting rights of prisoners was not definitive. Finally, on the basis of proposals of the Attorney General and the Ombudsman from 2016, in 2017 the CC issued a decision *PL. ÚS 2/2016* (March 22, 2017) declaring also the new wording of the obstacle to the exercise of the right to vote unconstitutional and violating international treaties. As far as international treaties are concerned, a discrepancy has been identified with Art. 3 of Protocol no. 1 to the Convention, Art. 25 of the International Covenant on Civil and Political Rights (hereinafter “ICCPR”) and Art. 39 of Charter of Fundamental Rights of the European Union. In its second decision on the prisoners’ right to vote, the CC reiterated what it had already stated in a previous decision, namely that in a democratic State governed by the rule of law it is inadmissible to exclude any large group of citizens from exercising their voting rights without essential public interest.

¹ The Electoral Code, adopted in 2014 as a part of codification of the law of elections, governs all types of elections. Until its adoption, each type of election was governed by a special law. Thus, there were five different electoral laws in total.

Yet, the CC identified the violation of the constitution and international law by the obstacle concerning prisoners' right to vote only in nationwide elections, i.e. elections to the National Council, elections of the President of the Republic and elections to the EP. In the case of elections to the bodies of municipalities and to the bodies of self-governing regions, the CC described the examined obstacle as acceptable and legitimately justified, because the right to vote in those elections is already constitutionally related to permanent residence. Thus, prisoners can no longer be considered a part of a territorial community of a municipality or a self-governing region. Nor can they be regarded as a part of a political community administering its public affairs through elections. Another reason for acceptability of the above-mentioned obstacle in the case of local elections was that decisions of municipal authorities as well as self-governing regional authorities have no (or almost no) direct effect on the legal status of prisoners. On the contrary, in the case of the National Council or the President of the Republic, it is not possible to speak of the absence of impact on the legal status of prisoners or of the territorial exclusion of prisoners from the political community concerned, which is the Slovak Republic as a whole.

In connection with the nationwide elections, the CC further stated that the legislator did not justify the obstacle to exercise prisoners' right to vote, which makes the adequacy of this obstacle unprovable. The only justification that emerged from the explanatory memorandum to the law was very laconic. According to this memorandum, a person who commits a crime for which the court usually imposes a long time imprisonment should not have the right to participate in the administration of public affairs.

Given its previous decision of 2009, the CC added that the new wording of the obstacle to exercise of the voting right, to a certain extent, takes into consideration the type of committed crime, but not the circumstances of the offender. In its decision of 2017, the CC also reflected the relatively rich case-law of the ECtHR concerning prisoners' right to vote. In addition to the already mentioned decision *Hirst v. UK*, there were other follow-up decisions, such as *Frodl v. Austria*, *Scoppola v. Italy* or *Anchugov and Gladkov v. Russia*. However, following the case of *Scoppola v. Italy* decision in particular, the CC emphasized that the unconstitutionality of the obstacle under examination did not lie directly in the exclusion of persons from voting rights *ex lege* instead of an individualized court decision. The unconstitutionality lies in the lack of balance between contradictory interests in the Electoral Code.

The consequence of the decision of the CC issued in March 2017, in accordance with Art. 125 of the Constitution, consisted in the loss of the legal force of a provision of the Electoral Code enshrining the obstacle to the exercise of prisoners' right to vote. Subsequently, the task of the National Council was to adopt such an amendment to the Electoral Code, which would reflect the legal opinion of the CC. As this has not happened in the period of 6 months, the contested provision of the Electoral Code also lost its validity and was excluded from the Slovak legal system. However, as already mentioned, the obstacle in question remains valid in relation to elections to local self-government bodies.

3. Right to Vote of Intellectually Disabled People

Another group of people who are often denied the exercise of the right to vote are intellectually disabled people. Until recently, this was also the case in Slovakia, as persons deprived of legal capacity, which is most often a consequence of an intellectual disability, were excluded from the exercise of the right to vote. As previously with prisoners, also in the case of intellectually disabled persons the CC intervened in the valid legal regulation.

Even in the case of persons deprived of their legal capacity, all Slovak electoral laws adopted after the 1989 revolution contained an obstacle to exercise of the right to vote. The only exception was the law regulating presidential elections. The impossibility to exercise voting rights by people deprived of their legal capacity was also presupposed by the original wording of the currently valid Electoral Code.

As already indicated, the obstacle to the exercise of the right to vote, consisting in the deprivation of legal capacity, also appeared before the CC. In 2016, the Attorney General delivered to the CC a proposal to initiate proceedings pursuant to Art. 125 of the Constitution on the conformity of legal acts, specifically a proposal to assess the conformity of the Electoral Code with the Constitution and international treaties. It was the same proposal as the one with which the Attorney General challenged the constitutionality of the restriction of the prisoners' right to vote.

Deprivation of legal capacity as an obstacle to exercise voting rights of the intellectually disabled can be *a priori* described as legitimate and justifiable. Its purpose can be seen in the interest to protect society from inadequate political decisions, which are undesirable in the administration of public affairs exercised through the suffrage. In the case of an intellectually disabled person, the ability to make an adequate political decision is debatable. In addition, it can be assumed that such a person is not able to understand the significance of elections.

However, the CC stated in its decision *PL. ÚS 2/2016* (the same decision as the one

concerning prisoners' right to vote) that the absence of full legal capacity cannot generally be identified with an inability of a person to understand the meaning and consequences of elections. Finally, it was decided that the examined obstacle to exercise the right to vote is in conflict with the Constitution and international treaties, namely with Art. 3 of Protocol no. 1 to the Convention, Art. 25 of the ICCPR, Art. 39 of the Charter of Fundamental Rights of the European Union and Art. 29 in conjunction with Art. 5 and Art. 12 of the Convention on the Rights of Persons with Disabilities. Although the CC acknowledged that the obstacle in question pursued a legitimate aim, such a restriction on the exercise of the right to vote was not necessary and therefore, not proportionate.

Thus, the unconstitutionality of the obstacle in question consisted in the fact that the law automatically excluded the possibility of exercising the right to vote for all persons deprived of legal capacity, regardless of whether or not they are able to understand the meaning and effects of elections, i.e. regardless of whether they are qualified to participate in the administration of public affairs. In addition, the CC emphasized that the current legal regulation of civil proceedings, unlike the previous one, no longer allows to completely deprive a person of legal capacity. Therefore, the examined obstacle would in the future gradually become obsolete, as there will be no persons fully deprived of legal capacity.

As in the review of the previous obstacle to the exercise of voting rights, in the case of intellectually disabled persons the CC took into consideration existing case-law of the ECtHR, namely judgments in cases of *Shtukaturov v. Russia* and, in particular, *Alajos Kiss v. Hungary*. Based on the cited decisions, the CC declared the restriction of the right to vote due to a deprivation of legal capacity generally acceptable. However, it must not be an automatic legal consequence, but rather a result of an individual judicial assessment. The CC added that restricting a person's ability to exercise the right to vote would be constitutionally acceptable only on the basis of an explicit statement of a court decision concerning a specific person. In the opinion of Slovak CC, only such a restriction on the right to vote respects the very essence of this right, as it does not jeopardize the right to vote as such.

The consequence of the decision of the CC, as in the case of prisoners, consisted in the loss of legal force of the Electoral Code provision that enshrined the examined obstacle to the exercise of the right to vote. In this case, too, the task of the National Council was to adopt such an amendment to the Electoral Code within 6 months, which would reflect the legal opinion of the CC. As this has not happened, the provision of the Electoral Code concerning the obstacle to exercise the voting right of persons deprived of legal capacity has been excluded from the Slovak legal

order. However, the passivity of the National Council led to the opposite extreme, as it existed until the decision of the CC. While until the decision all persons deprived of legal capacity were deprived of voting rights, now all persons can vote, even if they lack mental capacity.

4. Right to Vote of Persons Located Abroad

Prisoners or persons suffering from a mental disorder are not the only ones for whom the exercise of the right to vote is problematic. The third group that will be examined in this brief article are voters living abroad.

Before we look at the voting possibilities in Slovak elections from abroad, we will briefly describe the possibilities of voting from abroad in general. Comparative constitutional law offers several options. One of the possibilities is so-called advance voting. With such a method of voting, a voter staying abroad during the regular Election Day may vote in the standard way in a home country, but in advance. However, some legislations require voters to prove that they will not actually be able to vote during the regular Election Day (Massicotte, Blais & Yoshinaka, 2004, p. 138). Another possibility to participate in elections from abroad is to vote at special polling stations set up abroad, mainly in buildings of diplomatic missions. While the first two options the personal presence of the voter in the polling station is required, in the case of the third known possibility, the so-called voting by mail, this is not necessary. Thus, voting by mail represents a matter of distance voting in an uncontrolled environment, as the voter is not under the supervision of the electoral authority when adjusting the ballot, which may be associated with threats to certain principles of the suffrage (Antoš, 2007, p. 172). Another way of voting in an uncontrolled environment that can also be used by voters abroad is remote voting by electronic means, for example voting via a computer connected to the Internet. Finally, proxy voting is a well-known and widely used method of voting that also allows voting from abroad. In this case, a voter does not vote in person, but on his behalf the ballot paper is adjusted and handed over by his authorized representative.

However, let's go back to Slovakia. There are two basic categories of persons located abroad to whom the right to vote in Slovak elections formally belongs. The first group consists of persons living abroad permanently, but at the same time retaining the citizenship of the Slovak Republic. The second category are people

having a permanent residence in the territory of the Slovak Republic and staying abroad for only a short period of time, right at the time of the elections.

As far as the first category concerned, Slovak law formally grants the voting right to citizens of the Slovak Republic living abroad. Nevertheless, as they do not have a permanent residence in the territory of the Slovak Republic, this right does not apply to elections to local self-government. However, the method of exercising the voting right by expats is problematic. The Electoral Code regulates a special method of voting from abroad only in case of elections to the National Council, in which it is possible to vote by post. On the contrary, in case of the election of the President of the Republic, the Electoral Code does not facilitate in any way the exercise of the voting right by citizens living abroad. Therefore, if citizens of the Slovak Republic permanently living abroad want to participate in the election of the head of the Slovak Republic, they must physically come to Slovakia on the Election Day. Criticism of this situation has often been voiced in the Slovak literature (e. g. Orosz, Molek, Svák & Šimíček, 2016, p. 325).

Regarding the second category of foreign voters, the Electoral Code also allows voting from abroad only in case of parliamentary elections. Therefore, if a citizens of the Slovak Republic with a permanent residence in its territory stay abroad during the parliamentary elections, they may also vote by post. However, it is necessary that they know about their stay abroad in advance at the time when the law allows arrangement of voting by post. On the contrary, in case of other elections, the law does not allow voters to vote from abroad. It should be emphasized that the right to vote in such a situation remains formally preserved not only in presidential elections, but also in elections to local self-government, as far as voters meet the requirement of permanent residence.

Insufficient possibility to vote from abroad, as well as the case of prisoners' right to vote and the case of the voting right of intellectually disabled people, came before the CC. However, the proceedings regarding the issue of voting from abroad were initiated by a group of members of the National Council. They submitted the proposal in March 2019 and the CC ruled on it on 5 February 2020.

Unlike in two previous cases, in the case of exercising the right to vote from abroad, the CC did not grant the proposal. In the proceedings *PL. ÚS 3/2020*, the CC did not even discuss the proposal in substance, as it was rejected from procedural reasons, specifically for failure to meet necessary requirements. Act on the Constitutional Court, no. 314/2018 Coll., regulating the details of proceedings before the CC, requires any petition challenging the constitutionality of a law to

contain a precise indication of provisions of the law that are intended to contravene the Constitution or international treaties. However, the parliamentary proposal only generally stated that parts of the Electoral Code are in conflict with the Constitution and the Convention, as they do not allow voting from abroad, with the exception of elections to the National Council.

The reason why the proposal of the group of the National Council members was rejected can be accepted, but the truth is that the Slovak CC has never decided on the unconstitutionality of the absent legal regulation, which would be the case in question. Until now, the CC has always stated that only an existing legal regulation can be unconstitutional. Therefore, it might seem that the CC is not very active or even cowardly in a sense. However, given the Slovak situation, where the parliament often does not react legislatively to the decisions of the CC, a decision of the CC complying with the proposal in question could lead to a serious legislative crisis. If the National Council could not amend the Electoral Code within the aforementioned period of 6 months in the intentions of the decision of the CC, parts of the Electoral Code automatically expire. Thus, the Slovak Republic would be left without substantial parts of the legal regulation of the voting right exercise.

5. Right to Vote of Persons Threatening Public Health

Finally, the practical exercise of the right to vote in Slovakia may also be problematic for voters who, due to a possible infectious disease, pose a threat to public health. This group of voters attracts special attention in connection with the ongoing the COVID-19 pandemic.

In addition to the obstacles concerning prisoners and intellectually disabled people, the traditional part of the legal regulation of obstacles to exercise of the right to vote in Slovak law is also an obstacle related to persons dangerous to public health. This also applies to the applicable Electoral Code, which states that the obstacle to the exercise of the right to vote is also a “*restriction of personal liberty to protect public health*”. In conjunction with other relevant laws, this means that if a person has been ordered to be isolated due to existent or potentially existent dangerous infectious disease, such as COVID-19, not allowing that person to vote would be legal. That isolation, undoubtedly constituting a restriction on personal liberty, can take place either in a hospital or at home.

The aim of excluding persons threatening public health from the elections is clear and undoubtedly legitimate. The objective is to protect public health. Indeed, if a voter suffering from a dangerous infectious disease came to the polling station, the disease could spread to another 1,000 people, as the Electoral Code foresees that one polling station will be set up for around 1,000 voters. Voting in a mobile polling station (portable ballot box), for example at voter's home, which Slovak law also allows, would be similarly risky. With such a method of voting, the assistance of two members of the electoral commission is necessary. Consequently, these members of the electoral commission could further spread the disease to the polling station and from there to other voters.

Although the examined obstacle to the exercise of the right to vote has its rational justification, it has recently become a target of criticism by the professional public. The problem with its practical application lies in a fact that no law governs any details on the possible notification of the occurrence of this obstacle (Somorová, 2015, p. 62). Thus, the members of the electoral commission do not have to be aware of the existence of the obstacle in question in the case of a particular voter.

However, the most serious problem consists in the adequacy of the last obstacle examined. In order for any restriction of a fundamental right or freedom to be constitutionally acceptable, its compliance with the principle of proportionality is necessary. A restriction of a fundamental right is permissible within the meaning of that principle only if it is, *inter alia*, necessary to attain the objective pursued. In other words, the objective pursued cannot be attainable by means that are less intrusive on the fundamental right or freedom in question. The exclusion of infectious patients from the exercise of the right to vote would fulfil this condition only if the State, given the current state of technological development and taking into consideration reasonable costs, is not able to provide alternative exercise of the voting right associated with minimal risk to public health. However, as alternative voting forms protecting other voters from potentially infectious ones are known, we are inclined to the conclusion that the examined obstacle to the exercise of the right to vote in Slovakia is unconstitutional.

Unlike the three previous issues examined in this article, there is no decision of the CC in the case of the exclusion of persons potentially endangering public health from the exercise of voting rights. As the proceedings before the CC are governed by the principle of disposition and none of the entitled entities challenged the obstacle in question, the CC has not had an opportunity to decide on it.

6. Conclusions and Challenges for the Future

The article written on the 30th anniversary of the first free and democratic elections in Slovakia after the fall of the totalitarian regime, has briefly pointed out the current shortcomings regarding the exercise of the voting right. Although it might seem that after more than a quarter of a century of democratic constitutionalism in Slovakia, the development of the universal suffrage is completed, the opposite is true.

We have demonstrated four selected groups of persons who were excluded or still are excluded from the practical exercise of the voting right by the Slovak legal system, although they meet the requisites for granting the right to vote (citizenship/permanent residence and 18 years of age).

At first glance, it might seem that two of four examined issues have already been resolved, thanks to the intervention of the CC. However, this is not entirely true. Although the extent of restrictions on the voting right of prisoners could still be debated, perhaps the more acute problem is that of intellectually disabled persons. As a result of the passivity of the National Council on responding to the decision of the CC, Slovakia has found itself in a state where voting must be possible for virtually every person, regardless of whether or not he or she is mentally competent to understand the meaning and consequences of elections. The possible voting by people who do not have such a mental capacity may be abused and ultimately jeopardize the integrity of elections as such.

Given the third and fourth of presented issues, they have not been solved yet. In the case of the issue regarding voting from abroad, the CC, unlike in the two previous cases, did not intervene in the legislation. As the legislation of the Slovak Republic allows in the case of parliamentary elections all citizens to vote from abroad by post, we go beyond the required minimum set by the ECtHR case-law¹. However, this situation is not fully satisfactory. Perhaps most often voices calling for the opportunity to vote from abroad also in presidential elections can be heard. Ensuring the possibility to vote from abroad in the case of these elections, where the entire territory of the Slovak Republic forms one constituency, can be, from a technical point of view, relatively easy to implement. In addition to voting by post already recognized by the Slovak legal system, there are several other options

¹ In the case of *Shindler v. UK*, the ECtHR decided that not allowing those citizens who had lived abroad for more than 15 years to vote was an appropriate measure seeking the legitimate purpose of involving in the elections only those persons, who could be directly affected by legal acts of parliament.

already mentioned. We may even start with a voting by electronic means, as the current Government, formed after the parliamentary elections in February 2020, is starting a debate on the possibilities of such a voting method.

Equally open remains the question of how to protect public health without the need to exclude those voters who are potentially risky as a result of an infectious disease. However, experience gained during the COVID-19 pandemic in other countries suggests that opportunities exist here as well. Examples include voting by proxy in Croatia (Keršić, 2020) or voting in special tents with the help of several security means in Israel (Reuters, 2020). Another possibility is to use the abovementioned voting via the Internet. However, that method may not be the perfect solution even for infectious voters. Indeed, it is possible to agree with the opinion that the possibilities of technological implementation of voting by electronic means currently outstrip the necessary legal certainty regarding the basic principles of democratic and free elections, especially the principle of secret ballot (Drgonec, 2015, p. 722).

Regardless of whether it would be a voting by electronic means or another method of alternative voting, unless all persons whom the Constitution and the Electoral Code grant the right to vote are able to do so, we may hardly say that the right to vote in Slovakia is really universal. Thus, the universality of the suffrage, as one of the basic pillars of democratic and free elections, cannot be approached only formally.

References

- Antoš, M. (2007). Tajné hlasování za plentou jako záruka svobodných voleb versus dištanční hlasování. Secret Ballot as a Guarantee of Free Elections versus Distance Voting. *Časopis pro právní vědu a praxi/ Journal of Legal Science and Practice*, Vol. 15, No. 2, pp. 172-182.
- Cibulka, E. et al. (2014). *Ústavné právo – Ústavný systém Slovenskej republiky/ Constitutional Law – The Constitutional System of the Slovak Republic*. Bratislava: PraF UK.
- Domin, M. (2018). *Všeobecnosť volebného práva v Slovenskej republike a jej materiálne zabezpečenie/The Universality of the Suffrage in the Slovak Republic and Its Material Ensurement*. Bratislava: Wolters Kluwer.
- Drgonec, J. (2015). *Ústava Slovenskej republiky – Teória a prax/Constitution of the Slovak Republic – Theory and Practice*. Bratislava: C. H. Beck.
- Keršić, M. (2020). Voting in Times of a Pandemic: The Case of Croatia: Constitutional Conflict between the Right to Vote and the Protection of Health. *Verfassungsblog*. <https://verfassungsblog.de/voting-in-times-of-a-pandemic>.

Massicotte, L.; Blais, A. & Yoshinaka, A. (2004). *Establishing the Rules of the Game. Election Laws in Democracies*. Toronto: University of Toronto Press.

Orosz, L.; Molek, P.; Svák J. & Šimíček, V. (2016). *Volebné právo a súdny prieskum volieb v Českej republike a Slovenskej republike/ Law of Elections and Judicial Review of Elections in the Czech Republic and the Slovak Republic*. Bratislava: C. H. Beck.

Reuters (2020). *Masked and gloved: Israelis in quarantine from coronavirus vote in elections*. <https://www.reuters.com/article/us-israel-election-health-coronavirus/masked-and-gloved-israelis-in-quarantine-from-coronavirus-vote-in-election-idUSKBN20P1BZ/>.

Somorová, E. (2015). Podmienky a prekážky výkonu volebného práva v Slovenskej republike/ Conditions and Obstacles to the Exercise of the Right to Vote in the Slovak Republic. In L. Orosz, L. & Marejčák, T. (Eds.). *Aktuálne problémy volebného práva – Nové volebné zákony/ Current Problems of Law of Elections – New Electoral Laws*. Košice: UPJŠ (pp. 45-66).

Spáč, P. (2010). *Priama a zastupiteľská demokracia na Slovensku. Volebné reformy a referendá po roku 1989/ Direct and Representative Democracy in Slovakia. Electoral Reforms and Referendums after 1989*. Brno: Centrum pro studium demokracie a kultury.

Case-law

*** ECtHR (2005). Case *Hirst v. UK* (No.2). Application no. 74025/01.

*** ECtHR (2008). Case *Shtukaturov v. Russia*. Application no. 44009/054.

*** ECtHR (2010). Case *Alajos Kiss v. Hungary*. Application no. 38832/09.

*** ECtHR (2010). Case *Frodl v. Austria*. Application no. 20201/04.

*** ECtHR (2012). Case *Scoppola v. Italy*. Application no. 126/08.

*** ECtHR (2013). Case *Shindler v. UK*, 7 May 2013, Application no. 19840/09.

*** ECtHR (2013). Case *Anchugov and Gladkov v. Russia*. Applications no. 11157/04 and no. 15162/05.

*** Constitutional Court of the Slovak Republic (2009). Case no. *PL ÚS 6/08*, 11.

*** Constitutional Court of the Slovak Republic (2017). Case no. *PL ÚS 2/2016*.

*** Constitutional Court of the Slovak Republic (2020). Case no. *PL ÚS 3/2020*, p. 5.

Legislation

*** Act on the Conditions for the Exercise of the Right to Vote, no. 180/2014 Coll., as amended to 2020.

*** Act on the Constitutional Court of the Slovak Republic, no. 314/2018 Coll., as amended to 2020.

*** Constitution of the Slovak Republic, no. 460/1992 Coll., as amended to 2020.