



SAFEGUARDING ELECTORAL RIGHTS IN THE EUROPEAN UNION: BETWEEN THE EU'S NORMATIVE AUTHORITY AND NATIONAL JUDICIAL REVIEW*

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ABSTRACT

The right to vote and to stand for election constitutes one of the fundamental elements of the rule of law and a key mechanism of democratic legitimation of public authority. Within the European Union, this principle acquires particular significance, as the democratic legitimacy of the European Union is indirectly derived from democratic processes taking place in its Member States. The European Union cannot function as a credible global promoter of democracy and the rule of law if it is unable to ensure that the democratic origin of power in Member States is effectively protected.

What is the role of the European Union in safeguarding electoral rights in the context of increasing geopolitical confrontation? What role do the Member States play in this regard? What regulatory strategies in this area can be identified in European Union legislation and in the exercise of its conferred competences? The aim of this paper is to analyse and seek answers to these questions, since on 12 November 2025 the European Commission and the High Representative of the union for foreign affairs and security policy published a Joint Communication entitled “European Democracy Shield: Empowering Strong and Resilient Democracies”. This initiative envisages the adoption of measures to be implemented by 2027, one of its key areas being the strengthening of free and fair elections. As indicated in the document, elections within the European Union are subject to undue or undesirable influences. The question therefore remains whether the European Union, through its legal framework, is capable of ef-

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fectively addressing such influences while simultaneously respecting Member States' sovereignty in electoral matters.

Using the Slovak Republic as a case study, the paper also examines judicial review of elections considering the current challenges faced by the European Union in the exercise and protection of electoral rights. Effective and independent judicial review of elections does not merely represent an instrument of internal control over the legality of electoral processes but also forms a fundamental condition for the credibility of democratic governance and for the continuous promotion of the principles of democracy and the rule of law across the European Union. The European Union can promote these principles globally only to the extent that they are guaranteed and effectively enforced at the national level. Through an analysis of the Slovak approach, this contribution examines the process of interaction between European Union legislation and the national law of a Member State considering new initiatives in EU legislation.

Keywords: *Democracy, Electoral rights, Judicial review*

1. INTRODUCTION

In a democratic state governed by the rule of law, power derives from the citizens, who exercise it either directly or through elected representatives. Free and fair elections, together with the right to vote, constitute a fundamental instrument for the formation of key public authorities entrusted with the exercise of that power. The mandate conferred by the sovereign (the people) should not merely represent the objective of elections, but above all a binding commitment. However, if effective mechanisms ensuring the realization of the fundamental principles of free and fair elections are absent already in the very process of constituting public authority, democracy itself may face a serious challenge. The European Union (hereinafter "EU") cannot function as a credible global promoter of democracy and the rule of law, if it fails to ensure effective protection of the democratic origin of power within Member States. Although the European Union has undergone significant and ongoing development in electoral law, the primary guarantors of the legality and legitimacy of elections should remain with the Member States and their respective legal orders. This paper outlines the efforts of the EU to strengthen free and fair elections, presents the initiative associated with the European Democracy Shield, and, using the legal framework of the Slovak Republic as an example, addresses the issue of judicial review of the constitutionality and legality of elections to the European Parliament. Finally, it examines the extent to which these European initiatives may interfere with the sovereignty of Member States in matters of electoral law and assessing the potential risks of the instruments they are intended to be applied.

2. THE EVOLUTION OF EU LAW ON ELECTORAL RIGHTS: FROM THE CURRENT FRAMEWORK TO NEW LEGISLATIVE INITIATIVES

Pursuant to Article 2 of the consolidated version of the Treaty on European Union¹ (hereinafter “TEU”), “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.” Article 10 TEU further provides that “The functioning of the Union shall be founded on representative democracy.” A central feature of representative democracy is the right to vote and the right to stand as a candidate. Electoral rights constitute the fundamental basis of participation in the broader sense, with such participation culminating in the actual exercise of the vote.² At the level of the EU, citizens are directly represented in the European Parliament (hereinafter “EP”).

The legal basis for electoral rights at the level of the EU is firmly enshrined in primary law. Article 20(2)(b) of the consolidated version of the Treaty on the Functioning of the European Union (hereinafter “TFEU”) guarantees Union citizens the right to vote and to stand as candidates in elections to the EP, as well as in municipal elections in the Member State of residence, under the same conditions as nationals of that State. Article 22(1) and (2) TFEU further elaborates this framework by providing that every citizen of the Union residing in a Member State of which they are not a national shall have the right to vote and to stand as a candidate in municipal elections in the Member State, as well as in elections to the EP in the Member State of residence, under the same conditions as nationals of that State. These rights are also enshrined in the Charter of Fundamental Rights of the European Union³ (hereinafter “Charter”), in Articles 39 and 40. Article 39(2) of the Charter lays down the principles governing elections to the EP, including universality, direct suffrage, free elections, and the secret ballot. At EU level, the regulation of electoral rights thus primarily concerns the electoral rights of Union citizens in relation to elections to the EP, as well as the guarantees associated with those rights in relation to municipal elections within the Member States. The distinction between these two categories, from the perspective of EU institutional involvement, lies principally in the fact that, whereas municipal

¹ Consolidated version of the Treaty on European Union and the Treaty on the Functioning of the European Union [2016] OJ C 202/1.

² Krunková, A., *Volebné právo ako prostriedok participácie v kontexte Charty základných práv Európskej únie*, in: Orosz, L.; Majerčák, T. (eds.), *Aktuálne problémy volebného práva a volebného súdnictva v Slovenskej republike – II. ústavné dni. Zborník príspevkov z medzinárodnej vedeckej konferencie. Košice 25 septembra 2013*, UPJŠ, Košice, 2014, p. 225.

³ Charter of Fundamental Rights of the European Union [2016] OJ C 202/2.

elections - due to their diversity across Member States - remain primarily within national competence, elections to the EP directly concern one of the Union's principal institutions. In this context, a higher degree of EU involvement may be observed, stemming from Article 223 TFEU, which requires the EP (for the election of its Members) to draw up a proposal for a uniform electoral procedure or for a procedure in accordance with principles common to all Member States.

The process of constituting the EP has undergone significant development over time. The Assembly, as the precursor to the EP under the Treaty establishing the European Coal and Steel Community of 1951, was entrusted under Article 21(3) with drawing up proposals for elections by direct universal suffrage in accordance with a uniform procedure in all Member States. This objective of establishing a uniform electoral procedure was subsequently incorporated into Article 138(3) of the 1957 Treaty establishing the European Economic Community. During the 1970s, endeavours were aimed at achieving convergence among the electoral processes of the respective Member States and defining shared principles.⁴ Following substantial developments reflecting the gradual formation of more stable political cooperation extending beyond the economic and industrial spheres across Europe, a key milestone was reached in 1976 with the adoption of the instrument annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976, namely the Act concerning the election of the members of the European Parliament by direct universal suffrage (hereinafter "Act")⁵. Based on this Act, the first direct elections to the EP were held in 1979.⁶ The Act has since been amended on several occasions, most notably in 2002⁷ and again in 2018⁸. However, it does not establish a single uniform electoral system across the Member States but rather

⁴ Molek, P.; Šimíček, V., *Soudní přezkum voleb*, Linde Praha, a.s., Praha, 2006, p. 68.

⁵ Decision of the representatives of the Member States meeting in the council relating to the Act concerning the election of the representatives of the Assembly by direct universal suffrage, 76/787/ECSC, EEC, Euratom, [1976] OJ L 278/1.

⁶ Angelovičová, A., *Právna úprava volieb do Európskeho parlamentu – (doterajší vývoj, aktuálny stav, hodnotenie)*, in: Orosz, L.; Majerčák, T. (eds.), *Volebné zákonodarstvo v Slovenskej republike (doterajší vývoj, aktuálny stav, príčiny a dôsledky)*. Zborník vedeckých prác z medzinárodnej vedeckej konferencie. Košice 26.-27 jún 2014, UPJŠ, Košice, 2014, p. 296.

⁷ 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 [2002] OJ L 283/1.

⁸ Council decision (EU, Euratom) 2018/994 of 13 July 2018 amending the Act concerning the election of the members of the European Parliament by direct universal suffrage, annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976 [2018] OJ L 178/1. Although this decision was adopted as early as 2018, certain of its provisions have not yet entered into force due to the ongoing process of ratification by all Member States.

envisages the approximation of electoral principles in accordance with Article 223 TFEU.⁹

On 3 May 2022, the EP adopted a legislative resolution on the proposal for a Council Regulation on the election of the members of the European Parliament by direct universal suffrage, repealing Council Decision (76/787/ECSC, EEC, Euratom) and the Act concerning the election of the members of the European Parliament by direct universal suffrage annexed to that Decision (2020/2220(INL) — 2022/0902(APP)). The annex to this resolution contains a draft Proposal for a Council regulation on the election of the Members of the European Parliament by direct universal suffrage (hereinafter the “legislative resolution”).

The legislative resolution in question is regarded as a significant step in the ongoing debate on enhancing the transparency and democratic accountability of the EP. It is important to emphasise that it constitutes a proposal within the legislative process under Article 223 TFEU and does not as such establish binding electoral rules. Among its key elements is the proposal for the introduction of a Union-wide electoral constituency, which is intended to strengthen the transnational dimension of European elections.¹⁰ European political parties, European associations of voters, and other European electoral entities should be enabled to participate more visibly in European elections campaigns and to submit candidate lists across the Union, thereby enhancing their recognition among voters, including on ballot papers and in campaign materials and publications.¹¹ This development reflects broader effort to strengthen the role of European political parties and associations, of which citizens of the Member States are often insufficiently informed. The introduction of transnational electoral lists constitutes an explicit objective of the proposal and remains one of its most controversial and widely discussed elements, for example because of concerns regarding the creation of different categories of MEPs, the weakening of the link between representatives and their electorate, and the potential empowerment of populist.¹² Other parts of the legislative resolution

⁹ In the context of EU-level legal regulation of electoral rights, reference may also be made to Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals [1993] OJ L 329/34.

¹⁰ Point 2 of European Parliament legislative resolution of 3 May 2022 on the proposal for a Council Regulation on the election of the members of the European Parliament by direct universal suffrage, repealing Council Decision (76/787/ECSC, EEC, Euratom) and the Act concerning the election of the members of the European Parliament by direct universal suffrage annexed to that Decision (2020/2220(INL) — 2022/0902(APP)) [2022] OJ C 465/171 (Legislative resolution).

¹¹ Draft Article 15 of Annex to the Legislative resolution.

¹² Polzin, M., *Transnational Lists, Diversity and Quota Regulation: The European Parliament's proposal for a New Electoral Law*, EU Law Live, Weekend Edition, N°123, 2022, p. 4; see also Costa, O., *Can the*

concern the possible harmonisation of certain aspects of electoral participation. The recommended minimum voting age is 16 years (without prejudice to constitutional provisions of Member States establishing a minimum voting age of 18 or 17 years), while the minimum age for eligibility as a candidate should be set at 18 years.¹³ In order to promote participation in elections to the EP, the proposal encourages Member States to make available postal voting, advance in-person voting, or proxy voting.¹⁴ Further measures include proposed limits concerning of electoral thresholds, which should not exceed 5%¹⁵, as well as the coordination of deadlines for the submission of candidate lists and the compilation of electoral registers prior to European elections¹⁶, and the timing of electoral campaign (which may begin no earlier than eight weeks before election day)¹⁷ and equalisation of the length of the electoral silence period.¹⁸

In comparison with the current legal framework in the form of the Act, the proposed changes are considerable. The Act primarily contains a set of minimum common principles which are implemented by Member States in accordance with their respective national rules; therefore, despite the specific nature of elections to the EP, which are of a supranational character, from a procedural perspective (from the national point of view) they may be characterised as national electoral processes producing a European-level outcome. However, regarding EP elections, national regulations (comprising the judicial review of elections) must be subject to a consistent interpretation in compliance with Union law.¹⁹ The legislative resolution seeks to further Europeanise electoral procedures and to enhance their coherence across Member States. This proposal is currently pending and is subject to the special legislative procedure under Article 223 TFEU. Pursuant to this provision, it requires unanimous approval by the Council, the consent of the EP (by a majority of its members), and approval by the Member States in accordance with their respective constitutional requirements to enter into force. The proposal has not yet reached a consensus, and its progress has remained limited in recent years. The lack of agreement may be linked to concerns regarding certain proposed mea-

Conference on the Future of Europe unlock the EU elections reform? Reflections on transnational lists and the lead-candidate system, European Law Journal, Vol. 26, Issue 5-6, 2021, p. 468.

¹³ Draft Article 4 and 5 of Anex to the Legislative resolution.

¹⁴ Draft Article 8 of Anex to the Legislative resolution.

¹⁵ Draft Article 13 of Anex to the Legislative resolution.

¹⁶ Draft Article 9 and 11 of Anex to the Legislative resolution.

¹⁷ Draft Article 17 of Anex to the Legislative resolution.

¹⁸ Draft Article 17 of Anex to the Legislative resolution.

¹⁹ Molek, P., *Politická práva*, Wolters Kluwer, Praha, 2014, p. 437.

tures, including transnational candidate lists,²⁰ the establishment of a Union-wide constituency, and the harmonisation of rules concerning the age of eligibility for both active and passive suffrage. The proposal itself indicates that the age thresholds for active and passive suffrage differ across Member States²¹, which reflects the diversity of national constitutional traditions. While general principles governing elections are broadly common across all types of election, the procedures may differ depending on the national, social, or cultural traditions of individual Member States, particularly in relation to national electoral systems. Such differences may reflect the sovereignty of the Member States. It cannot therefore be excluded that the proposed legislation may be perceived as affecting national competences in the field of electoral law. A further aspect concerns the practical and technical feasibility of implementing the proposed regulation, should it be adopted. However, as noted above, any reform of EU electoral law must rest on a broad consensus among the Member States; absent such consensus, even well-intentioned amendments and reforms intended to strengthen the European character of elections will not have significant impact.²² Although the legislative resolution has not yet resulted in a political agreement among the Member States, several legal acts have been adopted at EU level that partially address electoral rights, as well as the enhancement of electoral transparency and political competition.²³

3. EUROPEAN DEMOCRACY SHIELD

Particular attention was drawn in 12 November 2025 to the initiative entitled “European Democracy Shield: Empowering Strong and Resilient Democracies” (hereinafter “EDS”), published by the European Commission and the High Rep-

²⁰ Fox, B., EU countries to reject Spitzenkandidaten and pan-EU election lists, 2022, Available at: [https://www.euractiv.com/news/eu-countries-to-reject-spitzenkandidaten-and-pan-eu-election-lists/?utm_source=chatgpt.com], Accessed 4 April 2026.

²¹ Point 23 of The Legislative resolution.

²² Mateo, F. P., *European Parliament and representation of the Union's citizens: What can be expected from electoral law from a democratic standpoint?*, European Law Journal, Vol. 28, Issue 1-3: Shall we say the words? Essays on the EU federal democracy, 2023, p. 69. As pointed out in the contribution, the legislative resolution was passed in the European Parliament by a very narrow majority, which may be taken as indicating a reduced potential in the subsequent legislative process.

²³ For example, Regulation (EU) 2024/900 of The European Parliament and of The Council of 13 March 2024 on the transparency and targeting of political advertising [2024] OJ L 2024/900; Commission Recommendation (EU) 2023/2829 of 12 December 2023 on inclusive and resilient electoral processes in the Union and enhancing the European nature and efficient conduct of the elections to the European Parliament; Council Directive (EU) 2025/1788 of 24 June 2025 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in elections to the European Parliament for Union citizens residing in a Member State of which they are not nationals [2025] OJ L 2025/1788.

representative of the Union for Foreign Affairs and Security Policy. In the introductory sections, the EDS emphasises the general need to strengthen democracy in a context of increasing geopolitical confrontation, international and regional conflicts, as well as technological transformation, all of which exert both internal and external pressure on democratic systems. The EDS identifies three areas which, according to the document, require more substantial at Union level intervention to effectively address these challenges:

- enhancing situational awareness and strengthening response capacities to safeguard the integrity of the information space,
- strengthening democratic institutions, free and fair elections, and free and independent media,
- enhancing societal resilience and citizen engagement.

The adopted document envisages, with a view to supporting cooperation and coordination in addressing the above-mentioned areas, the establishment of a dedicated body - the European Democracy Resilience Centre (hereinafter the “Centre”) - whose activities are intended to enhance awareness and strengthen democratic resilience.

As indicated by the priorities of the EDS, one of the areas to which it pays particular attention is the strengthening of free and fair elections, which is addressed in point 2.3 of the document. The EDS identifies cyberattacks and cyber threats as a major challenge to ensuring free and fair elections. The strengthening of protection against these threats is currently supported by the Network and Information Security Directive²⁴ and the Cyber Resilience Act²⁵, which establish a Union cybersecurity framework ensuring that critical sectors and digital products are, by design, secure, resilient, and coordinated across the Union. In relation to undesirable political advertising, the EDS specifically responds through Regulation (EU) 2024/900 of the European Parliament and of the Council of 13 March 2024 on the transparency and targeting of political advertising, as an instrument establishing common EU standards (hereinafter “Regulation on Political Advertising”). Based on information exchanges within the European Cooperation Network on Elections, the Commission plans to develop a repository of common references and standards for electoral processes and intends to cooperate with Member States on the development of specific guidance on the fair, transparent, and account-

²⁴ Directive (EU) 2022/2555 Of the European Parliament and Of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union [2022] OJ L 333/80.

²⁵ Regulation (EU) 2024/2847 Of the European Parliament and Of the Council of 23 October 2024 on horizontal cybersecurity requirements for products with digital elements [2024] OJ L 2847/1.

able use of artificial intelligence in electoral processes.²⁶ To address election-related threats, the Code of Practice on Disinformation (originally introduced in 2018) and the Digital Services Act (hereinafter “DSA”) ²⁷, which constitutes a set of rules on digital services, also play an important complementary role. The EU also aims to improve transparency and accountability in political financing, including campaign funding, and to address issues of common concern such as anonymous donations and cryptocurrencies, which may be used to finance activities in a non-transparent and difficult-to-trace manner. Finally, an objective set by the EDS in strengthening electoral rights is the adoption of a recommendation on security in politics, aimed at ensuring the safety of political candidates and elected representatives.²⁸ In view of the increasing role of influencers in electoral campaigning, the Commission, in connection with the EU legal centre for influencers, aims to support the creation of a voluntary network of influencers in order to raise awareness of relevant EU rules, namely the Regulation on Political Advertising, the DSA, and the Artificial Intelligence Act²⁹, including their obligations when participating in political campaigns.

Using the example of the 2024 and 2025 elections in Moldova, the EDS illustrated forms of interference in electoral campaigns in the form of hybrid threats, including cyberattacks, fake bomb threats, foreign information manipulation, foreign interference, and disinformation, with reference to the European Digital Media Observatory hub report³⁰, as well as the amplification of content artifi-

²⁶ Page 12 of Joint Communication to the European Parliament, the Council, the European economic and Social Committee and the Committee of the Regions, European Democracy Shield: Empowering Strong and Resilient Democracies, Available at: [\[https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52025JC0791#footnote58\]](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52025JC0791#footnote58), Accessed 4 April 2026.

²⁷ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act) (Text with EEA relevance) [2022] OJ L 277/1 (DSA).

²⁸ Page 14 of Joint Communication to The European Parliament, The Council, The European Economic and Social Committee and The Committee of The Regions, European Democracy Shield: Empowering Strong and Resilient Democracies, Available at: [\[https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52025JC0791#footnote58\]](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52025JC0791#footnote58), Accessed 4 April 2026.

²⁹ Regulation (EU) 2024/1689 Of The European Parliament And Of The Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) [2024] OJ L 2024/1689.

³⁰ EDMO hub report, Available at: [\https://brodhub.eu/en/republic-of-moldova/report-the-observation-mission-of-the-2025-parliamentary-elections-in-the-republic-of-moldova/ n of the 2025 Parliamentary Elections in the Republic of Moldova – BROD], Accessed 10 April 2026.

cially generated in support of certain candidates or parties, the extensive use of AI-generated content, fake social media pages, and vote-buying.³¹ The conclusion reached by the EDS in relation to the situation in Moldova was that, with the support of the EU and other partners, Moldova strengthened its cybersecurity and internal security, the integrity of its judiciary, the capacity of investigative authorities to detect illicit financial flows, including through cryptocurrencies. This experience demonstrated that the most significant vulnerabilities occurred in the online environment.³²

In summary, the EDS outlined the following measures regarding to strengthen free and fair elections:

- support for enhanced cooperation with Member States within the European Cooperation Network on Elections, with the aim of strengthening electoral integrity and preparedness,
- development of guidance on the use of AI in electoral processes,
- update of the electoral toolbox in accordance with the DSA,
- support for the establishment of a voluntary EU network of influencers,
- support for joint work with Member States in transparency and integrity of political financing,
- development of a Commission Recommendation and a dedicated best practice guide on the security of political candidates and elected representatives,
- strengthening cooperation with international election observers to enhance capacities for monitoring disinformation on social media during election observation activities outside the EU.³³

Although the stated objectives appear ambitious and reflect the EU's efforts to strengthen free and fair elections, certain concerns cannot be overlooked. In elec-

³¹ See reports by FACT - European Digital Media Observatory hub covering MD, Available at: [<https://fact-hub.eu/moldova/>] and BROD - European Digital Media Observatory hub covering RO and BU, Available at: [<https://brodhub.eu/en/republic-of-moldova/>], Accessed 10 April 2026.

³² Page 15-16 of Joint Communication to the European Parliament, the Council, the European economic and Social Committee and the Committee of the Regions, European Democracy Shield: Empowering Strong and Resilient Democracies, Available at: [<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52025JC0791#footnote58>], Accessed 4 April 2026.

³³ Page 16 of Joint Communication to The European Parliament, The Council, The European Economic and Social Committee and The Committee of The Regions, European Democracy Shield: Empowering Strong and Resilient Democracies, Available at: [<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52025JC0791#footnote58>], Accessed 4 April 2026.

toral matters, the EDS places particular emphasis on the “fight” against disinformation and undesirable political advertising; however, the question remains as to where the boundary lies between disinformation and freedom of expression. The EDS envisages monitoring the information space and mapping information manipulation, yet these concepts are, from a substantive perspective, relatively vague. The DSA, on which the EDS also relies in pursuing its objectives, has faced criticism regarding potential impacts on freedom of expression³⁴ and do not provide a conceptually sufficient definition of disinformation.³⁵ The definition of illegal content³⁶ itself raises concerns, as it may provide a basis for the excessive moderation of digital content that may be controversial or contentious, yet does not necessarily qualify as illegal.³⁷ Initiatives such as the EDS may certainly be regarded as a positive signal towards strengthening democracy in the EU; however, the protection of democracy requires a consistent commitment to democratic values, which include free and fair elections, but also freedom of speech, political pluralism, plurality of political opinions and parties. This commitment must be understood not only at EU level, but at the level of the Member States. At the same time, the EU should primarily make use of the instruments that have already been adopted and evaluate their practical outcomes. The EDS itself refers to several EU legal acts, such as the Regulation on political advertising, the DSA, the Artificial Intelligence Act, and the European Media Freedom Act, among others.³⁸ The growing volume of EU legislation may ultimately become counterproductive and create legal and interpretative uncertainty not only for Member States.

³⁴ On its platform, ADF International addresses issues related to the DSA, criticising in particular the vagueness of key concepts and the risk of censorship and threats to freedom of expression. Available at: [<https://adfinternational.org/article/digital-services-act-unpacked>], Accessed 10 April 2026.

³⁵ Repiščáková, D., *Removal of illegal content online - conflicts between Slovak and EU legislation?*, STUDIA IURIDICA Cassoviensia, Vol. 13, Special Issue, 2025, p. 144.

³⁶ DSA, Article 3 (h) ‘illegal content’ means any information that, in itself or in relation to an activity, including the sale of products or the provision of services, is not in compliance with Union law or the law of any Member State which is in compliance with Union law, irrespective of the precise subject matter or nature of that law.

³⁷ Treščáková, D., *Freedom of expression on the internet vs. Digital services act: chosen aspects*, in: Duić, D.; Petrašević, T. (eds.), *Strong and Secure Europe: Legal and Economic Aspects*, EU and Comparative Law Issues and Challenges Series (ECLIC), Issue 9, 2025, p. 141.

³⁸ Reference is also made, for example, to Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union [2022] OJ L 333/80. Regulation (EU) 2024/2847 of the European Parliament and of the Council of 23 October 2024 on horizontal cybersecurity requirements for products with digital elements [2024] OJ L 2847/1. 15. Regulation (EU) 2025/38 of the European Parliament and of the Council of 19 December 2024 laying down measures to strengthen solidarity and capacities in the Union to detect, prepare for and respond to cyber threats and incidents [2022] OJ L 2025/38.

4. CURRENT LEGISLATION AND CASE LAW OF THE SLOVAK REPUBLIC

Efforts by the EU to strengthen free and fair elections as one of the key instruments of a properly functioning democracy can be achieved only to the extent that Member States are willing to adopt effective domestic measures, as well as to ensure their effective implementation within national legal systems. The constitutional basis of electoral law in the Slovak Republic (hereinafter “SR”) is enshrined directly in the Constitution of the Slovak Republic No. 460/1992 Coll., as amended (hereinafter “Constitution”). The constitutional concept of elections is grounded in the principle of popular sovereignty expressed in Article 2(1) of the Constitution as follows: “State power originates from citizens, who exercise it through their elected representatives or directly.”³⁹ The right of citizens to participate in the governance of public affairs is set out in Article 30(1) of the Constitution, which provides that: “Citizens have the right to participate in the administration of public affairs either directly or through the free election of their representatives. Foreign nationals with permanent residence in the territory of the SR have the right to vote and to be elected to municipal self-government bodies and to the bodies of higher territorial units.”⁴⁰ Pursuant to Article 30(3), suffrage is universal, equal and direct, and is exercised by secret ballot. The Constitution does not provide a comprehensive regulation of the electoral process; instead, it is supplemented by means of blanket constitutional provisions.⁴¹ The primary role in this regard is played by Act No. 180/2014 Coll. on the Conditions for the Exercise of the Right to Vote (hereinafter “Election Act”)⁴² and Act No. 181/2014 Coll. on Election Campaign and on Amendments and Supplements to Act No. 85/2005 Coll. on Political Parties and Political Movements, as amended (hereinafter “Act on Election Campaign”). Prior to the adoption of the current Election Act, the legal regulation of elections to the EP in the SR was governed by a separate Act No. 331/2003 Coll. on Elections to the European Parliament. The new legal framework in the form of the Election Act and the Act on Election Campaign was, at the time of its adoption, assessed by some constitutional lawyers as a missed opportunity, lacking more substantial

³⁹ Article 2(1) of the Constitution of the Slovak Republic No. 460/1992 Coll.

⁴⁰ Article 30(1) of the Constitution of the Slovak Republic No. 460/1992 Coll.

⁴¹ A reference to the legal regulation of the electoral process is found, *inter alia*, in Article 30(3) of the Constitution of the Slovak Republic No. 460/1992 Coll.

⁴² Annex 2 to the Election Act sets out a list of transposed legally binding acts of the European Union, including the following: Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals [1993] OJ L 329/34 and Council Directive 94/80/EC of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals [1994] OJ L 368/38.

reforms and failing to reflect modern developments.⁴³ Although it has since undergone several amendments, there remain areas in which, it appears that it does not provide fully effective regulatory mechanisms. For example, the Act on Election Campaign explicitly provides that certain measures concerning the publication of information during the election campaign (for instance 48 hours before election day) do not apply to broadcasting via the internet.⁴⁴ In this context, however, what is meant is radio and television broadcasting transmitted via the internet.⁴⁵ But in general this approach does not reflect fully coherent regulatory measures and creates a certain gap in the regulation of online electoral campaigning. Another example can be found in the Constitutional Court's case-law concerning the application of the electoral moratorium to the dissemination of posts via social media platforms, inter alia in decisions PL. ÚS 25/2015 and PL. ÚS 53/2018. The Court held that social networks - specifically Facebook within this context - do not qualify as channels for regular public information. As such, they fall outside the ambit of mass media, thereby exempting them from the statutory prohibition under Section 30(11) of the Election Act (now Section 14(1) of the Electoral Campaign Act). However, given the ever-growing influence of social media on electoral campaigns, such interpretation may no longer suffice. The internet itself is inherently problematic, given that search engines alone possess the capacity to manipulate information and distort electoral outcomes to the benefit of a particular political viewpoint.⁴⁶

In the legal order of the SR, the mechanism of objective and independent review of the constitutionality and legality of elections is entrusted to different bodies depending on whether the review concerns the preparatory phase of elections (in which electoral registers are compiled, candidate lists are registered, etc.) or the post-electoral phase (i.e., the phase following the conclusion of elections and the announcement of their results). With regard to elections to the EP, the Supreme Administrative Court decides in proceedings concerning the registration of candidate lists for elections to the EP⁴⁷ (the preparatory, registration phase of the elec-

⁴³ Orosz, L., *Nové volebné zákony na Slovensku – kvalitatívny skok, evolučný krok, či premárnená šanca*, in: Orosz, L.; Majerčák, T. (ed.), *Aktuálne problémy volebného práva – nové volebné zákony*, UPJŠ, Košice, 2015, p. 31.

⁴⁴ Reference may be made to Section 12(6) or Section 14(2) of Act No. 181/2014 Coll. on Election Campaign and on Amendments and Supplements to Act No. 85/2005 Coll. on Political Parties and Political Movements, as amended.

⁴⁵ Domin, M. *Volebné právo a volebné systémy*, 2. vydanie, Wolters Kluwer, Bratislava, 2021, p. 370.

⁴⁶ Adamov Kráľová, V.; Fogašová, F., *Volebná kampaň v online priestore: medzi reguláciou a anarchiou*, in: Orosz, L.; Makaturová, M. (eds.), *Právna regulácia volebnej kampane a jej uplatňovanie vo volebnej praxi v Slovenskej republike a vo vybraných štátoch Rady Európy. Zborník príspevkov z vedeckej konferencie. Veľká Trňa 15. – 16. mája 2025*, UPJŠ, Košice, 2025, p. 52.

⁴⁷ Section 11(b) of Act No. 162/2015 Coll., the Administrative Judicial Code.

tions), while the Constitutional Court of the Slovak Republic (hereinafter “Constitutional Court”) decides on the legality and constitutionality of elections to the EP in the form of *ex post* electoral review.⁴⁸ In this section, attention will be paid to the *ex post* review of elections to the EP.

References to elections to the EP are nevertheless embedded in the Constitution in Article 77(1), which defines the incompatibility of the office of a Member of the EP and a Member of the National Council of the Slovak Republic, as well as in the Article 129(2) of the Constitution, which entrusts the review of the constitutionality and legality of elections to the EP to the Constitutional Court.⁴⁹ The procedural framework for judicial review of elections to the EP is laid down in the part regulating the Procedure in electoral matters (“electoral justice”) in the Chapter Ten of Part Five of Act No. 314/2018 Coll. on the Constitutional Court of the Slovak Republic and on Amendments and Supplements to Certain Acts (hereinafter “ACC”). This constitutes a unified procedural framework for proceedings concerning the constitutionality and legality of elections to the office of President of the SR, elections to the National Council of the SR, as well as elections to the EP.

According to Section 156 of the ACC, the purpose of electoral proceedings is to remedy potential unconstitutionality or unlawfulness of the challenged elections, thereby ensuring the free competition of political forces. The essence of constitutional review lies in the protection of fundamental rights guaranteed under Article 30 of the Constitution, namely the right to vote and the right to be elected. The legality of elections is understood, in particular, as their conduct in accordance with all applicable statutory electoral legislation, where, according to the established case law of the Constitutional Court, there must be a causal link between such a breach and its consequences for the rights of the persons concerned, which ultimately amounts to a violation of electoral rights and their underlying principles.⁵⁰ The jurisdiction of the Constitutional Court to decide on the constitutionality and legality of elections to the EP was conferred on it by Constitutional Act No. 323/2004 Coll. upon the accession of the SR to the EU. Standing to file a motion is granted to a political party or political movement, or their coalition, which has submitted a valid candidate list under special legislation.⁵¹ Beyond the general requirements, an electoral complaint must contain the specific particulars prescribed by Section 158 of the ACC. The statutory time limit for filing an

⁴⁸ Article 129(2) of the Constitution of the Slovak Republic No. 460/1992 Coll.

⁴⁹ Domin, M., *Volebné právo a volebné systémy*, Wolters Kluwer, Bratislava, 2017, p. 274.

⁵⁰ Macejková, I.; Bárány, E.; Baricová, J.; Fiačan, I.; Holländer, P.; Svák, J. and col., *Zákon o ústavnom súde Slovenskej republiky. Komentár*, 1. edition, C. H. Beck, Bratislava, 2020, p. 1166.

⁵¹ Section 157(2) of Act No. 314/2018 Coll. on the Constitutional Court of the Slovak Republic and on Amendments and Supplements to Certain Acts.

electoral complaint is ten days, commencing from the announcement of the election results.⁵² Failure to comply with this time limit results in the rejection of the complaint. Compliance with the statutory time limit is also of significance in relation to the submission of evidence, as the Constitutional Court will not consider evidence submitted after the expiry of that time limit.⁵³ The ACC also provides the Constitutional Court with a 90-day time limit to decide on the complaint, running from the date of its delivery. The law prescribes several types of decisions. The Constitutional Court may (1) declare the elections invalid, (2) annul the contested election results, (3) annul the decision of the electoral commission and declare elected the candidate who was duly elected, or (4) dismiss the motion.⁵⁴ The judgment of the Constitutional Court becomes final and enforceable on the day it is delivered to the National Council of the SR.⁵⁵

Broadly speaking, it may be contended that the development of case law is evolutionary in nature, and the doctrinal assessment of specific questions is inevitably subject to ongoing shift.⁵⁶ Electoral jurisprudence is characterised by a certain periodicity, given the periodic nature of elections themselves. In the case of elections to the EP, this period is five years. The first elections to the EP in the Slovak Republic were held following the accession of the Slovak Republic to the European Union in 2004, and since then they have been held on four further occasions (in 2009, 2014, 2019 and most recently in 2024). The decision-making activity of the Constitutional Court in matters concerning the constitutionality and legality of elections to the European Parliament is relatively limited and case-specific. There are not many decisions that directly concern elections to the EP. For example, in the 2019 the Constitutional Court dealt with proceedings PL. ÚS 15/2019⁵⁷ and PL. ÚS 21/2019⁵⁸, both applications were dismissed. In proceedings concerning alleged unconstitutionality or unlawfulness of elections to the EP, certain key decisions of the Constitutional Court may be applied *mutatis*

⁵² Section 159 of Act No. 314/2018 Coll. on the Constitutional Court of the Slovak Republic and on Amendments and Supplements to Certain Acts.

⁵³ Orosz, L.; Svák, J. and col., *Ústava Slovenskej republiky. Komentár. Zväzok II.*, Wolters Kluwer SR s.r.o., Bratislava, 2022, p. 490.

⁵⁴ Section 163(1) of Act No. 314/2018 Coll. on the Constitutional Court of the Slovak Republic and on Amendments and Supplements to Certain Acts.

⁵⁵ Section 163(3) of Act No. 314/2018 Coll. on the Constitutional Court of the Slovak Republic and on Amendments and Supplements to Certain Acts.

⁵⁶ Macejková, I.; Babják, M.; Mihaľov, J.; Možešová, Z., *Volebné sťažnosti v rozhodovacej činnosti Ústavného súdu Slovenskej republiky*, Vydavateľstvo EUROUNION, spol. s r.o., 2016, p. 17.

⁵⁷ Decision of the Constitutional Court of the Slovak Republic, file no. PL. ÚS 15/2019, of 26 June 2019 - application was dismissed to the failure to obtain the required majority within the Plenum.

⁵⁸ Decision of the Constitutional Court of the Slovak Republic, file no. PL. ÚS 21/2019, of 29 April 2020 - application was dismissed on the grounds that it was lodged out of time.

mutandis. For instance, in decision PL. ÚS 10/2020, the Constitutional Court, emphasised the importance of the electorate's decision as the sovereign, which may be altered only in exceptional circumstances: "only where a breach of law occurs in a manner affecting the free competition of political forces in a democratic society ... the exercise of this power requires a gross or serious breach, or repeated breaches, of laws governing the preparation and conduct of elections. Not every breach of electoral law necessarily leads to the invalidity of elections. ... The decision of the electorate as sovereign may therefore be altered by the Constitutional Court only in exceptional cases where defects in the electoral process have caused, or could demonstrably have caused, that voters would have decided differently and that a different candidate (i.e., a political party, political movement, or their coalition) would have been elected..."⁵⁹ Not every finding of unconstitutionality or illegality occurring during an election will lead to judicial interference with the election results; within the SR, the review of the constitutionality of elections does not apply the doctrine of absolute electoral defects, as these possess merely a relative character contingent upon other factors.⁶⁰ The line of case law reflects approach of the Constitutional Court towards electoral outcomes, grounded in the principle of popular sovereignty, therefore judicial intervention is conceived as strictly exceptional and limited. As a result, the Constitutional Court's established practice has not, to date, led to the annulment of the results of elections to the EP.

Based on the legal regulation of constitutional review of elections to the EP under the ACC, it may be concluded that, this review does not differ substantially from the process of reviewing elections to the National Council of the SR. In contrast to elections to the EP, in the case of elections to the National Council of the SR the Constitutional Court exercises full jurisdiction over the entire electoral process and provides comprehensive and, in principle, final review. In the case of EP elections, given their supranational nature, the Constitutional Court's review constitutes only a partial, nationally confined judicial review. A further question arises as to what possible impact, the adoption of a legislative resolution⁶¹ or the introduction of additional instruments associated with the application of the EDS in practice would have on this process. It follows from the annex to the legislative resolution containing the draft Regulation on the direct and universal elections

⁵⁹ Paragraphs 38 and 39 of the Decision of the Constitutional Court of the Slovak Republic, file no. PL. ÚS 10/2020, of 29 April 2020.

⁶⁰ Domin, M. *Volebné právo a volebné systémy*, 2. edition, Wolters Kluwer, Bratislava, 2021, p. 397.

⁶¹ European Parliament legislative resolution of 3 May 2022 on the proposal for a Council Regulation on the election of the members of the European Parliament by direct universal suffrage, repealing Council Decision (76/787/ECSC, EEC, Euratom) and the Act concerning the election of the members of the European Parliament by direct universal suffrage annexed to that Decision (2020/2220(INL) — 2022/0902(APP)) [2022] OJ C 465/171.

of Members of the EP that each voter would have two votes: one for the election of Members of the EP in national constituencies, and one for the election in a constituency covering the entire Union. Members of the EP would be elected as representatives of EU citizens under a system of proportional representation, both in national constituencies and in a Union-wide constituency (from a transnational candidate list).⁶² In this context, it is reasonable to assume that the jurisdiction of the Constitutional Court (and thus the national competence of Member States) in judicial review of elections could be further limited or modified by the adoption of the proposed measure. At the same time, however, it is necessary to consider which authority at EU level would potentially assume such functions and how such a mechanism might operate in practice.

5. CONCLUSION

The system governing electoral law at EU level exhibits a dynamic and evolving tendency, responding to social, geopolitical, and technological developments. The legislative framework and the proposed instrument, which introduce changes to electoral legislation, appear to contribute to a gradual transformation of the understanding of elections to the EP. They move from a structure based on the concept of separate electoral constituencies of Member States towards a model that extends into Member States' competences not only in the "preparatory" stage of elections, but also in key areas defining a common electoral constituency, active and passive electoral rights, the formation of candidate lists, and related matters. It is plausible that, if such a proposal were to pass the legislative process (although this has not yet occurred), it would necessitate corresponding adjustments to the domestic legal frameworks of Member States. It cannot be excluded that the proposed changes would ultimately affect even the level of judicial review of elections at the national level.

As regards the EDS in the context of strengthening free and fair elections, several problematic aspects have already been outlined in Chapter 2 of this article. The initiative may be viewed as a continuation of the EU's broader and coordinated efforts aimed at strengthening democracy. However, references to enhancing democratic governance must ultimately be accompanied by concrete measures and clearly defined objectives. The EU already possesses several instruments capable of facilitating a coordinated approach to democratic resilience across the Member

⁶² Draft Article 12 of the European Parliament legislative resolution of 3 May 2022 on the proposal for a Council Regulation on the election of the members of the European Parliament by direct universal suffrage, repealing Council Decision (76/787/ECSC, EEC, Euratom) and the Act concerning the election of the members of the European Parliament by direct universal suffrage annexed to that Decision (2020/2220(INL) — 2022/0902(APP)) [2022] OJ C 465/171.

States. Nevertheless, the use of such instruments requires careful coordination, particularly considering the principles of Member State sovereignty and national responsibility for democratic governance. Importantly, when the EDS refers to the strengthening of free and fair elections, it does not limit its scope to elections to the EP. Rather, it encompasses all electoral processes, including those falling within the exclusive competence of the Member States. In this respect, concerns may arise regarding measures that could potentially extend beyond the scope of powers conferred upon the EU under the Treaties.

Particularly contentious is the issue of identifying and addressing harmful content, including disinformation and other forms of online manipulation. In this area, measures aimed at combating harmful content may create tensions with the protection of freedom of expression. Although the EDS advocates broader public participation in democratic processes, some of the mechanisms envisaged for strengthening democracy may be perceived as reflecting an increased level of coordination at the Union level, particularly in relation to matters such as political campaign financing, the detection and countering of disinformation, and related regulatory initiatives. A separate issue concerns cooperation with social media influencers. Such cooperation may indeed represent an effective means of engaging younger generations in democratic processes. At the same time, it carries the risk of exerting influence that may not necessarily correspond with the intended democratic objectives.

Another challenge associated with the EDS lies in the relative vagueness of certain proposals. Several of the envisaged initiatives remain insufficiently specified, making it difficult to determine their precise implications for electoral processes. This is particularly evident in the EDS's references to the use of artificial intelligence in the political activities. The EU envisages cooperation with Member States and relevant stakeholders in the development of specific guidance on the fair, transparent, human-centred, and accountable use of artificial intelligence in electoral processes. Yet the practical meaning and operational implications of concepts such as "fair" and "human-centred" remain uncertain in the electoral context. If the use of AI tools and other digital technologies directly within electoral processes is contemplated, particular caution is required. Such technologies must be assessed against the fundamental principles of electoral law, including, most notably, the principles of free elections and the secrecy of the ballot. The legislative resolution, in draft Article 8, proposes that Member States provide additional voting options, for example voting via electronic and internet-based systems, which may easily come into conflict with the principle of secrecy of the ballot, as well as with the issue of subsequent judicial review of elections, where the assessment of legality will require a specific type of scrutiny.

Emerging challenges associated with increasingly sophisticated methods of electoral influence require Member States not only to adapt the administration of elections themselves, but also to adjust the mechanisms through which the constitutionality and legality of elections are reviewed. These developments may significantly complicate both the identification of actors seeking to influence electoral processes and the assessment of the actual impact of such activities on electoral outcomes. As follows from the case law of the Constitutional Court, not every instance of unconstitutionality or illegality occurring during the electoral process justifies judicial intervention in election results. The invalidation of an election or the election of a candidate may result only from such serious violations of electoral law as call into question the election results themselves and reasonably give rise to doubts as to whether the elections and their outcome genuinely reflect the will of the electorate.⁶³ In this regard, particularly problematic are forms of influence that are difficult to detect, operate within the online environment, and may manipulate voters through prohibited means. It therefore remains to be seen to what extent the initiatives associated with the EDS will effectively address these challenges and what consequences their implementation may have for the jurisdiction and constitutional responsibilities of the Member States in the field of electoral governance.

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⁶³ Orosz, L.; Svák, J. and col., *Ústava Slovenskej republiky. Komentár. Zväzok II.*, Wolters Kluwer SR s.r.o., Bratislava, 2022, p. 491

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