

Invalid votes in the election practice of selected countries – causes and consequences

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Abstract

This text analyses the causes for invalid votes. On one hand this may be caused by the ignorance of the voters, but on the other hand it can also be the result of a conscious decision. There are also some causes attributed to the election organizers (law makers, election commissions) and the applied election techniques. The article provides a detailed analysis of the presidential election in the USA in 2000, in which the election result was questioned due to misleading ballots and the way they were treated by the machines used in the election counting process, and the elections in Romania, in which the losing party accused the winners of election fraud on several occasions.

Key words

invalid votes, election behavior, election fraud, Romania, United States

The research on election issues conducted by sociologists, lawyers, and political scientists usually concentrates on election results, election behaviours, and/or legal regulations governing the election process. Another important, though still largely unanalysed issue, is that of invalid votes, i.e. votes cast by voters on ballots in a way which is not consistent with the provisions of the applicable election law. The scale of this phenomenon varies from country to country. A significant share of invalid votes in an election gives rise to accusations concerning election fraud. This article analyses the causes of invalid votes in selected countries and their social and political consequences.

According to the Polish Election Code a vote is invalid when a voter has put an 'x' mark in the box on the left side next to the names of

two or more candidates from various lists, or has failed to put an ‘x’ in the box on the left next to the names of any candidates from any list. However, if the voter puts an ‘x’ on the ballot paper next to the name of a candidate from only one list of candidates, and if that name has been crossed out from the list, such a vote is considered valid and given to that particular list. What’s more, in the event the ‘x’ has been placed on the ballot paper in the box next to the names of two or more candidates from the same list, the vote is considered valid and given to the indicated list of candidates, and assigned to the candidate whose name is placed higher on the list (*The Act*, 2011).

The Venice Commission recommends that as few votes as possible be considered invalid. In the event of doubts, ‘efforts should be made to find out the voter’s intentions’ (Code of Good Practice, 2002, p. 23). However, it does not specify how this should be done and what ‘as few as possible’ means. It is widely assumed that the acceptable share of invalid votes in parliamentary elections is 3–4%. In presidential elections, the share of invalid votes is usually lower than in parliamentary elections, and in such elections a 3–4 percent share of invalid votes is considered an alarming phenomenon (‘Acceptable’ number, 2010).

The causes of invalid votes

There are several reasons why invalid votes are given, namely:

- as an expression of the voter’s political opinion, usually considered as a manifestation of his or her dissatisfaction with the quality of political life and/or a declaration that none of the candidates meets the requirements posed by such a voting citizen;
- the existence of compulsory voting, where turning in an invalid vote is the only legal form of evading the voting;
- a misunderstanding of the principles governing the voting process, which may be due to frequent changes in the voting technique. It should be noted that in countries with widespread illiteracy ballot papers do not have names but logos or photos of candidates;

- faulty ballot papers,
- the absence of detailed guidelines for members of election commissions concerning the validity of votes;
- electoral fraud.

One of the most common reasons why voters give invalid votes can be attributed to citizens' dissatisfaction with the quality of political life and simultaneously constitutes a declaration made by such a voter that none of the candidates meets the requirements posed by the voting citizens. Perceiving participation in the election as their civil duty, such voters decide to participate in the election (or are compelled by law to do so), but consciously and intentionally cast an invalid vote. It is worth adding here that some countries have decided to legitimize such an approach to voting and have introduced a 'NOTA' category of voting, which stands for 'none of the above' or 'against all candidates'. However, in each of the countries which have this option, it is understood a bit differently. In Ukraine it is 'against all'; in France and Spain a 'blank vote'; and in Greece a 'white vote' (Waszak 2012: 6). In France 'blank votes' were considered invalid for years, but in 2013 the French National Assembly decided to introduce a provision which demands that 'blank votes' be separated from invalid ones in the protocol (L'Assemblée nationale, 2013). This makes it possible to determine how many voters consciously did not select any candidates, and how many made a mistake while voting.

A variation of voting for 'none of the above' is the possibility of voting for a candidate (fictitious or real) whose name is not on the ballot paper ('write-in votes') (Waszak 2012: 46). This institution is available, *inter alia*, in some US states and in Sweden, with some episodes of such voting in Ecuador (1967) and in Brazil (1994). One of the best known examples of the application of this institution is the case of Lisa Murkowski from the Republican Party, who won the office of senator in Alaska in 2010 (with 41 percent of votes against 35 percent by her main opponent). Murkowski, who lost to Joe Miller in the Republican preliminary election, decided to focus on a write-in campaign and emerged victorious. Her victory was due to a very simple technique – her voters wrote her name on the ballot paper. This result was challenged by Joe Miller, but the state authorities of

Alaska finally accepted Murkowski's victory after more than two months (Pyrzyńska 2015). Although the institution of write-in votes does not exist in Poland, it often happens that citizens write the names of real or fictitious candidates on ballot papers. In the presidential election of 2015, the following names, *inter alia*, were written on ballot papers: Deer with a chair on its head; Wróżbita Maciej [a famous fortune-teller]; Zenek Martyniuk (a popular disco-polo singer); Frank Underwood, Magda Gessler – political revolutions (a chef who runs a Polish version of Kitchen Nightmares).

Giving a blank vote is the only legal possibility to evade the voting requirement in countries with a compulsory voting scheme. It is usually in such countries that the share of invalid votes is the highest. In Europe, voting is compulsory in Belgium, Cyprus, Greece, Luxemburg and Turkey. It also functions in Argentina, Bolivia, Brazil, Chile, the Dominican Republic, Ecuador, Guatemala, Honduras, Costa Rica, Mexico, Panama, Paraguay, Peru, Salvador, Uruguay, Venezuela, Australia, Fiji, Laos, Nauru, Singapore and Thailand (Żółądek 2011: 15).

In Brazil and Peru, which have compulsory voting and impose severe fines on those who dodge their duty to vote (although in both countries persons aged over 70 are exempted from the voting obligation), there is a high share of blank votes, and in Peru blank votes are counted as valid. It is worth emphasizing that in Peru elections must be repeated if blank or invalid votes constitute over 1/2 of all votes. The popularity of blank or invalid votes, however, cannot be explained only by a compulsory voting scheme, since for example in Chile and Peru enrolment on the register of voters is voluntary. In Brazil, in the 1994 election to the Chamber of Deputies as many as 42 percent of citizens turned in blank or invalid votes. Experts believed that high rate of illiteracy and the complicated election procedure in Brazil, which required significant skills to acquaint oneself with the voting instructions and reach a proper understanding of filling in the ballot paper, accounted for this situation. After substituting paper forms with electronic voting machines, the share of invalid votes fell significantly. In this way the risk of electoral fraud was also diminished. However, it turned out that election commissions

acted for the benefit of a particular political option. Votes given for the candidates of the opposition parties were qualified as illegible and thus blank or invalid (Waszak 2012: 51). In Greece, in spite of a compulsory voting scheme the share of white votes is 1 percent at a maximum (with voter turnout of 65–75% percent and no sanctions for evading the duty to vote) (Waszak 2012: 48).

A frequent reason behind casting an invalid vote is a lack of understanding of the voting rules. The way in which citizens should vote is of vital importance here. The most debatable method is the crossing out technique – the probability of giving an invalid vote grows along with the number of candidates on the list whose names must be left uncrossed. In countries with widespread illiteracy, ballot papers do not have names of candidates or political parties, but only the logos (emblems) and photos of the candidate or the party leader (Żukowski 1997: 74). Frequent changes in the voting technique also lead to the growth of invalid votes. The type of the election system also matters. In majority systems the share of invalid votes is usually lower than in proportional systems (Żukowski 1997: 74).

Another reason for a high share of invalid votes can be a complicated shape of the ballot papers. Jarosław Flis believes that the increased number of invalid votes in the self-government election in 2014 in Poland – where for provincial parliaments it was as much as 17.47 percent; for district councils 16.67 percent; and for community councils 5.23 percent – and the results of the elections themselves, which widely differed from the poll results announced on election evening, could be attributed to the change of the ballot paper from a large sheet of paper to a multi-page brochure of A4 size, which was often referred to as the ‘booklet effect’ (Flis 2015). The new shape of some of the ballots was also one of the probable reasons behind the high share of invalid votes in Florida in the US presidential election of 2000.

Another reason for a high rate of invalid votes is connected with the composition of the constituent election commissions and the quality of trainings conducted for these people. The absence of detailed instructions and low quality trainings for members of election commissions leads to

them making wrong decisions when counting the votes. This cannot be attributed to ill will on the part of the election commission members, but to their fragmentary knowledge of, for example, the conditions for acknowledging a valid vote.

The last element is electoral fraud, which is conscious interference in ballot papers or voting protocols by members of election commissions. It may happen that in a situation when an opposition party wins a larger-than-expected number of votes, the ruling party may encourage members of election committees to make changes to allow it to stay in power. Such activities, however, are extremely complicated and difficult to prove.

In the next part of the article some cases of invalid votes in selected countries will be examined and discussed and the political consequences of this phenomenon will be analysed. In most cases, however, it is difficult to clearly determine the reasons for a high rate of invalid votes.

The presidential election in the United States in 2000

The presidential election in the United States in 2000 was probably one of the most controversial elections in US history. American citizens had to wait 36 days for official announcement of the election results. What's more, the candidate who lost in the popular vote won the election. The American constitution provides that it is the vote in the electoral college (known as 'electoral votes') that determines the result of a presidential election, and that the winning candidate must receive 50 percent + 1 of the total electoral votes. In the end, George W. Bush became the forty-third president of the United States. It is worth emphasizing that the result of the election hinged on the outcome of the voting in the state of Florida, and that the final difference between George W. Bush and Al Gore was 537 votes in that state. The first, incomplete results of the election led to a projection that Al Gore had won more electoral votes (267) as well as 337 576 more popular votes than George Bush (who won 246 electoral votes and more states than Al Gore). None of the candidates managed to gain the required majority number of

electoral votes, i.e. 270 (Pastusiak 2001). Due to the small difference in the number of votes cast for each candidate in Florida, as well as the fact that the 25 electoral votes up for grabs in Florida would determine who would become the forty-third president of the USA, it was decided to count them again. It turned out that some ballot papers which were rejected by the ballot-counting machine as invalid votes should have been treated as valid. After counting the votes in Palm Beach (a county in Florida state), Bush's advantage over Gore in Florida fell to 316 votes. The Bush staff filed a petition in Palm Beach court demanding that the procedure of manual counting of the votes be stopped. The court, however, rejected the motion even though the secretary of Florida state, Katherine Harris, had declared Tuesday, 14 November at 17.00 as the official deadline for announcing the election results and that deadline had passed. The Supreme Court of Florida issued an order allowing votes to continue to be counted manually until 26 November, and on that day it was announced that Bush had a 537 vote advantage of Gore, but that many disputed votes had still not been manually examined. George W. Bush fiercely criticized the decision of the Supreme Court of Florida to continue the manual counting and appealed to the Supreme Court of the United States. A similar appeal was lodged by the Democrats, who argued that the manual counting of the votes should be continued beyond the 26 November deadline. Everything seemed to indicate that the courts would make the final decision concerning the USA presidential election of 2000. Though the ballot papers were once again checked in Miami-Dade and Palm Beach counties, the Supreme Court, by a 5-4 vote, ruled that there was no longer any time for the manual re-counting of further ballots and annulled the decision issued by the Supreme Court of Florida to re-count about 43 000 more ballot papers which had been rejected by the counting machines. On 18 December 2000 the electoral college voted chose the new president. George W. Bush received 271 votes, while Al Gore obtained 266 votes. Since the results were so close and disputed, it comes as no surprise then that so many controversies arose around this election. The National Association for the Advancement of Colored People (NAACP) reported to the prosecu-

tor's office that in constituencies where African-Americans constituted a majority, election commissions ran out of ballot papers and that some voters received damaged (and thus invalid) ballot papers. In addition, it turned out that 19 200 votes were considered invalid in Palm Beach because voters ticked more than one name of the candidates for the office of president. The ballot papers, which had been designed to facilitate voting for the elderly, turned out to have a controversial design. They had been designed at the request of the Supervisor for the Election, Theresa LePore. Some voters wrongly understood the ballots and gave their votes to a candidate they had not intended to support. Some mistakenly voted for two candidates (the candidate of the Democrats was on the third, rather than the usual second, place). Apart from that, the candidate for the Reform Party for president of the USA, Pat Buchanan, stated that most of the 3407 votes he gained in Florida were won by mistake, and that in fact those votes constituted support for Al Gore (Wybory w USA 2000). Also, many votes cast via postal voting were rejected due to the lack of a post stamp on the mail, the lack of a date or signature, or the fact that the mail was received after the deadline. A significant group of the American society believed that most of the votes considered invalid were in fact intended to be cast for Al Gore (Perez-Pena 2000). The fact that a majority (five members) of the Supreme Court had been appointed by a Republican president, that the final Supreme Court decision followed party lines, and that the Court's reasoning was considered by many to be highly unconvincing, also stirred the public opinion. Some people implied that the court had simply indicated its preference for the conservative Republican candidate.

Presidential and parliamentary elections in Romania

There has continually been a large share of votes considered invalid in nearly all presidential and parliamentary elections held in Romania. Detailed data on that topic is presented in Table 1 below. In the further part of the article I analyse the elections in which the highest share of invalid votes have been recorded.

Table 1. The share of invalid votes in parliamentary and presidential elections in Romania

Date of the election	Organ	Number of invalid votes	Percentage of invalid votes
20.05.1990	CD	1 117 858	7.54
	S	869 584	5.86
	P	447 923	3.02
27.09.1992	CD	1 591 071	12.73
	S	1 507 623	12.06
	P	580 017	4.64
11.10.1992*		116 092	0.95
3.11.1996	CD	834 687	6.37
	S	785 977	6.00
	P	426 545	3.25
17.11.1996*		102 579	0.78
26.12.2000	CD	706 761	6.11
	S	653 834	5.66
	P	484 643	3.00
28.11.2004	CD	599 641	5.55
	S	556 128	5.15
12.12.2004*	P	339 010	3.14
25.11.2007**		103 245	1.02
		246 555	4.69

* second round of presidential elections, ** election to the European Parliament, CD – Chamber of Deputies, S – Senate, P – President

Source: Preda, C., Soare S.. (2008). *Regimul, partidele si sistemul politic din România*. Bucuresti, 93

The parliamentary and presidential elections of 1992 were held in an aura of scandal. In the capital city of Romania alone 35 000 cases of irregularities were found, i.e. the so-called “dead souls” and/or the same names and surnames appearing on multiple ballots. The society was also alarmed by the very high proportion of invalid votes. Therefore it was commonly believed that the election was manipulated. Romania later suffered consequences from the widespread perception that the election was manipulated. The House of Representatives of the United States rejected the project of restoring its most-favoured nation in its trade clause with Romania (Burakowski, Stan 2012: 93).

The year 1996 also constituted a year of election campaigns in Romania, since local, parliamentary, and presidential elections were held that year. Most representatives of the media expected changes and expressed their support for the Romanian Democratic Convention (CDR), led by Emil Constantinescu. The opposition parties won both the parliamentary and the presidential elections. Though there were no objections as to the outcome of the elections, there was once again a high share of invalid votes, mostly in the parliamentary election. (Burakowski, Stan 2012: 113–114).

In 2004, as early as before the parliamentary election and in the first round of the presidential election (held on 28 November 2004) there were rumours that there might be some instances of election fraud. The pre-election opinion polls pointed toward a slight advantage of the ruling Social-Democratic Party, so even small discrepancies when counting the votes could significantly affect the outcome of the election. On election day there were some accusations concerning ‘election tourism’. The anxiety over the fairness of the election was fuelled by the fact that in the consecutive announcements of partial results the number of invalid votes decreased, while the support for the ruling party increased (*Romania. Parliamentary and Presidential Elections*, 2005: 25). The media published some information on the election lists from various constituencies including the same names, which was supposed to reflect the above-mentioned ‘election tourism’. Although the opposing parties protested and questioned the election results, on 3 December 2004 the Constitutional Court ruled the election valid and announced the beginning of a campaign before the second round of the presidential election (Burakowski, Stan 2012: 199–200). The first round had been monitored by an observation mission of the Organization for Security and Co-operation in Europe. The mission’s report emphasized that lack of training for the members of the election commissions and the faulty structure of election protocols were a serious problem. At the same time, all accusations of manipulating election results by writing in votes for a particular political party were dismissed. In this situation, and in order to avoid further misunderstandings and irregularities, the Central

Election Office changed the structure of election protocols before the second round of the presidential election (*Romania. Parliamentary and Presidential Elections*, 2005: 2).

The first round of the presidential election held on 22 November 2009 aroused many controversies. It was won by the incumbent president Traian Băsescu from the Democratic-Liberal Party (PDL). His opponent was Mircea Geoană from the Social-Democratic Party (PSD). In spite of many optimistic poll projections for the PSD candidate in the second round, it was Traian Băsescu who in the end won the second round, which was held on 6 December 2009. The advantage was small, as he received 50.33 percent of the overall votes (Bugean 2009). The Social-Democratic Party argued that there were many empty ballot papers, massive election tourism, and also that election protocols were 'corrected'. Quoting the pre-election opinion polls favourable to Geoană (McLaughlin 2009), on 8 December 2009 the PSD petitioned the Constitutional Court for annulment of the second round of the presidential election and that the voting be repeated. It claimed that it had evidence of 13 000 cases of multiple voting or buying votes. The court ordered the election commission to check the allegations and re-count the votes which were considered invalid (Romania court, 2009). This however did not change the result of the election. It turned out that 2137 out of 138 000 previously invalid votes were deemed valid, of which 1169 were for Băsescu and 968 for Geoană. The Constitutional Court confirmed the victory of the incumbent president.

Conclusions

The issue of invalid votes gives rise to numerous controversies. When the proportion of invalid votes is high, there are suspicions of election fraud. Such controversies appeared, *inter alia*, during the self-government elections in Poland in 2014, the presidential election in the USA in 2000, and during many parliamentary and presidential elections in Romania. Although it is difficult to clearly determine the causes of this situation, the most common factors conducive to the phenomenon of

invalid votes are: voters expressing a political statement; the existence of a compulsory voting scheme; a lack of knowledge about the voting rules and procedures; a faulty structure of the ballots; and finally, no clear guidelines for members of the election commissions as to determining the validity of the votes cast. The acceptable proportion of invalid votes in parliamentary elections is 3–4%. In presidential elections it should be on an even lower level.

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