

Compatibility of the Ban on Publishing the Results of Election Polls with Freedom of Expression and Right to Information

Abstract

This thesis focuses on the issue of the ban on publishing the results of election polls in Czech election laws and is trying to prove the non-compliance of such ban with the constitutionally protected freedom of expression and right to information. The thesis describes the development of the legislation in question both in the Czech Republic and abroad and, based on an analysis of domestic and foreign case law and literature, it presents the belief that the restriction of the above-mentioned fundamental rights and freedoms does not meet the individual criteria of constitutionality, namely the legitimacy test and the proportionality test. Furthermore, the thesis focuses on the meaning of the ban as such, or more precisely its justification and purpose in the age of social networks and online information platforms. Many countries do not regulate the ban on publishing the results of election polls in their legal systems at all as they do not consider it in conformity with the constitution. Other countries have moved away from the ban as a result of decisions by their courts finding it to be contrary to constitutionally protected rights and freedoms. Czech case law does not deal with the issue in much detail and does not provide a lot of space for the examination of the constitutionality of the provision in question. As a result of the analysis of the arguments of foreign courts and literature, the current domestic form of the ban, starting on the third day before the election day and ending at the close of voting, appears to be contrary to freedom of expression and right to information, due to the absence of a legitimate aim of the interference with fundamental rights and freedoms or possibly due to the failure to meet the condition of appropriateness and necessity of this interference. An alternative that is not only permissible but also desirable from a constitutional point of view is a ban on publishing the results of election polls with its duration limited merely to the election days. The legitimate aim of such a provision is seen as protecting equal access to information for all voters, regardless of what time exactly they decide to go to the polls.

Key words: election poll, freedom of expression, right to information, legitimate aim, proportionality