



EU-CITZEN: ACADEMIC NETWORK ON EUROPEAN CITIZENSHIP RIGHTS

Political Participation of Persons with Disabilities

Update of the 2018 report written by Dr Andrea Broderick
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1. Introduction

Political participation in society forms a central part of an active citizenship. It is important for citizens to take an active role in political and public life. Yet, persons with disabilities regularly encounter administrative and legal barriers to their democratic participation. These persons often remain largely under-represented in parliaments and political parties and face additional obstacles in exercising their electoral rights.¹

A non-exhaustive definition of disability can be found in the UN Convention on Right of Persons with Disabilities (hereinafter the UNCRPD). This definition encompasses those who have “long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others.”² In this respect, the States have an obligation to guarantee political rights for persons with disabilities that can be exercised fully and effectively.³

The Convention has been ratified by the European Union and all its Member States. This is particularly important, as it is estimated that approximately 80 million people in the EU experience some form of disability⁴ and encounter barriers to inclusion and political participation.⁵ It is reported that in all 27 Member States there are rules or organisational arrangements in place that deprive some voters with disabilities the possibility of participating in elections.⁶ There is therefore a need for a stronger legal and policy framework that guarantees the political rights for all members of society. This is also reflected and stressed by the recently announced EU Disability Strategy 2021-2030, which aims to improve the lives of persons with disabilities in the coming decade by also fostering their participation in the democratic process.⁷

Member States have taken a variety of measures to facilitate the democratic inclusion of persons with disabilities. However, due to the varying approaches, the persons do not necessarily have a similar level of access to participate in elections in all Member States. There are differences in, for example, the right to vote and stand as a candidate; the degree of accessibility of information and physical barriers at the polling stations; the existence of alternative methods of voting such as postal or electronical voting; and whether voting is available outside the polling stations, for example at a hospital or at the person’s home.

¹ OSCE ODIHR, ‘Guidelines on promoting the political participation of persons with disabilities’ 15 March 2019, p. 7.

² Article 1 UN Convention on the Rights of Persons with Disabilities. As discussed on Section 2, the EU and its Member States have ratified the Convention. As there is no common definition of the notion ‘disability’ on the EU level, although the Court of Justice have developed some definition for the purposes of EU discrimination law in its judgments moving from a medical to social model of disability (e.g. Case C-354/13 *Kaltoft*, C-335/11 and C-337/11 *Jette Ring*, see more on the model of disability in G. de Beco, ‘Disability in International Human Rights law’ Chapter 2 Oxford University Press 2021), the definition provided by the UN Convention is used as a common reference. However, not all scholars agree that the ECJ definition aligns with the UNCRPD or is adequate in the view of intersectionality, see Schiek, D, ‘Intersectionality and the Notion of Disability in EU discrimination law’. 2016. *Common Market Law Review*, 53(1), 35-63.

³ Article 29 UN Convention on the Rights of Persons with Disabilities.

⁴ European Economic and Social Committee, ‘The need to guarantee real rights for persons with disabilities to vote in European Parliament elections’ SOC/638. 20 February 2020, point 3.2.4.

⁵ EU Commission Roadmap: Strategy on the Rights of Persons with Disabilities 2021-2030, March 2021.

⁶ European Economic and Social Committee, ‘The need to guarantee real rights for persons with disabilities to vote in European Parliament elections’ SOC/638. 20 February 2020, point 2.2.

⁷ European Commission Strategy for the Rights of Persons with Disabilities 2021-2030, March 2021.

These issues were already examined in 2018, when the first version of this research was conducted by Dr Andrea Broderick.⁸ The report explored the existing barriers, good practices and promising initiatives taken in selected EU Member States, namely Bulgaria, Denmark, Estonia, Germany, Ireland and the United Kingdom. According to Dr Broderick's conclusions in the 2018 report, although significant efforts have been made in the EU and its Member States, much work remains to be done to ensure that persons with disabilities can enjoy their active citizenship rights.⁹

The main findings of the 2018 report were as follow:

*(1) Overall, there is a **low level of political representation** of people with disabilities in political and public affairs, both in terms of electoral participation and non-electoral forms of political participation. (2) People with disabilities face **multifaceted barriers** in participating in political and public life. These barriers can be categorised into **legal and administrative barriers as well as accessibility and institutional barriers**. (3) People with intellectual impairments, in particular, face significant hurdles in exercising their political rights, due to **deeply ingrained stereotypes and restrictive legal capacity laws**. (4) Other characteristics, such as **age and gender** as well as factors such as socioeconomic **status and less economic resources**, also affect the levels of political participation of people with disabilities. (5) **Disabled persons' organisations play a major part in raising awareness** among public authorities of the rights of persons with disabilities through campaigning and advocacy, and have been active in implementing the CRPD. (6) **Significant efforts** have been made on the part of the EU and its Member States to improve political processes and outcomes for people with disabilities, such as through repealing legal capacity laws, introducing e-voting and tactile ballot papers and other such measures. (7) However, **much work remains to be done** both at EU and Member States levels to ensure that people with disabilities can participate on an equal basis with others and enjoy their active citizenship rights.*

In the meantime, the COVID-19 pandemic spread over the borders of Asia to Europe and other continents within few weeks of the end of 2019, enormously changing the way of life in Europe and all over the world, including the closure of borders and the possibilities of taking part in political meetings and electoral gatherings. Large congregations of people and meetings have been prohibited. In some countries, specific measures have been taken when organising elections on different political levels. While this can hamper the electoral process in general, it can pose an even higher burden for persons with disabilities who may have even less possibilities to take part in the democratic process and the discussions. Furthermore, some persons with disabilities might have a higher risk of infection or of a more severe illness, which will discourage them from taking part during elections if the process of the election is not safely regulated. In addition, voting by proxy or via post became a more prominent discussion in light of the pandemic as more people hesitated to participate in elections at the polling stations.

This update of the study of the 2018 report examines the following: (i) regulatory changes since the last study at EU level and in the original selected Member States (with the exception of the UK) have been considered and evaluated; (ii) four new case studies of Member States where elections have taken place recently have been added (Finland, Hungary, the Netherlands and Romania); and (iii) on

⁸ A. Broderick, 'Political Participation of Persons with Disabilities' 15 September 2018, Conclusions and Recommendations, pp. 50-51.

⁹ Ibid.

the basis of this updated information, a new evaluation and best practices has been considered. Special attention has been given to legislative or administrative measures taken by the Member States on elections and political participation specifically in respect of the COVID-19 pandemic.

The study has mainly been based on desk research from publicly available material, including studies and reports prepared by academics and international bodies (e.g. OSCE ODIHR, Venice Commission) and policy documents issued by competent national authorities. Furthermore, experts in the selected Member States have been consulted to give their insights on the specific measures taken.

In Section 2, the report provides an overview of the legal framework promoting the rights of persons with disabilities. In this Section, common barriers on political participation are also identified, summarising the facilitatory measures taken in the 27 Member States. The Section concludes by looking at the promising initiatives taken by the EU. In Section 3, the report examines in-depth case studies from selected Member States: Bulgaria, Denmark, Estonia, Finland, Germany, Hungary, Ireland, the Netherlands and Romania. Finally, the report sets out the key findings and provides recommendations for future.

2. Political participation of persons with disabilities in the EU

Political participation of persons with disabilities is promoted by a legal framework on international and European level¹⁰, which will be presented briefly in this section. As defined in the previous report, political participation encompasses participation that is voluntary, with the aim of exerting influence on decisions at the different levels of the political system.¹¹

The Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948, provides the right for everyone to take part in the government of their country.¹² The right to vote is also provided for in Article 25 of the International Covenant on Civil and Political Rights, adopted in 1966 and in Protocol 1 of the European Convention on Human Rights (ECHR).¹³

The (political participation) rights of persons with disabilities are enshrined in the United Nations Convention on Rights of Persons with Disabilities (UNCPRD), which has been ratified by the European Union and all its Member States.¹⁴ The Convention provides both negative and positive obligations for the State parties to guarantee the participation in public and political life for persons with disabilities by removing barriers and taking facilitatory measures. Overall, the Convention sets out a prohibition of discrimination on the ground of disability¹⁵, and obliges States to draft legal and policy frameworks to enable these persons to be fully and equally involved in representation and decision-making at all levels of the government.¹⁶ As well as ensuring the conventional forms of political participation (voting and standing as a candidate), the States are also obliged to take appropriate steps to ensure that persons with disabilities have access to information and communication¹⁷, and that they are equally recognised before the law (i.e. they have the legal capacity to participate in political and public life).¹⁸

The European Union and its Member States have ratified the Convention, and must therefore follow these obligations on political participation.¹⁹ In the EU, non-discrimination and voting rights are enshrined in its fundamental values set in the Treaties.²⁰ Furthermore, the Charter of the Fundamental Rights of the European Union sets out an overall prohibition of discrimination²¹, and calls for the implementation of measures to ensure the independence, social and occupational integration and participation of persons with disabilities in the community.²² The Charter also provides the right to vote and to stand as a candidate for every EU citizen in European Parliament and municipal elections.²³ These rights are further specified in the Electoral Act 1976, Council Directive 93/109/EC (concerning

¹⁰ A. Broderick, L. Waddington 'Political participation of people with disabilities in the EU' 2020. Research Handbook on EU Disability Law.

¹¹ A. Broderick, 'Political Participation of Persons with Disabilities'. 15 September 2018, p. 6.

¹² Article 21 Universal Declaration of Human Rights.

¹³ Article 3 of Protocol No. 1 to the European Convention on Human Rights (ECHR).

¹⁴ European Union Agency for Fundamental Rights, 'Fundamental Rights Report 2019: Putting the UN Disability Convention in practice' 2019.

¹⁵ Article 2 UNCPRD.

¹⁶ Article 4 UNCPRD.

¹⁷ Article 9 UNCPRD.

¹⁸ Article 12 UNCPRD.

¹⁹ Delia Ferri and Andrea Broderick, 'Political participation of people with disabilities in the EU' 2020. Research Handbook on EU Disability Law.

²⁰ Article 19, 20(2)b and 22 Treaty on the Functioning of the European Union (TFEU).

²¹ Article 21 EUCFR.

²² Article 26 EUCFR.

²³ Articles 39 and 40 EUCFR.

elections to the European Parliament) and Council Directive 94/80/EC (participation in municipal elections by citizens of the Union residing in a Member State of which they are not nationals).

It can be concluded that, on the EU level, there is no comprehensive or uniform legislation on elections, with the exception of European Parliamentary and municipal elections. However, these only provide provisions for non-discrimination, and do not provide a standard of protection for persons with disabilities. Where the EU legislation does not provide harmonisation, the Member State remain free to apply their own legislation within the general principles of the UNCRPD, Charter and EU law. Therefore, the political participation rights of persons with disabilities can vary between the Member States.

In the absence of a uniform standard of protection of persons with disabilities at an EU level, various barriers may be encountered in the Member States, hindering the effective political participation of all members of the society. In the following section, these common barriers, which are explored more in-depth in the case studies, will be identified.

2.1 Existing barriers to political participation

The previous report underlined the primary barriers to political participation by persons with disabilities. However, it is important to give an updated overview of which barriers are commonly encountered in the Member States. Due to the COVID-19 crisis, not only persons with disabilities but also other vulnerable groups are subject to these. These will be described more in detail in the case studies provided in Section 3.

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) has identified multiple barriers. The Office supports its participating States on human rights and non-discrimination by observing elections and reviewing legislation.²⁴ Similar barriers were also noted by rapporteur Krzysztof Pater in the information report from the European Economic and Social Committee (EESC), published in 2019.²⁵ The findings are summarised below.

First, barriers to political participation can be encountered already before the elections. There is lack of accessible information and communication on the participation and facilitatory measures for persons with disabilities. The information on elections and political campaigns is not always provided in an accessible form, for example for persons with visual impairments. In eight Member States, persons with disabilities have very limited sources of information.²⁶

Next, barriers are encountered due to inaccessible physical environments, including transportation to the polling station. These can be overcome by providing, for example, access ramps or requiring polling stations to be situated on the ground floor. Access can also be facilitated by providing alternative voting locations next to the polling stations. In some Member States, it is possible to choose a preferred polling station or to vote from home, hospital or other care institution or via post

²⁴ OSCE ODIHR, 'Guidelines on promoting the political participation of persons with disabilities' 15 March 2019.

²⁵ European Economic and Social Committee, 'The real rights of persons with disabilities to vote in European Parliament elections' SOC/554, Rapporteur Krzysztof Pater. 20 March 2019.

²⁶ European Economic and Social Committee, 'The real rights of persons with disabilities to vote in European Parliament elections' SOC/554. Rapporteur Krzysztof Pater. 20 March 2019.

or electronical means. However, in eight Member States, no alternative forms of voting are available; voting is only possible for those able to access the designated polling station.²⁷ Nevertheless, due to the COVID-19 crisis, there is pressure to provide more alternative voting options, particularly those that allow remote voting. While options such as postal or online voting may overcome accessibility issues experienced in the physical environments, it is important to ensure that the remote options do not in turn create new barriers (see Section 2.3).

Challenges can also be encountered during the voting process. Ballot papers can be too complex to be filled out for persons with physical limitations (due to the size of ballot paper or the manner in which the candidate has to be marked) and/or for those with intellectual disabilities (if the voting materials are not clear and understandable). In the event that technology-based voting is implemented (for example, via the use of machines at the polling station) the systems do not always accommodate the needs of persons with disabilities.²⁸ In some Member States, voting by ballot paper is simplified by providing the possibility to mark the candidate with a simple graphic sign, for example with an 'X' or circle, instead of writing the name of the candidate or their identification number.²⁹ Furthermore, Member States may provide the opportunity to use an assistant to guide in the voting process.

Further barriers can be found in restrictive national laws. In some Member States, persons under guardianship or with limited legal capacity are deprived of their rights to vote and stand as candidate in elections. Under the Convention, no persons should be excluded from the right to vote or to stand as candidate on the grounds of disability. Yet it is estimated that around half a million EU citizens, in 16 Member States, are deprived of the right to participate on these grounds.³⁰ In the view of OSCE ODIHR, instead of substituted decision making (a legal guardian taking these decisions on behalf of the person), supported decision making is advisable (providing that persons with disabilities could exercise their legal rights with the assistance of people they know and trust).³¹

The report from the EESC concludes that in each of the 27 EU Member States, there are rules or organisational arrangements in place depriving some voters with disabilities the possibility to participate in (European Parliament) elections. This (lack of) measures is affecting people with disabilities, people living with in-home care, in long-term care institutions and other people in short-term care, for example those undergoing treatment or rehabilitation, or people in isolation or in quarantine due to epidemiological risks.³²

²⁷ European Economic and Social Committee, 'The real rights of persons with disabilities to vote in European Parliament elections' SOC/554. Rapporteur Krzysztof Pater. 20 March 2019.

²⁸ European Economic and Social Committee, 'The need to guarantee real rights for persons with disabilities to vote in European Parliament elections' SOC/638. 20 February 2020, point 3.1.5.

²⁹ European Economic and Social Committee, 'The need to guarantee real rights for persons with disabilities to vote in European Parliament elections' SOC/638. 20 February 2020, point 5.2.

³⁰ European Economic and Social Committee, 'The real rights of persons with disabilities to vote in European Parliament elections' SOC/554. Rapporteur Krzysztof Pater. 20 March 2019.

³¹ OSCE ODIHR, 'Guidelines on promoting the political participation of persons with disabilities' 15 March 2019, p. 83.

³² European Economic and Social Committee, 'The need to guarantee real rights for persons with disabilities to vote in European Parliament elections' SOC/638. 20 February 2020, point 2.2.



2.2 Implementation of new voting methods

Indeed, the epidemiological risks caused by COVID-19 have introduced further barriers to political participation, not only for persons with disabilities but also for persons and their family members in quarantine or infected with the virus. Due to the crisis, there is pressure to provide alternative voting methods and identify innovative approaches. Several Member States (as discussed further in the case studies) have struggled to arrange elections in the times of crisis that both ensures the participation of everyone in democratic elections, but also provides sufficient measures for the protection of public health.

At best, the innovative solutions developed due to the COVID-19 crisis may facilitate voting of disabled (and vulnerable) persons; however, they may also further limit their participation. One example is the introduction of online voting, which has the advantage that it is not restricted to a physical location and its barriers. On the other hand, if the technological environment does not consider the needs of persons with disabilities, it may further hinder their participation. These barriers have already been noted by the European Parliament in their Resolution of 2020: online and distance arrangements have caused barriers for persons with disabilities to participate at work or education.³³ Similar issues of the 'digital divide' are also reported by the European Union Agency for Fundamental Rights.³⁴ These aspects are particularly important to consider when implementing alternative voting methods, such as online voting, to overcome the barriers created by the COVID-19 crisis.

Already, before the increasing demand to introduce remote voting options during the COVID-19 crisis, implementation of electronic voting had been explored in some Member States. Portugal, Spain and Finland have completed trials on electronic voting. Lithuania has approved electronic voting for future elections.³⁵ As online voting is currently only possible in Estonia, the increasing need for remote options could see this voting method become more popular in the coming decade.

Although this report mainly focuses on political participation of persons with disabilities who vote in the country where the elections are held, there may also be mobile EU citizens with disabilities who may be more affected by the lack of alternative voting options. In the event that voting abroad is limited to voting at an embassy or requiring travel back to their home country³⁶, this disproportionately affects persons with disabilities, who may encounter more barriers when voting requires travel to a physical location. Thus, it can be recommended that alternative voting methods would be also introduced for those abroad.

When implementing new voting methods, the special needs of persons with disabilities must be taken into account. It should also be noted that these needs may vary depending on the nature of the disability and the barriers, and there may not be a single solution available. Therefore, when deciding on best practice for implementing remote or alternative voting options, the experiences and views of

³³ European Parliament Resolution of 18 June 2020 on the European Disability Strategy post-2020, Point Y.

³⁴ European Union Agency for Fundamental Rights: 'Coronavirus pandemic in the EU – Fundamental rights implications: Focus on Social Rights', https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-coronavirus-pandemic-eu-bulletin-november_en.pdf.

³⁵ A. Mantha-Hollands et al, 'The Benefits and Drawbacks of Remote voting: a new vision' European University Institute 2021.

³⁶ O. Garner et. al, 'Political participation of mobile EU citizens – Insights from pilot studies on Austria, Belgium, Bulgaria, Germany, Greece, Hungary, Ireland and Poland' European University Institute 2021, p. 64.

persons with disabilities and their representative organisations must be taken into account. Next to gathering information, it is just as important to provide information to persons with disabilities on how the remote systems work and which assistive technologies are available to support their needs, for example - in the case of electronic voting modalities - text-to-speech converters, Braille output and acoustic confirmation signs.³⁷

The report on remote voting options recommends that alternative (remote) voting methods should complement, rather than replace, conventional ones.³⁸ This is also the case when considering the needs of persons with disabilities. Alternative voting options should be implemented to promote and facilitate the exercise of political rights, not to replace traditional voting at polling stations simply because polling stations are not designed to be accessible to persons with disabilities. The design of special voting methods should eliminate barriers created by the needs of these persons, rather than avoiding existing ones or creating new barriers.

2.3 Overview of measures in the Member States

Before taking a closer look at the case studies of the selected Member States in Section 3, this section offers an overview of the facilitatory measures taken in all EU Member States to overcome such barriers as discussed in the previous Section.³⁹

Table indicators	
Yes	
Partially	
No	

Table 1: Overview of facilitatory measures for persons with disabilities in the 27 Member States

	Measures for accessible elections	Voting by proxy	Voting from home	Voting from hospital or other care institution	Postal voting	Online voting	Assistance in voting	Political participation under guardianship
Austria					Persons with disabilities			
Belgium					Persons abroad			Individual assessment if court-imposed guardianship
Bulgaria								
Croatia								
Cyprus								
Czech Republic								Individual assessment if court-imposed guardianship
Denmark								Persons whose legal capacity is fully deprived by court
Estonia					Persons abroad			Subject to strict review (see case study)
Finland					Persons abroad			Only for persons declared incompetent

³⁷ European Blind Union EBU, 'Report on the Accessibility of Elections for Blind and Partially Sighted Voters in Europe', November 2018.

³⁸ A. Mantha-Hollands et al, 'The Benefits and Drawbacks of Remote voting: a new vision' European University Institute 2021.

³⁹ Information is based on the European Economic and Social Committee (EESC) 'Real rights of persons with disabilities to vote in European Parliament elections' SOC/554, 20 March 2019, IDEA International Institute for Democracy and Electoral Assistance, DOTCOM Disability Tool by the Academic Network of European Disability Experts (ANED), Election access <http://www.electionaccess.org/en/>.

								by a court order, not common
France								
Germany					All citizens			Only if limited by judicial order
Greece								
Hungary					Voters with no Hungarian address			Individual assessment when court-imposed guardianship
Ireland					For persons living at home and having a physical disability or illness preventing voting at a polling station			Persons of unsound mind are prohibited from standing as candidate
Italy								
Latvia								
Lithuania					Persons unable to go to polling station due to health reasons			
Luxembourg					All citizens			
Malta								Individual assessment when court-imposed guardianship, persons with intellectual impairments or otherwise of unsound mind
Netherlands					Temporarily for elections during COVID-19, persons over 70 years of age			
Poland					Persons with disabilities			
Portugal				Advance voting options available	In certain elections, for citizens abroad			Individual assessment if 'demented'
Romania					Persons abroad			Legal capacity limited by court order, case-by-case analysis
Slovakia								
Slovenia					Persons with disabilities			Individual assessment when court-imposed guardianship.
Spain					All citizens			
Sweden					Persons with disabilities or persons abroad			

All 27 Member States provide facilitatory measures for accessible elections in their legislation, for example rules on accessible information and on the physical accessibility of the polling station. However, it is important to note that the facilitatory measures taken do not necessarily mean that the political participation rights of persons with disabilities are realised in practice. For example, the obligation under law to have the polling station on the ground floor does not always mean that in practice the polling station is accessible or that the rule is implemented for every polling station. The case studies on the Member States discussed in Section 3 provide several examples of this.

As a complementary method of voting, five Member States allow voting by proxy.⁴⁰ In 16 Member States, it is possible to vote from home,⁴¹ while in 18 Member States, voting is made possible for persons staying at hospitals or other care institutions.⁴² Postal voting is offered in 20 Member States⁴³;

⁴⁰ Belgium, France, the Netherlands, Poland and Sweden.

⁴¹ Austria, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Italy, Latvia, Lithuania, Romania, Slovakia, Slovenia and Sweden.

⁴² Austria, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Netherlands, Poland, Slovakia and Sweden.

⁴³ Austria, Belgium, Denmark, Estonia, Finland, German, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

however, in some Member States it only applies to persons living or staying abroad at the time of the elections.⁴⁴ Currently, online voting is only available in Estonia.

Persons with disabilities may receive assistance during the voting process in every Member State. However, there are differences between who may assist the person and under which conditions (in some Member States, only certain impairments allow for the use of an assistant).⁴⁵ Nevertheless, there is a positive trend of allowing the voter to choose their assistant, for example a person they know and trust. A good example of this type of development may be found in Denmark, where voters have been able to obtain assistance from a person of their choice, rather than polling supervisors, since 2017.⁴⁶

In 18 Member States, the rights of political participation (the right to vote and/or to stand as candidate) are limited for persons under guardianship to some extent.⁴⁷ There are differences on how severely the rights are limited. In seven Member States, guardianship automatically leads to the deprivation of the right to vote⁴⁸, while in 11 Member States, guardianship may limit the legal capacity of the person, but it is subject to a judicial or medical decision that is concluded on individual basis.⁴⁹ Several Member States have amended their legislation from automatic exclusion to individual decision.⁵⁰ Eight Member States do not deprive voting rights on the basis of intellectual or psychosocial abilities. In this respect, an interesting development can be seen in Slovakia where, in 2017, the Supreme Court held the deprivation of voting rights to be unconstitutional.⁵¹ Other examples can be seen in the case studies of Denmark, Germany and Romania, as found in Section 3.

2.4 Promising initiatives at EU level

Despite the existing barriers, there have been numerous promising initiatives at EU level aimed at promoting the political participation of persons with disabilities.

Following the barriers identified by the initial report in 2019, the EESC calls for the amendment of the 1976 Electoral Act.⁵² On the basis of Article 29 UNCRPD (on participation in political and public life), the EESC states that clarification is required on the principles of universality, directness and secrecy of

⁴⁴ Belgium, Estonia, Finland, Hungary, Portugal and Romania.

⁴⁵ See case study on the Netherlands.

⁴⁶ See case study on Denmark.

⁴⁷ Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Ireland, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania and Slovenia.

⁴⁸ Bulgaria, Cyprus, Estonia, Greece, Lithuania, Luxembourg and Poland.

⁴⁹ Belgium, Czech Republic, Denmark, France, Germany, Hungary, Ireland, Malta, Portugal, Romania and Slovenia.

⁵⁰ For instance, in Denmark (see case study), in Belgium (*Projet de loi portant des dispositions diverses en matière de justice* 20 December 2018), in Czech Republic (Supreme Court, case no. Cjpn 23/2016).

⁵¹ Slovakian Constitutional Court, case no. I. ÚS 624/2016-18, https://www.ustavnysud.sk/documents/10182/25351100/TI_info_32_17/556197fa-279e-4b9e-a503-0e549d85bbff.

⁵² European Disability Forum, 'Urgent call to revise the European Electoral law of 1967', <https://www.edf-feph.org/an-urgent-call-to-revise-the-european-electoral-law-of-1976/>.

elections.⁵³ The EESC has advised Member States to dismantle the existing barriers and to implement common standards for persons with disabilities to vote.⁵⁴

The EESC has proposed introducing a ban on the deprivation of the right to vote in European Parliament elections on the grounds of disability or health. Furthermore, there should be an obligation to provide accessible information of elections and voting procedures for persons with disabilities, and - in the absence of accessible polling stations - to provide alternative forms of voting. Moreover, facilitatory measures should be taken to promote the possibilities for persons with disabilities to vote independently. Those persons needing significant support, for example those who are visually impaired, blind, deafblind or with limited manual dexterity, should have the possibility to freely choose an assistant.⁵⁵ The EESC has also called for the implementation of a new EU Disability strategy ensuring political participation for all citizens with disabilities in their national, regional and local electoral processes.⁵⁶

The EU has already committed to facilitating the exercising of EU citizens' electoral rights in their Disability Strategy 2010-2020. Yet in 2020, the European Parliament stated in their Resolution that still more than half of the Member States deprive mentally or intellectually disabled persons from their voting rights.⁵⁷ According to Parliament, the post-2020 EU Disability Strategy must include clearly designated priority areas covering all provisions of the UNCRPD and provide a common definition of the concept 'disability' at EU level.⁵⁸

The EU Disability Strategy for 2021-2030 was adopted in March 2021. One key theme of the Strategy is to promote accessibility and the participation of persons with disabilities in the democratic process. The Commission aims to support Member States in shaping their national strategies and action plans to further implement the EU legislation and UNCRPD in their national legislation.⁵⁹ The Strategy also refers to the additional challenges brought by the COVID-19 pandemic, which amplifies the obstacles and inequalities experienced by persons with disabilities.⁶⁰ The Commission aims to work with Member States in the European Cooperation Network on Elections to support full electoral participation, address underrepresented citizens and to guarantee the exercise of political rights of persons with disabilities on equal basis with others. It is also planned to establish a guide of good electoral practice within this Cooperation Network in 2023, and to support democratic participation through the new Citizenship, Equalities, Rights and Values programme (CERV).⁶¹

⁵³ European Economic and Social Committee, 'The need to guarantee real rights for persons with disabilities to vote in European Parliament elections' SOC/638. 20 February 2020, point 2.4.

⁵⁴ European Economic and Social Committee, 'The need to guarantee real rights for persons with disabilities to vote in European Parliament elections' SOC/638. 20 February 2020, point 5.3.

⁵⁵ European Economic and Social Committee, 'The need to guarantee real rights for persons with disabilities to vote in European Parliament elections' SOC/638. 20 February 2020, point 2.4.

⁵⁶ Section 4.2.2.4, European Economic and Social Committee, 'Shaping the EU agenda for disability rights 2020-2030' SOC/616. 24 January 2019

⁵⁷ European Parliament Resolution of 18 June 2020 on the European Disability Strategy post-2020. Point A.

⁵⁸ Ibid, Point 5.

⁵⁹ European Commission, Union for Equality: Strategy for the Rights of Persons with Disabilities 2021-2030, March 2021.

⁶⁰ Ibid, p. 5.

⁶¹ Ibid, p. 10.

Several representative organisations of persons with disabilities at European level have also been active in advocating the rights of persons with disabilities.

The European Disability Forum (EDF) is an umbrella organisation of persons with disabilities, bringing together representative organisations of persons with disabilities from across Europe. The EDF has welcomed the new EU Disability Strategy, supporting the establishment of a guide of good electoral practice to ensure the political rights of persons with disabilities.⁶² The EDF has also advocated, on multiple occasions, for ensuring barrier-free availability of European standards on accessibility⁶³ as well as considering accessibility of digital platforms and services.⁶⁴ Recently, the EDF has published a manual on how to improve the accessibility of elections so that the electoral participation of persons with disabilities could be ensured.⁶⁵ In January 2021, the EDF and the European Parliament's Disability Intergroup agreed on their work programme on disability rights, where voting rights was considered as one of the priorities.⁶⁶

Accessibility has also been a theme advocated by the European Union of the Deaf (EUD). The EUD prepared an advocacy letter, in collaboration with the European Union of the Deaf Youth and the European Forum of Sign Language Interpreters. The letter specifies actions required to ensure that the elections are fully accessible for the deaf, both before and during the electoral process. With the letter, the EUD calls upon the European Parliament and relevant national authorities to empower deaf voters to meaningfully exercise their right to vote by removing significant obstacles when accessing information and communication. Measures should be taken to improve the accessibility of information and communication by using national sign languages, subtitles, visual formats and new technologies.⁶⁷

Since the previous report was published in 2018, promising initiatives have also been taken at national levels. The following section will discuss these changes and the overall political participation of persons with disabilities in the selected Member States.

⁶² European Disability Forum, 'A new journey for disability rights. The European Disability Forum welcomes the new Disability Rights Strategy 2021-2030' <https://www.edf-feph.org/a-new-journey-for-disability-rights-the-european-disability-forum-welcomes-the-new-disability-rights-strategy-2021-2030/>.

⁶³ European Disability Forum, 'EU needs to make accessibility standards affordable' <https://www.edf-feph.org/affordablestandards-eu-needs-to-make-accessibility-standards-affordable/>.

⁶⁴ European Disability Forum, 'Access denied? EU must ensure accessible digital services for persons with disabilities!' <https://www.edf-feph.org/access-denied-eu-must-ensure-accessible-digital-services-for-persons-with-disabilities/>.

⁶⁵ European Disability Forum, 'How to make your elections campaign accessible for persons with disabilities and the general public' <https://www.edf-feph.org/publications/how-to-make-your-elections-campaign-accessible-for-persons-with-disabilities-and-the-general-public/>.

⁶⁶ European Disability Forum, 'The Parliament's Disability Intergroup and EDF agree disability rights priorities for 2021' <https://www.edf-feph.org/the-parliaments-disability-intergroup-and-edf-agree-disability-rights-priorities-for-2021/>.

⁶⁷ The European Union of the Deaf (EUD), 'Don't leave deaf voters behind' <https://www.eud.eu/files/5515/5458/0495/Letter.pdf>.



3. Case studies

The following section will focus on the core of this report, providing an update on the case studies on the selected EU Member States: Bulgaria, Denmark, Estonia, Germany and Ireland. Due to the notable developments in the political participation rights of persons with disabilities, the update will also include Finland, Hungary, the Netherlands and Romania. It will examine electoral rights, the organisation of elections, the facilitatory measures being taken in each State and the recent developments. Alongside the updates, this report will take a broader approach by exploring beyond the challenges faced by persons with disabilities. Following the COVID-19 crisis, it is important to examine how political participation is being ensured for all types of vulnerable groups, and whether authorities have taken sufficient protective measures in elections organised during the pandemic.

3.1 Case Study on Bulgaria⁶⁸

3.1.1 Political participation in Bulgaria

According to the Bulgarian Constitution, the right to vote is granted for every Bulgarian citizen of at least 18 years of age.. Exceptions are made for those placed under judicial interdiction,⁶⁹ meaning that persons whose legal capacity is deprived under a guardianship are ineligible to vote. This exclusion is also laid down in the Bulgarian Electoral code, under which persons with partial or plenary guardianship are precluded from voting.⁷⁰ Consequently, the loss of the right to vote leads to the loss of the right to stand as a candidate in elections.⁷¹ As a result, the political participation of persons with disabilities under a guardianship may be severely limited in these cases.

However, there are attempts to facilitate the participation of disabled persons in elections. Prior to the election day, the election commission is obliged to announce the measures taken to facilitate participation by impaired voters or voters with ambulant difficulties.⁷² Overall, the Constitution prohibits discrimination on the basis of disability.⁷³ Elections should be held on the basis of universal, equal and direct suffrage by secret ballot.⁷⁴

Generally, votes are cast at polling stations.⁷⁵ However, those persons with disabilities who are in hospitals, nursing homes or other care institutions have the option to vote at that location, upon a request of at least ten voters with permanent disabilities.⁷⁶ The Electoral Code also provides an option for mobile polling stations for voters with permanent disabilities that prevent them from voting at the polling site.⁷⁷ Special mobile precinct election commissions (MPECs) are set up⁷⁸ and voting can then

⁶⁸ Written together with Dr Dessi Hristova.

⁶⁹ Article 42(1) Bulgarian Constitution.

⁷⁰ Article 3 Electoral Code 2014 (Amended 2017).

⁷¹ European Union Agency for Fundamental Rights: The right to political participation of persons with mental health problems and persons with intellectual disabilities, October 2010, p. 15.

⁷² Article 234 Electoral Code 2014 (Amended 2017).

⁷³ Article 6 Bulgarian Constitution.

⁷⁴ Article 10 Bulgarian Constitution.

⁷⁵ Article 8(1) Electoral Code 2014 (Amended 2017).

⁷⁶ Article 9(6)-(7) Electoral Code 2014 (Amended 2017).

⁷⁷ Article 37 Electoral Code 2014 (Amended 2017).

⁷⁸ Article 238(1) Election Code 2014 (Amended 2021).

take place in an accessible and visible place at the home of the voter.⁷⁹ Moreover, in the event that a mobile polling station is set up, voters with permanent disabilities can submit a request to vote with mobile ballot box five days prior to election day.⁸⁰ Persons residing outside Bulgaria have the possibility to vote at a polling station provided abroad.⁸¹

The polling stations should be made accessible for the voters. This, however, has been assessed as 'limited' by the OSCE ODIHR mission for the recent parliamentary elections.⁸² If a polling station is located in a multi-storey building, casting a vote should be possible on the ground floor for persons with visual impairments or other ambulant difficulties.⁸³ A vote can be cast by means of a paper ballot.⁸⁴ If a voter is not able to perform the voting alone, the chairperson of the commission may allow the voter an assistant.⁸⁵ Furthermore, municipalities may provide transport for voters with disabilities for accessing their respective polling stations.

Although the Bulgarian legislation provides alternatives for voting to persons with disabilities, the UN Committee on Rights of Persons with Disabilities has recommended that Bulgaria amend its legislation. The Committee has found it particularly problematic that persons under guardianship are being deprived of their right to vote. Furthermore, there are reports that polling stations and information on elections remain inaccessible, despite the attempts at facilitation.⁸⁶

3.1.2 Recent developments

The Election Code was adopted in 2014, but has since been amended more than 20 times, the most recent being in 2019 and 2020, entering into force on 1 May 2021. Based on the OSCE ODIHR Limited Election Observation Mission Preliminary statement on the parliamentary elections on 4 April 2021, the legal framework lacks stability.⁸⁷ Furthermore, the deprivation of voting rights has been criticised in consecutive OSCE ODIHR reports as being below international standards.⁸⁸

Since 2014, with the adoption of the Election Code, machine voting was planned; first experimentally, then gradually as a substitute for paper ballots. However, debate over the various legislative amendments⁸⁹ changed the initial plans. In 2020, prior to the most recent parliamentary elections, and following inconsistent amendments related to machine voting, a parallel system of voting was put in place, thus giving voters the choice. Devices were allocated country-wide in all polling stations with

⁷⁹ Article 238(1) Electoral Code 2014 (Amended 2017).

⁸⁰ Article 37(2) Election Code 2014 (Amended 2021).

⁸¹ Section 3 Electoral Code 2014 (Amended 2017).

⁸² OSCE ODIHR Preliminary Statement to the 4 April General Parliamentary elections in Bulgaria, p.16.

⁸³ Article 10(1) Electoral Code 2014 (Amended 2017).

⁸⁴ Article 206(1) Electoral Code 2014 (Amended 2017).

⁸⁵ Article 263 Electoral Code 2014 (Amended 2017).

⁸⁶ UN Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Bulgaria'. 22 October 2018.

⁸⁷ OSCE ODIHR International Election Observation Mission, 'Bulgaria – Parliamentary Elections, 4 April 2021 Statement of Preliminary Findings and Conclusions' p. 2.

⁸⁸ Ibid, p. 7: Voter Registration; footnote 33.

⁸⁹ Machine voting in Bulgaria:

<https://www.kas.de/documents/286758/286807/Paper+Recommendations+Machine+Voting+BG.pdf/5d178dff-c7d7-9c19-90a3-018b5f22b69d?version=1.0&t=1608142801174>.

at least 300 voters, although this did not apply for out-of-country voting. The devices had to be programmed to allow magnification for voters with visual impairment. This, however, has not been fully implemented.

With recent amendments to the Election Code as of 1 May 2021⁹⁰, machine voting has been introduced as the main means in all polling stations with at least 300 voters both inside and outside the country, posing some logistical and preparation challenges. The legal amendments also facilitated submitting applications for mobile voting for persons with permanent disabilities. However, although the Central Election Commission has previously issued specific decisions on the matter, some municipalities were requesting submission of such requests in person or by using qualified electronic signatures. They would also require the person to present copies of the disability certificates that would impede their access to voting. The legal amendment clarified any ambiguities as to how voters should submit their applications. Now, the Election Code provides number of options for persons with permanent disabilities to apply to use a mobile polling station, where the request need only be made in-person if the supporting evidence could not be found from the internal system.⁹¹

The institute of legal incapacity, despite criticism by OSCE ODIHR missions and a number of NGOs in Bulgaria, still prevents people from exercising their full voting rights. Unfortunately, it is not fully understood as discriminatory to persons with disabilities.⁹² In 2019, it was estimated that 7 355 persons in Bulgaria are legally incapacitated, with 3 000 of them in institutions.⁹³ The NGOs working on this and advocating for legislative change have provided data that this situation is conducive to further abuse of their rights as well as degradation of their state.

Bulgaria ratified the UNCRPD in 2012 and has adopted a new law on the people with disabilities in 2019. However, the restrictions of legal incapacity remain where a person is granted only limited rights and is not capable of taking decisions independently. In recent years, a coalition of NGOs have initiated a petition⁹⁴ to change the currently active legislation. The NGOs also criticise the Bulgarian State in its tasks of implementing the provisions of the ratified UN Convention. In 2018, a number of Bulgarian NGOs initiated a petition, the '*National Initiative 7000*', to initiate legislative changes aimed at abolishing this provision.⁹⁵ Additional advocacy efforts were undertaken at national institutions and commissions, but the members of parliament at that time did not vote on the national initiative, despite the legislative requirements. This campaign, '*Born ready*' has now been resumed, uniting with other organisations to attract attention. For the last eight years, the initiative has managed to assist 150 persons in decision-making and to revoke the legal incapacity for seven individuals. The

⁹⁰ Article 37(3-3a) Election Code 2014 (Amended 2021).

⁹¹ Article 37(1)(3)3a Election Code 2014 (Amended 2021).

⁹² Action Plan for implementing the final recommendations to Bulgaria on behalf of the UN Committee for the rights of persons with disabilities (2021-2026).

⁹³ There are 7,355 persons legally incapacitated with a court decision, <https://www.marginalia.bg/novini/v-balgariya-ima-7-355-dushi-pod-palno-zapreshhtenie-nad-3000-sa-v-institutsii/>
<http://bcnl.org/news/neli-kutskova-strashno-e-che-v-balgariya-ima-7-355-dushi-postaveni-pod-palno-zapreshhtenie-bez-nikakvi-prava-ot-tyah-nad-3-000-sa-v-institutsii.html>

⁹⁴ <https://www.bornready.me/>; <http://bcnl.org/news/rodeni-gotovi.html> – A campaign supported by the Bulgarian Center for Non-profit Law, BALIZ- Bulgarian Association of Persons with intellectual difficulties, Global Initiative in the psychiatry, Autism Association, Fine Acts and others.

⁹⁵ A petition, supported by 12,000 people asking for legislative changes: <http://bcnl.org/news/blizo-12-000-choveka-podkrepiha-natsionalnata-grazhdanska-initsiativa-7000-za-premahvane-na-zapreshhtenieto.html>.

campaigning is still ongoing, with a major event entitled ‘*Ability Fest*’ in late May 2021, aiming at increasing awareness and advocating for change.

Efforts have been taken at national level to improve the rights of persons with disabilities. The new National Disability Strategy 2021-2026⁹⁶ lays down the challenges faced and the measures needed to address poverty, social exclusion and employment. Recommendations have been issued to address shortcomings in the legislation and the treatment of people with disabilities and in respecting their full rights; however, it appears that the measures are still mainly formalistic and do not address the issue of ensuring full rights to all.⁹⁷

On matters of accessibility, the National Ombudsman of Bulgaria has proposed to the Central Election Commission in 2019 that additional measures could be implemented to facilitate understanding and inclusion of persons with disabilities in the election process. Braille or readers, sign language and logistical enhancements could all be used to ensure they have equal access to polling stations and election campaigns.⁹⁸

On 4 April 2021, parliamentary elections were held in Bulgaria, for which ODIHR NAM recommended a deployment of an Election Observation Mission (EOM).⁹⁹ Due to the rushed manner in which the legislative amendments were adopted (e.g. the introduction of machine voting, modifications to the appeal system on disputes relating to elections), ODIHR NAM interlocutors expressed concerns over the changes. It was also noted that the legislative framework could be improved in terms of safeguarding democratic elections.¹⁰⁰ Similar concerns were raised by the Members of European Parliament. Due to the changes on electoral laws close to the elections, MEPs called on the Bulgarian authorities to respect EU values and to ensure full compliance of the legislation with the recommendations of the Venice Commission and the OSCE ODIHR.¹⁰¹

The Election Code prescribes, in detail, the voter and candidate registration processes and vests competencies in the Central Election Commission (CEC)¹⁰² to organise the process, to further lay down the specific requirements and to take decisions should the need arise. The CEC is a permanent body tasked with interpreting and implementing the Election Code, thus supplementing the legislative documents that lay down the foundations for the electoral process.

⁹⁶ National Strategy for People with Disabilities 2021–2030, <https://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=1342>.

⁹⁷ Bulgarian Centre for Non-profit Law Foundation, ‘9 years later - are we implementing the Convention and the recommendations of the Committee on the Rights of Persons with Disabilities?’ <http://bcnl.org/news/9-godini-po-kasno-prilagame-li-konventsivata-i-preporakite-na-komiteta-za-pravata-na-horata-s-uvrezhdaniya.html>.

⁹⁸ Ombudsman’s letter on voting of persons with disabilities, 2019: https://www.ombudsman.bg/pictures/Ombudsman_predlojeniq_CIK.pdf.

⁹⁹ OSCE Office for Democratic Institutions and Human rights: Bulgaria, Parliamentary elections 4 April 2021: ODIHR Needs Assessment Mission Report, 28 January 2021. <https://www.osce.org/odihr/elections/bulgaria/476866>.

¹⁰⁰ OSCE, Republic of Bulgaria: Parliamentary elections 4 April 2021, https://www.osce.org/files/f/documents/6/0/476866_0.pdf, p. 1.

¹⁰¹ European Parliament resolution on the rule of law and fundamental rights in Bulgaria, https://www.europarl.europa.eu/doceo/document/B-9-2020-0309_EN.html.

¹⁰² Article 57 of the Election Code.

The CEC has taken specific decisions on organising elections during COVID-19 crisis; for example, it lays down the details over the requirements for setting up mobile polling stations¹⁰³ as well as voting for people under mandatory quarantine or isolation. As for the decision for voting of persons with disabilities, the CEC has solicited the opinion of the National Council of People with Disabilities, which consists mainly of public institutions and nationally representative organisations, largely dependent on State funding. The discussion did not suggest constructive feedback or input for the CEC decision on voters with disabilities.¹⁰⁴ Furthermore, there are no prominent candidates with disabilities. The lack of reliable data and consistent policies in this area have deprived the community (estimated at 426 382 persons, based on the 2011 census data¹⁰⁵) of a sustainable voice and of representation.

The OSCE ODIHR has raised concerns over the politicised nature of the CEC and over its capacity to perform its duties effectively.¹⁰⁶ Furthermore, in the view of the OSCE, before the parliamentary elections of April 2021, there was a pressing need for more information on the election-day procedures and machine voting as well as the adjustments made for COVID-19.¹⁰⁷ The lack of a legal framework on the participation of voters infected with the virus, their family members and persons in self-isolation was concerning, in the view of ODIHR.¹⁰⁸ Also, it was noted that the legislative frameworks and the internal policies of the parties to promote female participation remain absent.¹⁰⁹ Further concerns were raised over the election campaign and alleged vote buying and organised voting.¹¹⁰

The challenges of holding elections in the COVID-19 pandemic have urged the legislators to adopt additional measures to avoid any potential disenfranchisement of those people under mandatory quarantine or isolation. Ahead of the elections, Bulgarian President Roumen Radev called for the introduction of postal voting and urged for further amendments to the electoral legislation before the upcoming elections. The ruling political party GEBR (*Citizens for European Development of Bulgaria*) agreed that amendments were needed, for example in respect of persons in quarantine and hospitalised COVID-19 patients. As mobile voting was only available to persons with disabilities, it was important to ensure that those affected by COVID-19 had an accessible means of voting.¹¹¹ However, they disagreed with the introduction of postal voting.¹¹²

The measures were adopted late in the process, with no clear division of labour and no real flexibility to afford all COVID-19 patients the ability to vote. The measures are stipulated in the *Law on the*

¹⁰³ CEC decision as of 22 February 2021: <https://www.cik.bg/bg/decisions/2117/2021-02-22>; as of 25 May 2021: <https://www.cik.bg/bg/decisions/117/2021-05-25>.

¹⁰⁴ Protocol №3 of online session 26.02-02.03: http://saveti.government.bg/web/cc_11/1.

¹⁰⁵ Persons in disability in Bulgaria: <https://www.nsi.bg/spisaniestatistika/page/download.php?articleID=44>.

¹⁰⁶ OSCE ODIHR Preliminary Statement to the 4 April 2021 General Parliamentary elections, p.5; p.14.

¹⁰⁷ Ibid, p. 1.

¹⁰⁸ Ibid, p. 6.

¹⁰⁹ Ibid, p. 2.

¹¹⁰ Ibid, p. 3.

¹¹¹ EURACTIV 'Bulgaria's parliamentary elections to be held in April'

https://www.euractiv.com/section/politics/short_news/bulgarias-parliamentary-elections-to-be-held-in-april/

¹¹² EURACTIV, 'Bulgaria will not allow mail-in voting despite pandemic'

https://www.euractiv.com/section/politics/short_news/bulgaria-will-not-allow-mail-in-voting-despite-pandemic/

*Measures and Actions During the State of Emergency Declared with the Decision of the National Assembly of 13 March 2020.*¹¹³

For the parliamentary elections, a similar approach to mobile polling stations for voters with permanent disabilities was adopted. The initial provisions, as of 9 February 2021, prescribed that those voters in quarantine or isolation due to COVID-19 can submit their applications to vote by mobile ballot box only at their permanent or current address three days prior the elections (the latter only if they had managed to file an application to vote on their current address within the respective deadlines). Dedicated mobile polling stations were organised where at least ten applications at a municipality had been filed. In practical terms, this meant that people quarantined outside of their permanent or current address or quarantined after the specified deadline were not able to vote.¹¹⁴

Due to these difficulties, according to a study published by the Bulgarian Helsinki Committee, a total of 13 833 voters were unable to exercise their right to vote as they were put under mandatory quarantine during the period 1-4 April 2021. In the Committee's view, the Parliament had failed to provide sufficient options in the peak of the second wave of the infections in the country. Another issue identified by the Committee related to the requirement for at least ten applications in order to set up a mobile polling station. Due to the low number of applications, no mobile stations were set up in 71 municipalities.¹¹⁵

The next snap parliamentary elections are scheduled to take place on 11 July 2021. A new CEC composition has been introduced, entering into force on 12 May 2021. Machine voting is now the primary voting method at all polling stations with at least 300 voters, including out-of-country stations. This poses logistical and procurement issues in the tight deadlines prior to the snap elections. Some of the amendments remain incomplete, such as out-of-country constituencies. As there have been issues with municipalities and official websites requesting qualified electronic signatures in prior elections, the latest amendments, as of 1 May 2021 have amended the wording to allow for voting at the place of quarantine. In addition, the new texts provide an opportunity for person under quarantine to be added to the voters roll even if they submit their request after the roll has been printed.

3.2 Case Study on Denmark

3.2.1 Political participation in Denmark

According to the Danish Constitution, Danish citizens who have reached electoral age (18 years) have the right to vote.¹¹⁶ Further legislation on elections and voting can be found in the Parliamentary

¹¹³ Law on the Measures and Actions During the State of Emergency Declared with the Decision of the National Assembly of 13 March 2020 <https://www.lex.bg/bg/laws/ldoc/2137201253>.

¹¹⁴ CEC information on applications of people under quarantine: <https://www.cik.bg/bg/ns2021/covid-sik>; The biggest silent scandal: Disenfranchising voters under quarantine: <https://www.svobodnaevropa.bg/a/31181951.html>.

¹¹⁵ Bulgarian Helsinki Committee, 'In a pandemic: the right to vote in elections for the 45th National Assembly' <https://www.bghelsinki.org/bg/articles/v-pandemija-pravoto-da-glasuvash-v-izborite-za-45-o-narodno-sybranie>.

¹¹⁶ Section 29(1) Constitution of Denmark, Section 1(1) Parliamentary Election Act.

Election Act, the Danish European Parliament Elections Act and in the Local and Regional Government Elections Act.¹¹⁷

In Denmark, persons who have been declared legally incompetent do not have the right to vote.¹¹⁸ This also entails a limitation of voting rights for persons who are under guardianship.¹¹⁹ According to the Guardianship Act, guardianship can be instituted for a person who is unable to take care of their affairs as result of illness, impaired mental development or other severe debilitating condition. Furthermore, there are different types of guardianship. The legal capacity of persons under financial, personal and/or co-guardianship is not limited, thus they retain their voting rights.¹²⁰ However, under a court-imposed guardianship, the legal capacity of the person is fully restricted, leading to a deprivation of their voting rights¹²¹ and consequently to the loss of the right to stand as an electoral candidate.¹²² Before the legal amendments (as discussed in the following section), the restriction applied to parliamentary elections¹²³ and to the elections for municipalities and regional councils.¹²⁴

Votes can be cast on the designated election day or in advance.¹²⁵ Ahead of the election day, persons confined to hospitals or care facilities may vote by post.¹²⁶ If illness or a disability prevents voting in advance at a polling station, the person may vote from their own home. The request must be submitted at the latest 12 days prior to the election day.¹²⁷

On election day, where a voter's disability or poor health justifies it, it is possible to vote at a different polling station than the one allocated based on their residency.¹²⁸ Persons with disabilities, those with poor health or are similarly unable to walk into a polling station, or are in any other way unable to vote, may request assistance during voting.¹²⁹ It has to be noted that assistance may be granted only when the voter is able to directly and unambiguously indicate the candidate for whom they will cast their vote.¹³⁰ Up to 2017, assistance was provided by two polling supervisors or appointed electors. It was possible to substitute one of these by a person of the voter's choice.¹³¹ In 2017, the voting procedure was further facilitated for persons needing an assistant and those with hearing impairments. Now, voters in need of support to cast their vote can demand to be assisted solely by a person of their choice. Furthermore, tools in the voting booth will enable some voters to cast their

¹¹⁷ Local and Regional Government Elections Act, Consolidated Act No. 363 of 2 April 2014.

¹¹⁸ Section 29(1) Constitution of Denmark.

¹¹⁹ Section 1(1) Parliamentary Election Act, Article 1(3) Local and Regional Government Elections.

¹²⁰ Section 5 and 7 Danish Guardianship Act.

¹²¹ Section 6 Danish Guardianship Act.

¹²² Section 30 Constitution of Denmark.

¹²³ Section 4 Parliamentary Election Act.

¹²⁴ Section 108a(2) Local and Regional Government Elections Act.

¹²⁵ Section 59 Local and Regional Government Elections Act, Section 53 Parliamentary Election Act.

¹²⁶ Section 60 Local and Regional Government Elections Act, Section 54 Parliamentary Election Act.

¹²⁷ Section 60(4) Local and Regional Government Elections Act, Section 54(4) Parliamentary Election Act.

¹²⁸ Section 47(a) Parliament Election Act, Article 53(a)(1) Local and Regional Government Elections Act, Section 25(2) Act on Elections to the European Parliament.

¹²⁹ Section 49(1) Parliamentary Election Act.

¹³⁰ Section 55(4) Local and Regional Government Elections Act.

¹³¹ Section 55(1)-(3) Local and Regional Government Elections Act.

vote without assistance¹³², for example special lights, voting booths, magnifying glasses and adjustable tables.¹³³

3.2.2 Recent developments

Recent developments in Denmark have focused mostly on the voting rights of persons under guardianship. The previous report also referred to this as one of the greatest challenges in implementing the CRPD in Denmark.¹³⁴ In 2016, the European Parliament Elections Act and the Local and Regional Elections Act were amended, providing voting rights for persons whose legal capacity is deprived under a guardianship.¹³⁵ However, the amendments concerned only the European parliament, local and regional elections; the restriction of voting rights remained for other elections.

In 2018, two Danish nationals lodged an application at the European Court of Human Rights against Denmark, as they were deprived of their legal capacity and consequently were not entitled to vote in the 2015 parliamentary elections. The applicants claimed that this was in violation of Article 3 of Protocol No. 1 (right to free elections) and Article 14 ECHR (prohibition on discrimination). The deprivation of the right to vote was, in their view, unjustified, arbitrary and incompatible with Denmark's international obligations. The Danish government claimed that the restriction was proportionate with the legitimate aim, i.e. ensuring a level of mental understanding for voting. In 2021, the Court delivered their judgement, where they found the limitation of voting rights not in violation of the ECHR.¹³⁶

The Court recalled that States enjoy a wide margin of appreciation on voting rights – the Danish situation is comparable to other States. The loss of right to vote was based on law that was subject to sufficient judicial review. The Court found that the difference in treatment of the applicants was proportionate to the aim of limiting voting rights to those with the capability of assessing the consequences of their decisions. The disenfranchisement affected only a small group of persons and was applied under strict conditions assessing individually the person's mental capacity. Therefore, the Court held that there had been no violation.

The case led to public debate on legislative amendments aimed at restoring voting rights. The European Disability Forum, Disabled People's Organisations Denmark and the International Disability Alliance were deeply concerned of the court's judgment, stating that "*this decision excludes persons*

¹³² European Union Agency for Fundamental Rights, 'Developments in the right to vote of people deprived of legal capacity in EU Member States' https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-right-vote-ep-elections-legal-capacity_en.pdf.

¹³³ OSCE ODIHR, https://www.osce.org/files/f/documents/4/d/419231_0.pdf.

¹³⁴ A. Broderick, 'Political Participation of Persons with Disabilities'. 15 September 2018, p. 32.

¹³⁵ Denmark, Act no. 381 of 27. April 2016 amending the Act on Election of Danish Members to the European Parliament and the Act on Municipality and Regional elections. <https://www.retsinformation.dk/eli/lt/2016/381>. Local and Regional Elections Act 09/01/2020, <https://www.retsinformation.dk/eli/lt/2020/13>

¹³⁶ *Strøbye and Rosenlind v. Denmark*, 2 February 2021.

*with disabilities from the democratic process, reducing them to second-class citizens and perpetuating stereotypes about them”.*¹³⁷

Although the applicants were not successful in their claims in front of the European Court of Human Rights, since 1 January 2019, due to legislative amendment on the Guardianship Act (2018), the deprivation of legal capacity under Section 6 can be imposed partially. As a result, persons under this type of guardianship may also be eligible to vote in parliamentary elections.¹³⁸ The right to vote in parliamentary elections also gives the right to vote in referendums, and - in the opinion of the Government - next to improving the voting rights of persons under guardianship, the new system of partial deprivation of legal capacity provides additional flexibility in the guardianship system. This in turn allows tailored solutions to protect the individuals in question.¹³⁹ However in 2020, the Danish Institution of Human Rights reported that the courts have only applied the new legislation to a limited extent.¹⁴⁰

3.3 Case Study on Estonia¹⁴¹

3.3.1 Political participation in Estonia

Alongside the Estonian Constitution,¹⁴² regulation on elections and voting procedures can be found in the National Election Act,¹⁴³ the Municipal Council Election Act¹⁴⁴ and in the European Parliament Election Act.¹⁴⁵ Next to the prohibition on discrimination,¹⁴⁶ the Constitution provides for people with disabilities to enjoy special care from the national government and local authorities.¹⁴⁷

As laid down in the Estonian Constitution, all citizens aged 18 years or over have the right to vote. Persons deprived of their legal capacity by a court order do not have this right.¹⁴⁸ However, such a restriction applies only in case the capacity of the person is fully limited. Under Section 526 (5) of the Code of Civil Procedure, if a court establishes guardianship for managing all the affairs of a person under guardianship, or if the scope of duties of a guardian is extended in such manner, the individual

¹³⁷ European Disability Forum, ‘The European Court of Human Rights fails to protect the right to vote of persons with disabilities’ <https://www.edf-feph.org/the-european-court-of-human-rights-fails-to-protect-the-rights-to-vote-of-persons-with-disabilities/>.

¹³⁸ Bill no. 113 of 20 November 2018 on amending the Act on Guardianship.

¹³⁹ Proposal to the Act amending the Guardianship Act, https://www.ft.dk/samling/20181/lovforslag/l113/20181_l113_som_fremsat.htm.

¹⁴⁰ Institut for Menneske Rettigheder, Annual report: Human Rights Denmark 2020, <https://menneskeret.dk/udgivelser/menneskerettigheder-danmark-2020> p. 26.

¹⁴¹ Written together with Kristi Joamets, PhD, Department of Law, School of Business and Governance, Tallinn University of Technology.

¹⁴² Estonia, Constitution of the Republic of Estonia, passed 28.06.1992, RT 1992, 26, 349, available at: <https://www.riigiteataja.ee/en/eli/530122020003/consolide>, last accessed 18 March 2021.

¹⁴³ Estonia, Riigikogu Election Act, passed 12.06.2002, RT I 2002, 57, 355, available at: <https://www.riigiteataja.ee/en/eli/514122020002/consolide>, last accessed 18 March 2021.

¹⁴⁴ Estonia, Municipal Council Election Act, passed 27.03.2002 RT I 2002, 36, 220, available at: <https://www.riigiteataja.ee/en/eli/521122020001/consolide>, last accessed 18 March 2021.

¹⁴⁵ Estonia, European Parliament Election Act, passed 18 December 2002 RT I 2003, 4, 22, available at: <https://www.riigiteataja.ee/en/eli/516122020005/consolide>, last accessed 18 March 2021.

¹⁴⁶ Section 12 Estonian Constitution

¹⁴⁷ Section 28 Estonian Constitution.

¹⁴⁸ Section 57 Estonian Constitution, Section 5(3) Municipal Council Election Act, Section 4(2) National Election Act

affected is also deemed to be without active legal capacity with regard to the right to vote and loses that right. However, it is important to note that the period of guardianship cannot be longer than five years; after that period, the active legal capacity of the person is re-assessed by the court.

In municipal elections, Estonian citizens and citizens of the European Union aged 16 or over, and who are permanently resident in the corresponding rural municipality or city, are eligible to vote. An alien has the right to vote if they meet the abovementioned specified conditions, reside in Estonia on the basis of a long-term residence permit or have the right of permanent residence. Similarly to *Riigikogu* (parliamentary) elections, a person who has been divested of their active legal capacity does not have the right to vote in municipal elections.¹⁴⁹

In European Parliament elections, an Estonian citizen aged 18 or over, and a European Union citizen - who is not an Estonian national - aged 18 years or over by election day whose permanent residence is in Estonia and has not been deprived of the right to vote in their home Member State, have the right to vote.¹⁵⁰ Similarly to other elections, a person who has been divested of the active legal capacity also does not have a right to vote in European Parliament.

Estonian citizens aged 21 or over may stand as candidate in parliamentary (*Riigikogu*) elections.¹⁵¹ In Municipal Council elections, every Estonian citizen is eligible to stand as a candidate. This is also the case for European Union citizens aged 18 or over by the last day for the registration of candidates with the right to vote and whose are permanently resident in the corresponding rural municipality or city not later than on 1 August of an election year. In European Parliament elections, Estonian citizens aged 21 or over are allowed to stand as candidates. A European Union citizen has the right to stand as a candidate if they are aged 21 or over by election day, are permanently resident in Estonia and have not been deprived of the right to stand as a candidate in their home Member State.¹⁵² Candidacy is limited to those with voting rights, meaning that persons under full guardianship do not have the right to stand as a candidate.¹⁵³

Votes can be cast either on the official election day or in advance.¹⁵⁴ Voting in advance is possible either in the polling stations, at the location of the voter, in custodial institutions and in hospitals.¹⁵⁵ Depending on the health of the voter or, for another valid reason, a person is permitted to vote outside of their voting district when requested in writing.¹⁵⁶ Voting in a foreign State is also possible for voters permanently or temporarily staying abroad,¹⁵⁷ also by post.¹⁵⁸

¹⁴⁹ Section 5 Municipal Council Election Act.

¹⁵⁰ Section 4(1)(2) European Parliament Election Act.

¹⁵¹ Section 60 Estonian Constitution, Section 4(4) National Election Act.

¹⁵² Section 4 Riigikogu Election Act, Section 5 Municipal Council Election Act, Section 5 and 6 European Parliament Election Act.

¹⁵³ Ibid.

¹⁵⁴ Section 38(2) National Election Act.

¹⁵⁵ Section 38(2)1-2 and Section 45 National Election Act, Section 44 Municipal Council Election Act.

¹⁵⁶ Section 43(1) National Election Act, Section 49 Municipal Council Election Act.

¹⁵⁷ Chapter 8 National Election Act.

¹⁵⁸ Section 52 National Election Act.

In Estonia, it is also possible to vote electronically.¹⁵⁹ The Election Act requires that the voting application must provide support for visually impaired persons, and this requirement is fulfilled in practice such that they can exercise their right to vote without assistance.

On election day, next to online voting, votes may be casted at a designated polling station¹⁶⁰ or at the individual's home.¹⁶¹ Voting at home is available for those unable to visit the polling station for health or another valid reason.¹⁶² As a rule, voters are expected to vote independently, but if they need assistance in filling out a ballot, they have the right to receive assistance from whomever they choose, as long as that person is not a candidate in the particular electoral district.¹⁶³

Polling stations are located in public buildings, which must comply with the requirements of a Regulation of the Minister of Enterprise and Information Technology "Requirements for Structures arising from the Special Needs of Disabled Persons"¹⁶⁴, adopted on the basis of the Building Code.¹⁶⁵ In June 2019, the Estonian Chancellor of Justice turned their attention to the fact that not all polling stations have ensured the access to disabled persons.¹⁶⁶ However, the Chancellor also refers to good practice in access to elections. At the polling stations, signature frames are used for visually impaired persons.¹⁶⁷ In some polling stations, cardboard screens were used to allow those disabled persons who cannot stand to exercise their vote while sitting. Using such equipment was also encouraged in other polling stations in forthcoming elections. Amending the electoral legislation was also suggested to specifically ensure that accessibility for disabled persons is mandatory during the voting process at the polling stations, and that the Consumer Protection and Technical Regulatory Authority should inspect the accessibility arrangements at the polling sites.¹⁶⁸

3.3.2 Recent developments

In Estonia, voting is possible through a wide range of options. Individuals with special needs can vote using electronic means, at care institutions or hospitals or at home. There are measures to facilitate voting for persons with disabilities, through providing the opportunity of assistance and by providing accessible information. Yet limitations on voting rights remain. Persons deprived of legal capacity by court decision, and those with criminal offences, do not have the right to vote.

The OSCE ODIHR deployed an expert election team to observe the Estonian parliamentary elections on 3 March 2019. However, despite the measures taken in Estonia, the team noted that there were a lack of practical measures to promote participation by persons with disabilities. Only 60 percent of polling stations were accessible by wheelchair, and the information was not easily available. Furthermore, voting by electronic means was not configured for use by persons with visual

¹⁵⁹ Section 38(2)3 National Election Act, Chapter 7 National Election Act.

¹⁶⁰ Section 34 National Election Act, Section 40 Municipal Council Election Act.

¹⁶¹ Section 38(3) National Election Act.

¹⁶² Section 46 National Election Act, Section 52 Municipal Council Election Act.

¹⁶³ Section 39(5) and 39(8) National Election Act, Section 45(5) Municipal Council Election Act.

¹⁶⁴ Adopted 29.05.2018 nr 28 RT I, 31.05.2018, 55.

¹⁶⁵ Adopted 11.02.2015 RT I, 05.03.2015, 1.

¹⁶⁶ A letter of the Chancellor of Justice 21.06.2019 nr 16-6/190358/1903226.

¹⁶⁷ Section 48.3 Riigikogu Election Act, section 53.2 Municipal Election Act, section 47.2 European Parliament Election Act.

¹⁶⁸ Ibid.

impairments. It is advised to introduce more assistive tools at the polling stations and in the online applications.¹⁶⁹

On 13 June 2018, the Estonian Parliament adopted an amendment to the Chancellor of Justice Act to provide for the institution of the Chancellor of Justice to promote, protect and monitor implementation of the UNCRPD. The amendment came into force on 1 January 2019.

In 2019, the Estonian Government established a Task Force Group (*Ligipäasetavuse Rakkerühm*)¹⁷⁰ to develop a comprehensive accessibility policy. This Group, which has a mandate of two years, brings together all relevant stakeholders from the government, NGOs and private sector. It held its first meeting in November 2019 with three further meetings in 2020.

Estonian law provides for sufficient access to disabled persons to participate in voting or standing as a candidate; however, in its shadow report of following the CRPD in 2021, the Estonian Chamber of Disabled Persons has stated that there is no data available in Estonia on how many people with disabilities are using, or can use, their voting rights.¹⁷¹ In addition, although e-voting is widespread, there is no certainty whether the voting is conducted correctly and transparently.¹⁷² Also, it was argued that there are problems in accessibility of information on elections, particularly for those with visual and hearing impairments and with intellectual disabilities. Accessibility issues at the polling station may not be overcome by the fact that alternative voting methods (online or voting at home) are available, but by persons with disabilities having the right to decide how they exercise their vote. Unfortunately, for people with disabilities, e-voting or voting from home are often the only available options.¹⁷³

In its reply to the UN Convention on the Rights of Persons with Disabilities (CRPD) Committee on the Rights of Persons with Disabilities¹⁷⁴, on equal recognition before the law, Estonia stated that it “does not currently intend to withdraw its interpretative declaration on Article 12 of the Convention”.¹⁷⁵ This was because “guardianship shall only be established in cases where use of supported decision-making mechanisms would not be possible due to the severity of the mental disorder of the person, and the extent of the guardianship shall always be as narrow as possible”.¹⁷⁶ In practice, however, the problem is that a court makes its decision based on the documents prepared by the local government, and there may be questions as to whether the limitations to the persons’ active legal capacity were correct.

In 2021, the Referendum Act and Election Act were amended. Voting in polling stations will become more flexible in 2021 and will reduce contact between people. It will be possible to vote at any voting district of an electoral district of a rural municipality or a city. The electronic list of voters will be introduced in Estonia. A voter’s right to vote is checked against the electronic list of voters at the polling station of a voting district. Upon receiving a ballot paper, the voter signs the signature roster.

¹⁶⁹ ODIHR Election Expert Team Final Report 2019, p. 6.

¹⁷⁰ <https://riigikantselei.ee/ligipaasetavus>.

¹⁷¹ Shadow Report of Estonian Chamber of Disabled Persons.2021. Available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT_percent2fCRPD_percent2fICO_percent2fEST_percent2f33965&Lang=en, p. 40.

¹⁷² Ibid, p. 41.

¹⁷³ Ibid.

¹⁷⁴ UNCRPD. Replies of Estonia to the list of issues in relation to its initial Report. 16.12.2019, CRPD/C/EST/RQ/1.

¹⁷⁵ UNCRPD. Replies of Estonia to the list of issues in relation to its initial Report. 16.12.2019, CRPD/C/EST/RQ/1, p. 82.

¹⁷⁶ UNCRPD. Replies of Estonia to the list of issues in relation to its initial Report. 16.12.2019, CRPD/C/EST/RQ/1, p. 81.

Voter's cards will no longer be sent to voters; instead, election information sheets will be prepared. These will contain information on the conditions of the right to vote and on the voting possibilities in a specific rural municipality or city.¹⁷⁷

E-voting is continuously developing and growing in popularity. In the light of COVID-19, more people will use e-voting. From the 2021 elections onwards, it will be possible to change one's electronic vote until the close of voting in the evening of election day. Also, some restrictions on campaigning are removed, permitting political outdoor advertising throughout the entire election period. The polling station must remain free of advertising, but campaigning elsewhere on the election day is allowed.¹⁷⁸

3.4 Case Study on Finland

3.4.1 Political participation in Finland

Persons with Finnish nationality¹⁷⁹ aged 18 or over have the right to vote, as stated in the Constitution of Finland.¹⁸⁰ This right is further elaborated in the Election Act.¹⁸¹ Therefore, disability does not preclude voting, but disabled persons may face practical barriers during elections. For this reason, voting can be facilitated through special arrangements.

To ensure that disabled persons have access to information prior the elections, the Finnish Ministry of Justice provides information leaflets in simple Finnish and simple Swedish, videos in sign languages as well as brochures in Braille.¹⁸²

Disabled persons have the option to vote in a care establishment or in a hospital before the official election day. Persons with movement restrictions, who cannot access the polling station without unreasonable difficulties, have the right to vote from home. Those wishing to make use of this arrangement should request it in advance.¹⁸³ In the case of a serious disability, the person may receive help from an assistant who is either a person of their own choosing or an electoral official. The assistant is not permitted to influence the voting decision; however, they may guide the voter in finding a suitable candidate. The assistant is not permitted to vote on behalf of the disabled person.¹⁸⁴

In 2019, the possibility of postal voting was introduced for persons residing or temporarily staying abroad at the time of the elections.¹⁸⁵ As yet, there is no indication that postal voting would be possible

¹⁷⁷ <https://www.valimised.ee/en>.

¹⁷⁸ Valimised 'Voting in polling places becomes more flexible this year' <https://www.valimised.ee/en/voting-polling-places-becomes-more-flexible-year>.

¹⁷⁹ In certain elections, such as in the municipal elections, also persons without a Finnish nationality may be eligible to vote.

¹⁸⁰ Section 14 Constitution of Finland, 11.6.1999/731.

¹⁸¹ Section 2 Vaalilaki (Election Act), 2.10.1998/714.

¹⁸² European Economic and Social Committee, 'Real rights of persons with disabilities to vote in European Parliament elections' 2017 SOC/554, p.16.

¹⁸³ Section 55 Vaalilaki (Election Act), 2.10.1998/714.

¹⁸⁴ *Kenellä on oikeus äänestää ja olla ehdolla vaaleissa*, Tukiliitto [2017]. Accessed via <https://www.tukiliitto.fi/tuki-ja-neuvot/oppaat-ja-materiaalit/lakimies-vastaa/kenella-on-oikeus-aanestaa-ja-olla-ehdolla-vaaleissa/>.

¹⁸⁵ *Kirjeäänestys*, Finnish Ministry of Justice [2021]. Accessed via <https://vaalit.fi/kirjeaanestys>.

for disabled persons residing or staying in Finland at the time of the elections.¹⁸⁶ Outside this development, election legislation has essentially remained unchanged from previous years.¹⁸⁷

On election day, a person can only vote at a specified polling station. The polling station is allocated according to the person's residence and is specified in a letter of eligibility received prior to election day. The polling station should be accessible, and a person with disabilities may be eligible for transport services to the polling station provided by the government.¹⁸⁸

Disability does not preclude standing as a candidate in elections. Only persons declared incompetent cannot stand;¹⁸⁹ however, declaring incompetence is not common in Finland. Neither does the appointment of a guardian preclude standing as a candidate.¹⁹⁰ In fact, several Members of the Parliament have encouraged persons with disabilities to run for office.¹⁹¹

Accessibility is also an important theme in Finland. The electoral officials use a checklist to ensure that their polling stations are barrier-free. There are three aspects to accessibility: arrival, entry and the voting procedure onsite. The polling station should be accessible by public transport and the route to the entrance should be free of obstacles. At the entrance, a ramp should be provided and a wide door opening that is either automatic or easily operated. The polling booth should be equipped with adequate lightning and the tables at the polling booth should be of a certain height or adjustable.¹⁹²

Despite efforts to make voting easier for people with impairments, the OSCE ODIHR has stated that additional steps are still required.¹⁹³ The Parliamentary Ombudsman inspected the accessibility of the parliamentary elections in 2019 and identified several deficiencies. There was no separate polling booth for voters using a wheelchair or other aids, and wheelchair users also had difficulty entering the premises freely. Furthermore, the visibility of signs promoting the use of electoral and participation rights could be improved.¹⁹⁴

3.4.2 Recent developments

In Finland, the next municipal elections were planned for 18 April 2021. The Finnish Association of People with Physical Disabilities compared the municipal election programmes of all nine parliamentary parties, and people with disabilities were included in seven of them. The Association

¹⁸⁶ Section 66a Vaalilaki (*Election Act*), 2.10.1998/714.

¹⁸⁷ OSCE ODIHR, 'Needs Assessment Mission Report – Republic of Finland, Parliamentary Elections 14 April 2019' https://www.osce.org/files/FIN_percent202019_percent20Parliamentary_percent20-percent20NAM_percent20report.pdf.

¹⁸⁸ *Ibid* §190. See also Laki vammaisuuden perusteella järjestettävistä palveluista ja tukitoimista (*Act on Services and Assistance for the Disabled*) 3.4.1987/380.

¹⁸⁹ Section 27 Constitution of Finland, 11.6.1999/731.

¹⁹⁰ *Kenellä on oikeus äänestää ja olla ehdolla vaaleissa*, Tukiliitto [2017]. Accessed via <https://www.tukiliitto.fi/tuki-ja-neuvot/opaat-ja-materiaalit/lakimies-vastaa/kenella-on-oikeus-aanestaa-ja-olla-ehdolla-vaaleissa/>.

¹⁹¹ Invalidiliitto, 'Kannustamme vammaisia ihmisiä ehdolle kuntavaaleihin!', <https://www.invalidiliitto.fi/kannustamme-vammaisia-ihmisia-ehdolle-kuntavaaleihin>.

¹⁹² Invalidiliitto, 'Äänestyspaikkojen esteettömyyden tarkistuslista' <https://www.invalidiliitto.fi/aanestyspaikkojen-esteettomyyden-tarkistuslista>.

¹⁹³ OSCE ODIHR, 'Needs Assessment Mission Report – Republic of Finland, Parliamentary Elections 14 April 2019' https://www.osce.org/files/FIN_percent202019_percent20Parliamentary_percent20-percent20NAM_percent20report.pdf.

¹⁹⁴ Parliamentary ombudsman of Finland, 'Deficiencies still found in securing the secrecy of the polls - Parliamentary Ombudsman carried out surprise inspections at advance polling station' https://www.oikeusasiamies.fi/en_GB/-/oikeusasiamies-teki-yllatystarkastuksia-ennakkoaanestyspaikoille-vaalisalaisuuden-turvaamisessa-edelleen-puutteita.

hopes that promoting the wellbeing of people with disabilities would be a common theme among the parties as well as decision-making that improves equality and accessibility.¹⁹⁵

However, the rising levels of COVID-19 infection raised discussions over whether the elections should be postponed. It was questioned whether everyone could take part in the elections in a safe manner. The Finnish Disability Forum also raised concerns over whether, given the crisis, it would be possible for persons with disabilities to exercise their voting rights. Due to their health conditions, most persons with disabilities are at elevated risk. From an equality perspective, it would be problematic were these persons to be excluded from participation in the elections, nor would it be optimal for democracy.¹⁹⁶

In essence, the debate of postponing the elections focused on two viewpoints. First, there was an interest in organising elections on time, in order to avoid uncertainty – any change to the election date should only be in the most exceptional cases; the second favoured postponing the elections. From this perspective, everyone should have an equal opportunity to participate; this would protect both the right to vote and ensure the organisation of democratic elections.

A parliamentary workgroup has been responsible for the organisational aspects of the elections and assured that the organisation is well advanced. However, two months before the elections, doubts persisted whether the elections could be organised safely for everyone. To prevent the further spread of the COVID-19 virus, it was suggested that facemasks and hand disinfectants would be used at the polling stations. For persons in quarantine, it was suggested that certain persons could vote from home. Nonetheless, the Finnish Ministry of Justice noted that a situation could arise where not everyone could vote due to the health risks imposed by COVID-19.¹⁹⁷

At first, there was confusion over who has the right to vote from home and whether anyone who was unwilling to come to the polling station would be eligible for this option. The Finnish Disability Forum also called for greater clarity over who would be entitled to use this opportunity.¹⁹⁸ The rule was later clarified: voting at home would only be available for those with exceptional difficulties in voting at the polling station and for those officially declared by a doctor as needing to remain in quarantine.

Although this is a positive development, persons in self-isolation were excluded from this option. This limitation was made based on the reasoning that there was a high risk that the electoral officials might spread the virus from one home to another. It was also argued that home voting is an extensive procedure, one for which arrangements take time and are difficult to implement. It is difficult to estimate and prepare the required personnel for home voting, as organisers only receive the information on the numbers that have requested home voting the day before advance voting

¹⁹⁵ Invalidiliitto, 'Miten vammaiset huomioidaan kuntavaaliohjelmassa?' <https://www.invalidiliitto.fi/ajankohtaista/miten-vammaiset-huomioidaan-kuntavaaliohjelmassa>.

¹⁹⁶ Vammaisfoorumi, 'Yhdenvertaiset vaalit taattava' <https://vammaisfoorumi.fi/yhdenvertaiset-vaalit-taattava/>.

¹⁹⁷ YLE, 'Kuntavaalit keräävät araostelua: Osa suomalaisista ei pääse äänestämään, äänestys mahdoton, varautuminen puolitiehen', <https://yle.fi/uutiset/3-11784310>.

¹⁹⁸ Vammaisfoorumi, 'Yhdenvertaiset vaalit taattava' <https://vammaisfoorumi.fi/yhdenvertaiset-vaalit-taattava/>.

begins.¹⁹⁹ Due to the concern over further spreading the virus, it was advised that the electoral officials assisting in home voting should be on the priority list for vaccination.²⁰⁰

There was criticism that there had been insufficient preparations made for the elections, as the upcoming elections and the continuing impact of the COVID-19 crisis could have been predicted. It was argued that experiences with postal voting have been positive, and had earlier preparations been made, postal voting for everyone could have been arranged for the municipal elections. However, in the view of others, the introduction of postal voting would have been an overly ambitious goal to reach within this time, as it would have required numerous legal amendments. Next to the option of postal voting, electronic voting was also raised as a potential solution. In 2017, electronic voting was extensively discussed and, based on this research conducted, further steps could have been taken to implement this in time for the municipal elections.

Due to the above-mentioned difficulties and the rise in infection numbers, in February 2021 the Finnish Ministry of Justice suggested postponing the elections. However, the political parties disagreed and, on 5 March 2021, the Ministry of Justice put forward another proposal. Finally, agreement with most of the political parties was reached and, on 6 March 2021 the Ministry announced that the elections would be postponed until 13 June 2021. The postponement would hopefully see the epidemiological situation improve, where most vulnerable persons would have been vaccinated and allow for further protective measures to be prepared. Furthermore, it was decided to extend voting in advance from one to two weeks.²⁰¹ Voting was also possible at multiple drive-through locations for the first time in history.²⁰²

Following the postponement, the Disability Forum continued to call for the electoral process to be made accessible – whether through home voting, advance voting or at the polling station on election day. The option to vote from home was welcomed, however the Forum noted that not everyone knows about the opportunity or has the opportunity to use this. Therefore, the municipalities should provide more information and ensure sufficient resources, so that everyone who is entitled to do so can vote at home.²⁰³ As with previous elections, the Finnish Parliamentary Ombudsman will observe the upcoming elections, focusing in particular on accessibility, safeguarding electoral secrecy and the implementation of the COVID-19 measures.²⁰⁴

During the advance voting, the Ombudsman undertook unannounced inspections at several polling stations. It found that accessibility to the polling stations had improved and that barrier-free voting booths were available in more locations than before. As a result, election secrecy was easier to

¹⁹⁹ YLE, 'Kuntavaalit keräävät araostelua: Osa suomalaisista ei pääse äänestämään, äänestys mahdoton, varautuminen puolitiehen', <https://yle.fi/uutiset/3-11784310>.

²⁰⁰ YLE, 'Kotiäänestyksessä auttavat vaalitoimitsijat kirivät rokotusjonon kärkeen', <https://yle.fi/uutiset/3-11820738>. This suggestion led to much discussion whether it is justified that these persons would be prioritised over other vulnerable groups and prolong the vaccination of others. On the other hand, it was found important that home voting could be arranged safely in the light of democracy and providing equal opportunities for everyone to vote. Nevertheless, concerns remained whether the personnel could be vaccinated in time for the elections.

²⁰¹ Ministry of Justice, 'Municipal elections postponed to June', <https://oikeusministerio.fi/-/kuntavaalit-siirtyvat-kesakuulle>.

²⁰² Invalidiliitto, 'Kuntavaaleissa voit äänestää myös kotona' <https://www.invalidiliitto.fi/ajankohtaista/kuntavaaleissa-voit-aaanestaa-myos-kotona>.

²⁰³ Finnish Disability Forum, 'Municipal elections 2021' <https://vammaisfoorumi.fi/kuntavaalit-2021/>.

²⁰⁴ The Finnish Parliamentary Ombudsman, <https://www.oikeusasiamies.fi/fi/web/guest/ea0a#>.

maintain for those in wheelchairs or using other mobility aids. Nevertheless, the location of polling stations should have been better communicated. The Ombudsman and the Ministry of Justice also have requested an explanation on how election secrecy has been secured at certain drive-through polling stations.²⁰⁵

3.5 Case Study on Germany

3.5.1 Political participation in Germany

As Germany is a federal State, there are 16 regional election laws of the *Länder*.²⁰⁶ At a national level, legislation on elections can be found in the German Basic Law, the Federal Electoral Act and in the Federal Election Regulations. According to Article 38 of the Basic Law, every person has the right to vote in general, direct, free, equal and secret elections. This right is also provided in the Electoral Act.²⁰⁷ Before the 2019 rulings of the Constitutional Court in Germany (as discussed in ‘recent developments’ below), under Section 13 of the Electoral Act, persons under a court-imposed guardianship and persons in a psychiatric hospital who have committed a crime but have not found responsible for the act based on their mental illness, were excluded from the right to vote.²⁰⁸ This right was also withheld from EU citizens who, by court order, had lost the right in their home Member State.²⁰⁹

Article 3 of the Basic Law lays down the prohibition on discrimination: everyone shall be equal before the law and no person shall be discriminated on grounds of disability. The Equality for Persons with Disabilities Act further regulates the rights of disabled persons. The public authorities have the obligation to eliminate and prevent any disadvantages for people with disabilities, ensuring their equal participation in society.²¹⁰ Buildings and facilities,²¹¹ as well as means of communication, should be made accessible,²¹² and persons with hearing or language disabilities have the right to communicate in sign language or with other suitable communication aid.²¹³

Votes can be cast at the polling station either by ballot paper or using a voting machine.²¹⁴ A blind or visually impaired voter may use a ballot paper template.²¹⁵ Postal voting is also possible.²¹⁶ In hospitals, nursing homes and other care institutions, mobile electoral boards can be appointed when necessary.²¹⁷

²⁰⁵ The Finnish Parliamentary Ombudsman, ‘Report on the inspection of municipal elections’ 8 June 2021 <https://www.oikeusasiamies.fi/r/fi/ratkaisut/-/eoar/3250/2021>, YLE, ‘Pyörätuolilla pääsi äänestyspaikoille aiempaa paremmin’ 10 June 2021 <https://yle.fi/uutiset/3-11925318>.

²⁰⁶ The electoral laws of the federal states can be found here: <https://www.wahlrecht.de/gesetze.htm#laender>.

²⁰⁷ Section 12 Federal Electoral Act.

²⁰⁸ Section 13(3) Federal Electoral Act.

²⁰⁹ Section 6a(2) European Elections Act.

²¹⁰ Section 1 The Equality for Persons with Disabilities Act.

²¹¹ Section 8 The Equality for Persons with Disabilities Act.

²¹² Section 4 The Equality for Persons with Disabilities Act.

²¹³ Section 9 The Equality for Persons with Disabilities Act.

²¹⁴ Sections 34 and 35 Federal Electoral Act.

²¹⁵ Section 57(4) Federal Election Regulation.

²¹⁶ Section 36 Federal Electoral Act.

²¹⁷ Section 8 Federal Election Regulation.

Information about accessibility of the polling stations should be included in polling cards.²¹⁸ Polling stations should be made accessible for the entire electorate, particularly for persons with disabilities or restricted mobility. The local authorities should inform, in good time, which polling stations are barrier free.²¹⁹ Persons who are illiterate or prevented by a disability from casting their vote may use an assistant.²²⁰ Where necessary, the assistant may enter the polling booth²²¹ and shall be bound to secrecy of the vote.²²² Any help should be limited to practical assistance in marking or folding the ballot paper. The assistant is not permitted in situations where abusive influence over the voter or another conflict of interest is detected.²²³

3.5.2 Recent developments

The Committee on the Rights of Persons with Disabilities has been concerned by the exclusion criteria under Section 13 and has recommended that Germany repeal laws depriving persons with disabilities of the right to vote.²²⁴ It is estimated that over 80 000 persons under court-imposed guardianship are excluded from exercising their electoral rights. There has been a welcome development; in 2019, the Federal Constitutional Court held this exclusion to be unconstitutional. As a result, many disabled persons subsequently gained the right to vote.²²⁵

As described above, persons are excluded from the right to vote if they are placed under a full guardianship or if they are confined in a psychiatric hospital. In January 2019, the Second Senate of the Federal Constitutional Court declared this exclusion void under the Federal Election Act. In the Court's view, the exclusion interferes with the principle of universal suffrage and the prohibition on discrimination on grounds of disability. The interference was not justified, as the persons who are affected by this exclusion are determined in a manner that violates the right to equality without a sufficient factual analysis. Furthermore, the provision did not identify persons who are incapable of participating in the democratic process, but merely assumed that the appointment of a guardian refers to cases where the person would lack the mental capacity required to participate in elections.

The Lower House of the German Parliament, the *Bundestag*, decided to adapt the law according to the judgment by 1 July 2019. However, as elections of the European Parliament were planned for 26 May 2019, several members of the *Bundestag* filed an urgent application with the Federal Constitutional Court for a preliminary injunction. This requested that similar provisions under the European Elections Act would be temporarily suspended before the elections would take place.

In the view of the Court, due to the identical exclusion of voting rights under both Federal Election Act and the European Elections Act, it is likely that the exclusions under the European Elections Act also

²¹⁸ Article 19 Federal Election Regulation.

²¹⁹ Article 46(1) Federal Election Regulation.

²²⁰ Section 14(5) Federal Electoral Act.

²²¹ Section 57(3) Federal Election Regulation.

²²² Section 33(2) Federal Electoral Act.

²²³ Section 57(2) Federal Election Regulation.

²²⁴ Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Germany'. 13 May 2015, S. 53.

²²⁵ Order of the Second Senate of 29 January 2019 – 2 BvC 62/14

violate the general right to equality and the prohibition on discrimination on grounds of disability. Deciding otherwise would “*irreversibly deprive the most noble right conferred upon citizens in a democratic state*”, as these persons could not participate in European elections. An argument was put forward stating that, in the event that the legislation was amended so close to the elections, it would risk the principle of legal certainty. However, in the view of the Court, the severe disadvantage arising from excluding people from participating in democratic communication process outweighs the disadvantage of “*potential impairment of the function of an election as the integrative process*”. Therefore, the Constitutional Court approved the request.²²⁶

As more disabled persons were now eligible to vote in the European Parliament elections in 2019, greater attention was paid to accessibility and the participation of persons with disabilities. Where the polling station indicated in the voter’s notification was inaccessible, persons with disabilities may vote at another station. The notification also provides information on the accessibility and aids provided at the polling station. Furthermore, the polling stations provide ballot paper templates free of charge to blind and visually impaired citizens, to ensure that they can vote independently without needing to resort to assistance.²²⁷

There were multiple local and regional elections organised in Germany during the COVID-19 crisis. The examples showed how the election procedure was adapted in the light of the pandemic while ensuring that everyone had equal opportunities to participate in democratic elections. The State of Bavaria held local elections in March 2020. Although the area was the second-most COVID-affected State in Germany, the elections were not postponed. Instead, due to the rising infection numbers, it was decided to have an all-postal voting election, which would also guarantee that persons in quarantine could cast their votes. This required a legal amendment of the Bavarian Infection Protection Law.²²⁸ For 2021, elections have been planned for many of the States (Länder) including Hessen, Rhineland-Palatinate, Baden-Württemberg, Niedersachsen and Sachsen-Anhalt. The elections in Baden-Württemberg and Rhineland-Palatinate took place on 14 March 2021 (where special information folders in clear language were created to make the elections more accessible²²⁹), municipal elections took place in Hessen on the same day. The regional elections in Sachsen-Anhalt took place on 6 June 2021. The municipal elections in Niedersachsen will be organised on 12 September 2021. The elections on federal level for the Bundestag will take place on 26 September 2021. On the same day, there will also be regional elections in Mecklenburg-Vorpommern, Thüringen and in Berlin organised. After this unique election year, it will be interesting to evaluate how inclusive the right to vote in Germany on municipal, regional and federal level has been after the reform of 2019.²³⁰

²²⁶ Federal Constitutional Court 2 BvQ 22/19,

https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2019/04/qs20190415_2bvq002219en.html.

²²⁷ The Federal election officer (Bundeswahlleiter), ‘Accessibility of voting’

<https://www.bundeswahlleiter.de/en/europawahlen/2019/informationen-waehler/barrierefreies-waehlen.html>.

²²⁸ R. Wagner, ‘Responding to COVID-19 with 100 percent postal voting: Local elections in Bavaria, Germany’. September 2020. <https://www.idea.int/sites/default/files/responding-to-covid-19-with-postal-voting-local-elections-in-bavaria.pdf>.

²²⁹ Lebenshilfe Baden-Württemberg, Einfach wählen gehen!, February 2021.

²³⁰ Lebenshilfe.de, Inklusives Wahlrecht, Informationen zu Wahlen und zum Wahlrecht für alle, 2021.



3.6 Case Study on Hungary²³¹

3.6.1 Political participation in Hungary

The Hungarian Constitution lays down a prohibition on discrimination. The provision is open, which allows discrimination to be classified into a new range of protected human characteristics, but disability is included in the exemplary list of protected characteristics; moreover, the Constitution prescribes that Hungary take “special measures” to protect people with disabilities.²³²

Persons with disabilities under guardianship may be deprived of their right to vote and to stand as a candidate in elections. When a person is placed under guardianship, the Court makes a decision on whether the political participation rights are consequently deprived. The court excludes from the right to vote those persons whose ability of understanding to exercise their right to vote has been either reduced permanently or periodically due to their psychological state, mental depletion or addiction or who have become completely absent due to their mental state or mental illness.²³³

The Act on Detailed Rules of the Electoral Procedure (Act XXXVI of 2013) sets out a number of guarantees to facilitate the participation of persons with disabilities in parliamentary, local government and European Parliament elections.

A voter who is on the constituency register on the 67th day before polling day shall be notified by the National Electoral Office of his or her inclusion in the constituency register. This notification shall also include the address of the polling station and information on its accessibility.²³⁴ A voter may vote in the constituency of his or her address in the polling station or by using a mobile ballot box.²³⁵ The mobile ballot box is not operated specifically for persons with disabilities but rather is generally for those that cannot reach the polling station (for example, detainees, people with reduced mobility, citizens not travelling due to illness).

A voter with a disability may request assistance to exercise his or her right to vote. Furthermore, the voter may make use of simplified information material, a Braille voting template and a barrier-free polling station.²³⁶ A voter who wishes to vote at a barrier-free polling station shall request it no later than four days before the vote, if their designated polling station is not barrier-free. The local election office will then transfer its name within the municipality and constituency to the register where there is an accessible polling station, at least one of which must be provided per municipality.²³⁷ At least two ballot boxes shall be provided in each polling station, at least one mobile ballot box shall be provided, and a ballot paper in Braille shall be provided in a polling station with a list of voters who requested assistance no later than the ninth day before the vote.²³⁸

²³¹ Written by Dr Judit Tóth, Associate Professor at University of Szeged.

²³² Article XV Hungarian Constitution.

²³³ Academic Network of European Disability experts (ANED) Country report on disability assessment – Hungary 2018, <https://www.disability-europe.net/theme/political-participation?country=hungary>.

²³⁴ Article 115 as amended by the Act on Detailed Rules of the Electoral Procedure XXXVI of 2018.

²³⁵ Article 168 The Act on Detailed Rules of the Electoral Procedure.

²³⁶ Article 88 The Act on Detailed Rules of the Electoral Procedure.

²³⁷ Article 102 and 166 as amended by Act XXXVI of 2018.

²³⁸ Article 167 The Act on Detailed Rules of the Electoral Procedure.

A voter may use the assistance of another person to request a mobile ballot box and to get to the polling station, but no public call may be published to request these, and no passenger transport may be carried by bus to the polling station. A public call for transportation of voters to a polling station is considered to be, for example, putting up a poster on the organisation of transport to a polling station, promoting a device to facilitate such transport, inviting its use or publishing a computer application for organising transport.²³⁹

The mobile ballot box is taken to those persons on the list of voters who request the mobile ballot box (at home or at their place of residence) by two members of the counting committee. The voter must be guaranteed conditions that ensure the secrecy of their vote.²⁴⁰

A voter who is unable to read, or who is prevented from voting by his or her physical disability or other reasons, may seek the assistance of an assistant of their choice or, in the absence thereof, a joint member of the counting committee. The counting committee inserts the voter's ballot paper into the voting template and hands it over to the voter. After the vote, the voter shall remove the ballot paper from the voting template, place it in an envelope and then in the ballot box and return the voting template to the counting committee.²⁴¹

On the 91st day after the vote, the list of citizens requesting a mobile ballot box (as well as the list of voters at the mission or by letter) is destroyed.²⁴² Thus, if their number is not recorded for statistical purposes, the destruction eliminates this possibility.

The counting committee may be supplemented by the head of the local electoral office if the number of voters requesting a mobile ballot box is more than 40.²⁴³ The register of constituencies also contains information on the accessibility of the polling station. The central voters' register contains an indication of the assistance the disabled citizen requires, their citizenship and the refugee, immigrant or settled status of the voter.²⁴⁴ In principle, therefore, data on these could be obtained, but no such statistics are collected.

3.6.2 Recent developments

Hungary has ratified the UN Convention in 2007; however in January 2019, the UN Committee on Rights of Persons with Disabilities found violations of the rights of persons with disabilities to equal recognition before the law, to live independently and be included in the community and to equality and non-discrimination. The Committee urged Hungary to end restrictions on persons with disabilities; around 90 percent of persons with disabilities under guardianship are denied their right to vote and to stand as a candidate in elections.²⁴⁵

²³⁹ Article 143/A as inserted by the Act XXXVI of 2018.

²⁴⁰ Articles 184-185 and 250 as amended by Act XXXVI of 2018 and Act CLXVII of 2020.

²⁴¹ Article 181 The Act on Detailed Rules of the Electoral Procedure.

²⁴² Art.13/C amended by Act CLXVII of 2020.

²⁴³ Article 24 The Act on Detailed Rules of the Electoral Procedure.

²⁴⁴ Annex to the Act as amended by the Act XXXVI of 2018 and Act CLXVII of 2020.

²⁴⁵ UN Committee on Rights of Persons with Disabilities, 'Hungary: UN experts urge end to restrictions on persons with disabilities' <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25799&LangID=E>.

On several occasions, there has been complaints over the electoral process - the ballot boxes did not reach the voters, so they were unable to cast their vote. In 2014, the Ombudsman received 14 such complaints, for which it proposed an amendment to the law²⁴⁶, while in a similar case the Constitutional Court in 2019 rejected the related constitutional complaint²⁴⁷ and several cases appeared in the press.

The Supreme Court's (Curia) Group for the Analysis of Appeals to Electoral and Referendum Procedures has conducted a comprehensive examination of the enforcement of electoral and referendum legislation.²⁴⁸ In this, the Curia Group drew the attention to the *Debrecen Judgment Board* case.²⁴⁹

In the case being complained, during municipal elections some voters filled in the ballot paper outside the polling booth, asking for the help of the members of the counting committee. This was argued to have violated the secrecy of the vote. According to the Court of Appeal, the right granted to a voter by law to seek assistance in the event of their being prevented from voting may not detract from the rule that a voting booth is available for the voter to fill in the ballot paper. The voter committee can call upon the voter to use the voting booth, but it may not oblige them to do so. This provision means that the mere fact that the voter did not fill in the ballot paper in the voting booth does not violate the electoral legislation or electoral principles. Namely, a person who is unable to read or who is prevented from voting due to his or her physical disability or other reasons, may seek the assistance of an assistant of their choice or, in the absence thereof, two members of the counting committee. The question of who may request assistance is primarily a matter for the voter. Due to the guaranteed nature of the provision, the will of the voter is the determining factor, and there is no need to prove that they were prevented from voting.

On 11 March 2020, a state of emergency was introduced in Hungary, which had an impact on the application of certain legislation, including having effect on the organisation of elections. The period of application of emergency measures was extended until 8 February 2021.²⁵⁰ This will affect the application of some 70 pieces of legislation that are not necessarily within the scope of emergency measures, taking into account the pandemic prevention provisions summarised in Act I of 2021. In particular:

- It is not possible to dissolve the representative body of local governments during the emergency, nor to hold interim elections, its appointment or a local referendum.
- A national referendum cannot be held or initiated during a state of emergency, in accordance with further application of Government Decree No 30 of 29 January 2021.
- The organisation of European Citizens' Initiatives is suspended, and referendum signatures should be stopped during emergencies.

²⁴⁶ Report of the Commissioner for Fundamental Rights in case AIB-2449/2014.

²⁴⁷ Case IV / 01793/2019 / AB.

²⁴⁸ January 2018, Budapest, Summary opinion, https://kuria-birosag.hu/sites/default/files/joggyak/valasztasi_nepszavazasi_joggyak.pdf.

²⁴⁹ *Debrecen Judgment Board* Pk.II.20.761/2014/2.

²⁵⁰ Government Decree No 80 of 2021.

Already, on 6 November 2020, the website of the National Electoral Office²⁵¹ announced that all interim elections will be postponed during the emergency and no new elections can be set. The initiative and the organisation of the ongoing elections must also be suspended for the referendums; they can only be continued and initiated after the end of the emergency.

Thus representative and direct democracy, transparency and social control are significantly weakened, which has been criticised not only abroad but also in Hungary itself, as the concentration of power in the hands of the government increases. In particular, maintaining such restrictive measures for such a prolonged period and the lack of consideration of the need for proportionality can be criticised from a constitutional perspective.²⁵²

3.7 Case Study on Ireland²⁵³

3.7.1 Political participation in Ireland

The constitutional right to vote can be found in Article 16(2) of the Irish Constitution, under which the right is conferred to all citizens and other persons as defined by law of over 18 years of age. Next to the Constitution, relevant legislation on elections can be found in the Electoral Act 1992, the Electoral Act 1996, the Electoral Regulations 2016, the Presidential Elections Act 1993, the Local Elections Regulations 1995, the European Parliament Elections (Voting and Candidature) Regulations 1994 and the European Parliament Elections Act 1997 (as amended).

Persons of unsound mind are excluded from the right to stand as a candidate in local or European Parliament elections.²⁵⁴ It is the Court Service of Ireland who decides whether a person falls under this definition.²⁵⁵ For elections of *Dáil Éireann*, every citizen aged 21 or over, and who is not placed under disability or incapacity by the Constitution or law, is eligible to stand as an electoral candidate.²⁵⁶

The buildings where polling stations are sited must be made accessible for persons with disabilities.²⁵⁷ Each polling station should have at least one station that is accessible for wheelchair users.²⁵⁸ Also, information and communication on voting and campaign information, must be made accessible for people with disabilities.²⁵⁹ There should be arrangements for facilitating the marking and placing of ballots for wheelchair users and for voters with visual impairments.²⁶⁰

²⁵¹ Nemzeti Választási Iroda, 'Interim elections and referendums in times of epidemic emergency', <https://www.valasztas.hu/veszelyhelyzet>.

²⁵² The Guardian's view on COVID and civil liberties: keeping a close watch on government 10 March 2021 <https://www.theguardian.com/commentisfree/2021/mar/10/the-guardian-view-on-covid-and-civil-liberties-keeping-a-close-watch-on-government> or interview with Karsai, D. attorney-at-law, azonnali.hu, 2021.

²⁵³ Comments received from Prof Dr Dagmar Schiek, University College Cork, School of Law.

²⁵⁴ Section 41 (1) (i) Electoral Act of Ireland 1992.

²⁵⁵ Rules and Fees Order 47.

²⁵⁶ Article 16, Constitution of Ireland.

²⁵⁷ Sections 25-28 Disability Act 2005.

²⁵⁸ Section 2 Electoral (Amendment) Act of Ireland 1996.

²⁵⁹ Section 28 Disability Act 2005.

²⁶⁰ Section 3(1) Electoral (Amendment) Act of Ireland 1996.

The Electoral Act 1992 facilitates the voting of persons with disabilities by providing the possibility to vote at an alternative polling station that is more convenient.²⁶¹ The person has the right to receive assistance at the polling station, either from a companion or from an electoral officer. Visually impaired, incapacitated or illiterate persons are eligible for voting assistance.²⁶² If the condition of the voter prevents them from voting without assistance, the ballot may be marked for them by a companion.²⁶³ Alongside these options, it is also possible to vote at a hospital, another care institution or by post. In the Electoral Act 1996, postal voting is allowed for persons unable to vote at the polling station due to reasons of physical illness or physical disability.²⁶⁴ However, in order to use postal voting, an application must be submitted together with a medical certificate, leading to challenges in the voter registration.²⁶⁵

3.7.2 Recent developments

In 2015, the Assisted Decision Making (Capacity) Act was signed. The Act aims to maximise a person's capacity to make decisions through a system of support for persons with intellectual disability, mental illness or any condition affecting capacity. The Act also ensures that persons under guardianship are not automatically deprived of their voting rights. However, in 2021 the Act has yet to fully come into effect and the provisions on capacity had not yet commenced.²⁶⁶ Nevertheless, the Act is a positive development towards assisted decision-making and guides Irish legislation to be enacted more in line with Article 12 UNCRPD. Further efforts have been put forward by the Disability Bill 2016, which proposed the removal of Section 41(i) of the Electoral Act 1992 restricting the candidature rights of persons of unsound mind. Unfortunately, the Bill lapsed before the elections of 2020 and the restriction remains in force.²⁶⁷

For 2017-2021, Ireland has committed to a National Disability Inclusion Strategy aiming to fulfil its obligations under the UN Convention on the Rights of Persons with Disabilities (UNCRPD). In January 2020, a mid-term analysis was published, presenting the achievements made under the Strategy to date. These included introducing new ballot papers for referendums to facilitate private voting, and enacting of the Irish Sign Language Act 2017. Other achievements relate to the accessibility of public buildings, information on public websites and public transport. For 2020 and 2021, the focus of the Inclusion Strategy will be on raising awareness, strengthening the legal rights of persons with disabilities and improving public services. The mid-term review also refers to the start of the Assisted Decision Making (Capacity) Act as one of its priorities.²⁶⁸

²⁶¹ Section 100 Electoral Act of Ireland 1992.

²⁶² Section 103 Electoral Act of Ireland 1992.

²⁶³ Section 103(3) Electoral Act of Ireland 1992.

²⁶⁴ Section 4 Electoral (Amendment) Act of Ireland 1996.

²⁶⁵ Disability Federation of Ireland, 'Disability Federation of Ireland's Submission to the Department of Children, Equality, Disability, Integration and Youth - On the Draft State Report on the UN Convention on the Rights of Persons with Disabilities' April 2021.

²⁶⁶ Status of commencement of the Assisted Decision-Making (Capacity) Act 2015 No. 64 of 2015:

http://www.irishstatutebook.ie/eli/isbc/2015_64.html

²⁶⁷ Disability (Miscellaneous Provisions) Bill 2016 (Bill 119 of 2016)

²⁶⁸ Government of Ireland, 'Midterm review of the National Disability Inclusion Strategy 2017-2021'.
<https://www.gov.ie/en/publication/8072c0-national-disability-inclusion-strategy-2017-2021/>.

Ireland was one of the last EU Member States to ratify the UN Convention, in April 2018. Therefore, measures are heavily focused on implementing these rights into Irish legislation. Nevertheless, serious concerns have been expressed over voting access for people with disabilities. For the 2019 local and European elections, the Disability Federation of Ireland launched a campaign (*#DisabilityVotesCount*) to stress the importance of local and European politics to persons with disabilities. They raised concerns over the lack of awareness of the voting support available (for example, the help of an assistant), high numbers of inaccessible polling stations, a voting system that is complex for persons with visual impairment and poor dissemination of information of alternative voting methods, such as mobile polling booths or postal voting.²⁶⁹

To date, the Disability Federation of Ireland continues to find worrying shortcomings in the implementation of UNCRPD. In 2021, the Federation noted that important disability legislation in Ireland is yet to commence. In Article 29 of the Convention, the Federation noted that persons with disabilities still report significant problems in voting: there are accessibility barriers, insufficient training of the electoral officers in assisting people with disabilities and a lack of measures for increasing the awareness of the individual's rights. There is also absence of measures for supporting active political participation: to join political parties or to stand as candidate.²⁷⁰

3.8 Case study on the Netherlands

3.8.1 Political participation in the Netherlands

According to the Constitution of the Netherlands, every Dutch national should, in principle, have equal right to participate in elections by casting their vote or by standing as a candidate.²⁷¹ Article 1 of the Constitution prohibits discrimination on all grounds. The right to vote is provided in Article 54, stating that only those who are deemed legally incompetent by a final judgement of Court due to mental disorder are excluded from this right.²⁷² The Elections Act provides further regulation on elections and voting procedures. Dutch nationals or residents, depending on the elections, aged 18 or over have the right to vote.²⁷³

Polling stations should be set up in a way that guarantees voting secrecy.²⁷⁴ The municipalities have an obligation to provide accessible polling stations. It should be ensured that the polling stations are suitably situated and equipped to enable voters with physical disabilities to cast their vote as independently as possible.²⁷⁵ In the event that municipalities are unable to make all polling stations

²⁶⁹ Disability Federation of Ireland, 'Call for equality for voters with disabilities'. 6 April 2019, <https://www.disability-federation.ie/news/press-releases/2019/04/06/call-for-equality-for-voters-with-disabilities/>.

²⁷⁰ Disability Federation of Ireland, 'Disability Federation of Ireland's Submission to the Department of Children, Equality, Disability, Integration and Youth - On the Draft State Report on the UN Convention on the Rights of Persons with Disabilities' April 2021.

²⁷¹ Article 4 Constitution of the Kingdom of the Netherlands.

²⁷² Also found in Article B5 Elections Act.

²⁷³ Articles B1, B2, B3, Y3 Elections Act.

²⁷⁴ Article J15 Elections Act.

²⁷⁵ Article J4(2) Elections Act.

accessible, they must provide a notification in advance. Those who have the right to vote in the elections will receive a voting pass, by mail, at least 14 days before the election.²⁷⁶

Generally, the voter will cast their vote at a polling station of their choice in the municipality where they are registered as a voter.²⁷⁷ Mobile polling stations can also be designated. The location of the polling stations is notified at least 14 days before the election takes place.²⁷⁸ In principle, votes are cast by the individual (also those who have a legal presentative or are under guardianship).²⁷⁹ However, voting is possible via proxy for those not able to vote at the polling stations.²⁸⁰ No more than two proxies are permitted per election.²⁸¹ Persons residing outside the Netherlands on the day of elections are permitted to vote by mail at their request²⁸² or at a polling station located abroad.²⁸³

The voter indicates the chosen candidate on the ballot paper with a red colour, after which the ballot paper is folded and placed in the ballot box.²⁸⁴ To ensure accessibility, all polling stations should be equipped with at least one reading magnifier. Some polling stations provide a voting template with audio support for visually impaired voters.²⁸⁵

Persons who need help in casting their vote due to their physical condition have a right to be assisted.²⁸⁶ This entails persons with *intellectual* disabilities are excluded from the use of an assistant. The chair of the polling station assesses whether the limitations arise from physical or intellectual limitations. The right to assistance has been widely disputed; for example, the Netherlands Institute for Human Rights has reported multiple problems related to the restrictive approach to assistance (as discussed in the following section).

Research conducted on elections of the House of Representatives in 2017 (*Tweede Kamer*) reveals that voting is not accessible for all. Despite the obligation for municipalities to provide accessible polling stations, persons with physical limitations still have difficulties entering the buildings. Furthermore, the staff at the polling station are not always aware of the right to receive assistance. It is also reported that persons who are blind or have visual impairments have difficulties receiving information on the elections and on casting their vote. Since the ballot paper is both large and extensive (as it includes the names of all candidates), it can prove difficult to understand. For these reasons, the materials and ballot papers should be easier to read and handle. This is also important for the person's independence to be able to cast the vote themselves, rather than resorting to someone else voting from them via proxy. The research makes recommendations on how these barriers could be removed; these include introducing a simpler ballot paper with bigger letters, voting

²⁷⁶ Article J7 Elections Act.

²⁷⁷ Article J5 Elections Act.

²⁷⁸ Article J4a Elections Act.

²⁷⁹ Rijksoverheid, 'Wat is er geregeld voor kiezers met een beperking', <https://www.rijksoverheid.nl/onderwerpen/verkiezingen/vraag-en-antwoord/wat-is-er-geregeld-voor-kiezers-met-een-beperking>.

²⁸⁰ Articles B6 and L1 Elections Act.

²⁸¹ Article L4 Elections Act.

²⁸² Article M1 Elections Act.

²⁸³ Article M15 Elections Act.

²⁸⁴ Article J26 Elections Act.

²⁸⁵ Rijksoverheid, 'Wat is er geregeld voor kiezers met een beperking', <https://www.rijksoverheid.nl/onderwerpen/verkiezingen/vraag-en-antwoord/wat-is-er-geregeld-voor-kiezers-met-een-beperking>.

²⁸⁶ Article J28 Elections Act.

via alternative means (e.g. by machine or postal voting) or providing assistance beyond for those with physical limitations.²⁸⁷

Providing accessible information for all members of the society is also important. The *Kiesraad* (Electoral Council) has assessed whether its website indeed contains accessible information for all, also for those with limitations and whether EU accessibility guidelines are being fulfilled. The website provides subtitles for persons with hearing problems, and the text is adjustable in size. However, the assessment identified some barriers for persons who are unable to use a keyboard or for those using assistive technologies.²⁸⁸

3.8.2 Recent developments

The Netherlands Institute for Human Rights is an independent body that monitors the implementation of UNCRPD in the Netherlands. As part of the evaluation of the municipal elections and advisory referendum held in 2018, the Institute reported that there were both positive and negative evaluations of the accessibility of the municipal elections.²⁸⁹ Almost half the reports concerned the physical accessibility of the polling station or the surrounding environment; they also discussed the assistance that the voter receives in the polling booth.

On the aspect of accessibility, narrow entrances to buildings and the lack of a magnified version of the list of candidates were particularly problematic. In vast majority of cases, there was no special polling booth provided for those with disabilities, making it potentially difficult for wheelchair users to access. Potential solutions suggested by reporters were ringing a doorbell at the front of the polling station, in order that wheelchair users could get help from the polling station staff.²⁹⁰

On a positive note, several municipalities had taken action to facilitate the voting of persons with disabilities. They organised workshops for voters with disabilities, provided more information for people with intellectual disabilities and made use of mobile polling stations and voting taxis. The vast majority of the municipalities (90 percent) had indicated on their website those polling stations that would be accessible for disabled people, and almost three-quarters of the municipalities sent this information together with the voting pass.²⁹¹ A positive development on accessibility can also be found in the legislative amendment of the Electoral Act, providing that - as of 1 January 2019 - *all polling stations* must be made accessible to voters with physical disabilities (as opposed to the previous provision, which stipulated that only 25 percent of polling stations should be accessible).²⁹² The meaning of accessibility in this sense was clarified to encompass adequate information on the accessibility of the polling stations, physical access to the polling location and the proper use of the

²⁸⁷ College voor de Rechten van de Mens, 'Ombepert stemmen' 2017. <https://mensenrechten.nl/nl/publicatie/37739>

²⁸⁸ Kiesraad 22 June 2020.

²⁸⁹ Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, 'Evaluatie gemeenteraadsverkiezingen en raadgevend referendum over de Wet op de inlichtingen- en veiligheidsdiensten' 21 March 2018. <https://kennisopenbaarbestuur.nl/rapporten-publicaties/evaluatie-gemeenteraadsverkiezingen-en-raadgevend-referendum-over-de-wet-op-de-inlichtingen-en-veiligheidsdiensten-21-maart-2018/>.

²⁹⁰ Ibid.

²⁹¹ Ibid.

²⁹² Article J4 Elections Act.

voting facilities (in a wheelchair or mobility scooter) where assistive tools will be provided (reading magnifier, correct height of ballot boxes and voting table).²⁹³

The evaluation of the municipal elections in 2018 also focused on the voting assistance given to voters with disabilities. As provided in Article J28 of the Elections Act, persons with physical disabilities have the right to assistance in the voting booth from a person of their choice. However, some reports indicated that help in the voting booth was refused, as the rule was not always known among polling station officials. It was indicated that the polling station members should be made more aware of the rights on assistance. Therefore, the Institute has advised more training and information for the polling station staff.²⁹⁴

It was also recommended that also voters with intellectual disabilities be offered the opportunity of assistance in casting their vote, as it is currently provided for persons with physical limitations. Until the 2008 constitutional reform, voters with mental disorders did not have the right to vote. As a result, the Elections Act assumes that those with intellectual disabilities who are not able to vote without assistance do not have the capacity for independent decision-making.²⁹⁵ However, the limitation on the assistance indirectly affects the right to vote of persons with intellectual disabilities – as the UN Convention provides, the right to be assisted does not distinguish between voters with physical or intellectual disabilities. In many cases, these voters concern persons with intellectual disabilities who are able to independently determine their will, but for various of reasons do not manage to cast their vote without assistance.²⁹⁶

On a positive note, a bill was proposed on 28 June 2021 to introduce a five-year experiment in a small number of municipalities to also allow persons with intellectual disabilities assistance in the polling booth. Following Article 29 UNCPRD, the proposal acknowledges the importance of enabling voters with disabilities to vote as independently as possible, and that the right of assistance should not differentiate between the type of disability. It is expected that more persons with intellectual disabilities will take part of elections by voting in person. However, assistance may only be granted by officials of the polling station, as the experiment is also focusing on examining how polling station members could be better equipped to help voters. As reasoned in the proposal, an assistant of one's own choice entails risks to voting freedom and voting secrecy.²⁹⁷ Although this is a positive development in providing right to assistance to persons with all types of disabilities, it raises questions as to why differentiation is still being applied to those who may use the assistance of a person they know and trust.

²⁹³ Rekenkamer Metropool Amsterdam, 'Toegankelijkheid van stemlocaties' February 2019. Accessibility is three-fold: *bereikbaar*, *betreedbaar* and *bruikbaar*. Next to these, communication is also important.

²⁹⁴ Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, 'Evaluatie gemeenteraadsverkiezingen en raadgevend referendum over de Wet op de inlichtingen- en veiligheidsdiensten' 21 March 2018. <https://kennisopenbaarbestuur.nl/rapporten-publicaties/evaluatie-gemeenteraadsverkiezingen-en-raadgevend-referendum-over-de-wet-op-de-inlichtingen-en-veiligheidsdiensten-21-maart-2018/>.

²⁹⁵ Kiesraad, 'Hulp bij stemmen' <https://www.kiesraad.nl/verkiezingen/tweede-kamer/stemmen/hulp-bij-stemmen>.

²⁹⁶ Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, 'Evaluatie gemeenteraadsverkiezingen en raadgevend referendum over de Wet op de inlichtingen- en veiligheidsdiensten' 21 March 2018. <https://kennisopenbaarbestuur.nl/rapporten-publicaties/evaluatie-gemeenteraadsverkiezingen-en-raadgevend-referendum-over-de-wet-op-de-inlichtingen-en-veiligheidsdiensten-21-maart-2018/>.

²⁹⁷ *Tijdelijke regels voor experimenten met assistentie bij het stemmen in een stemhokje (Tijdelijke experimentenwet assistentie bij het stemmen)* 28 June 2021.

In 2019, the Netherlands appointed an informal Minister of Disability Issues for the first time. Other promising initiatives have also been taken; the Ministries of the Interior and Kingdom Relations, together with associations (VNG and NVVB)²⁹⁸ and the Electoral Council have agreed on an Accessible Voting Action plan to promote the participation of person with disabilities. However, due to the COVID-19 crisis, the presentation has been postponed.²⁹⁹

Despite these positive developments, in December 2020 the Netherland Institute for Human Rights issued a report on the compliance with the UN Convention. It was found that the participation of persons with disabilities in policy making and legislation remains insufficient; it is difficult for these persons to influence decision making.³⁰⁰

Most recently, elections on the House of Representatives were held on 17 April 2021. In the light of the COVID-19 crisis and the rising infection levels, there were discussions over postponing the elections. Ultimately, however, the elections were held on schedule with certain protective measures. Although the current legislation already provides a legal basis for some measures (for example setting up additional polling stations), the *Tijdelijke wet verkiezingen* (Temporary Elections Act) was adopted to provide further measures to ensure safe elections.³⁰¹

The Temporary Elections Act introduces various safety measures. Voters and the electoral staff at the polling station were subject to health checks.³⁰² Polling stations followed stricter hygiene measures; the Act required that polling stations are designed in a way that enables sufficient distance kept, flow of voters by route markings, regular cleaning of materials and setting up cough screens.³⁰³ To minimise contamination or transmission of the virus, use of personal protective equipment (mouth masks) was also required, alongside the use of hand disinfectants.³⁰⁴ The Electoral Council stressed that the information on these protective measures should be clear for all, including voters with visual impairments through - for example - using enlarged icons and certain colours and contrasts.³⁰⁵

To ensure distribution of the voters, the Act extended voting time - it was possible to cast a vote two days in advance.³⁰⁶ As a solution for enabling the participation for persons in quarantine, it was decided to expand proxy voting from two persons to three.³⁰⁷ The Electoral Council expressed criticism over this measure. Although in their view it was understandable that this might be the only way for

²⁹⁸ Associations on civil affairs and the municipalities, Vereniging van Nederlandse Gemeenten (VNG), Nederlandse Vereniging voor Burgerzaken (NVVB).

²⁹⁹ Riksoverheid, 'Actieplan toegankelijk stemmen', <https://www.rijksoverheid.nl/onderwerpen/verkiezingen/documenten/publicaties/2020/02/21/actieplan-toegankelijk-stemmen>.

³⁰⁰ College voor de rechten van de mens, 'Jaarlijkse rapportage over de naleving van het VN-verdrag handicap' 3 December 2020 <https://mensenrechten.nl/nl/publicatie/5fc877581e0fec037359c660>.

³⁰¹ Tijdelijke wet verkiezingen COVID-19, <https://wetten.overheid.nl/BWBR0044317/2021-01-30>

³⁰² Articles 1(b) and Article 9 Tijdelijke wet verkiezingen COVID-19. Voters were obliged to complete a health check – to answer questions whether they, for example, had health problems related to coronavirus or if they were in quarantine. Any voter who would not comply with the health check, could be refused to enter the polling station. In addition to voters, also the electoral staff at the polling station were required to fill out the health check regularly.

³⁰³ Article 1(c) Tijdelijke wet verkiezingen COVID-19.

³⁰⁴ Article 1(d) Tijdelijke wet verkiezingen COVID-19.

³⁰⁵ Kiesraad, 'Advice on the temporary arrangements for COVID-19 elections', 19 October 2020 <https://www.kiesraad.nl/advies-en-publicaties/advies/2020/oktober/19/advies-over-de-tijdelijke-regeling-verkiezingen-covid-19>

³⁰⁶ Article 2(g) Tijdelijke wet verkiezingen COVID-19.

³⁰⁷ Article 15 Tijdelijke wet verkiezingen COVID-19.

persons who are not permitted to leave their home to exercise their vote, voting by proxy creates a higher risk of abuse.³⁰⁸

As well as the expansion of the voting time and voting by proxy, those in the Netherlands aged 70 or over were eligible to vote by post.³⁰⁹ This may raise questions as to why the postal voting was adopted for only a certain age group, as the aim was to protect those most vulnerable to the virus, but the measure failed to take into account younger persons with health conditions. Eventually, these questions were presented in front of the Court in Den Haag.³¹⁰

A political party (*Partij voor de Dieren*) challenged the measure on postal voting on the basis that it makes a discriminatory distinction between people aged 70 or over and those who are younger but also vulnerable. This was in line with the recommendations of the Electoral Council, who had advocated that postal voting would be enabled for all. However, the Court held that other, sufficient, measures were taken to ensure safe election and participation: additional opportunities to vote two days in advance of the elections and voting by proxy. Since the decision on enabling postal voting only for people aged over 70 was set out in the legislation, in its view the Court was unable to extend this to other voters. The only assessment that the Court could make was on whether the measure for postal voting was permissible. Given that the group of vulnerable persons aged less than 70 was difficult to identify in the eyes of the Court, in its view it was justified that the measure was only applied to those over this age limit.³¹¹

In its election assessment, OSCE ODIHR also noted that the postal voting could be further expanded to all voters, particularly for persons with disabilities.³¹² The extension of the proxy voting would potentially not have been necessary if postal voting had been provided for all. In particular, the measure affects those aged under 70 with disabilities, who for various reasons are not able to vote at the polling station and only have the opportunity to vote by proxy. However, the restriction on postal voting was justified on the basis of alternative voting methods, as seen in the Court's argumentation.

However, the appropriateness of the extension of the proxy voting as an alternative voting method can be criticised. Following the municipal elections in 2018, it had already been suggested that proxy voting would be restricted from two to one, as abuses or misuses there had been identified.³¹³ Over the years, the OSCE ODIHR has also provided multiple recommendations on proxy voting and the potential challenges to the secrecy and equality of the vote. Contrary to their recommendations, no justification to request a proxy vote is required by the Elections Act in the Netherlands.³¹⁴ These

³⁰⁸ Kiesraad, Advice on the COVID-19 Temporary Elections Act, 10 September 2020.

³⁰⁹ Article 7b Tijdelijke wet verkiezingen COVID-19.

³¹⁰ Rechtbank Den Haag, 19 February 2021, ECLI:NL:RBDHA:2021:1305.

<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2021:1305>

³¹¹ Rechtbank Den Haag, 19 February 2021, ECLI:NL:RBDHA:2021:1305.

<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2021:1305>

³¹² OSCE ODIHR Needs Assessment Mission Report: The Netherlands Parliamentary Elections 17 March 2021,

https://www.osce.org/files/f/documents/4/0/478501_0.pdf.

³¹³ Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, 'Evaluatie gemeenteraadsverkiezingen en raadgevend referendum over de Wet op de inlichtingen- en veiligheidsdiensten' 21 March 2018.

<https://kennisopenbaarbestuur.nl/rapporten-publicaties/evaluatie-gemeenteraadsverkiezingen-en-raadgevend-referendum-over-de-wet-op-de-inlichtingen-en-veiligheidsdiensten-21-maart-2018/>.

³¹⁴ OSCE ODIHR Election Assessment Mission Final Report: The Netherlands Parliamentary Elections 15 March 2017, <https://www.osce.org/files/f/documents/a/d/321821.pdf>.

challenges notwithstanding, the majority of ODIHR NAM interlocutors did not express fundamental objections to increase of proxy voting from two to three during the 2021 elections. Nevertheless, although proxy voting is a longstanding practice in the Netherlands and is usually used appropriately, the same concerns persist on the secrecy of the vote (as the person must disclose their chosen candidate to the proxy). It may inadvertently facilitate group voting, with the possibility of pressure or intimidation.³¹⁵

Postal voting for those eligible were not without issues; some 65 000 postal votes were declared invalid. Due to contradictory communication, complicated procedures and repeated adjustments to the rules,³¹⁶ the votes were not cast correctly; the envelopes were often missing a voting pass and sometimes even the ballot paper. In the end, 6 percent of the postal votes were not included.³¹⁷

Following the elections, the Netherlands Institute of Human Rights reported that some persons with disabilities were unable to vote without obstacles. Although the election management bodies indicated that they are occupied with securing more spacious voting premises and educating polling staff³¹⁸, the reports concerned the accessibility issues already seen in previous elections. There were challenges from the physical environment and for voting for people with visual impairments in poor lighting and the absence of voting templates. Some voters with physical limitations were refused assistance. More than half of the reports were related to the COVID-19 situation: on the impossibilities of voting by mail and the risk of infection at the polling stations. Although voting was possible two days in advance, many of the polling stations were situated too far from the voter's home. As a result, 17.4 percent of those reporting chose not to vote in the elections. The Institution is currently preparing recommendations for the Ministry of the Interior and the municipalities on these aspects, in consultation with the interest groups.³¹⁹ Furthermore, a general internet consultation has been launched by the government on a possible amendment to the Electoral law, which would allow greater assistance for persons in polling stations during the voting procedure.³²⁰

³¹⁵ Ibid.

³¹⁶ NOS 'Hoe het ministerie waarschuwingen over briefstemmen keer op keer negeerde', <https://nos.nl/artikel/2372895-hoe-het-ministerie-waarschuwingen-over-briefstemmen-keer-op-keer-negeerde>.

³¹⁷ NOS, '65.000 stemmen 70+'ers niet meegeteld door fouten bij briefstemmen' <https://nos.nl/artikel/2375960-65-000-stemmen-70-ers-niet-meegeteld-door-fouten-bij-briefstemmen>.

³¹⁸ OSCE ODIHR Needs Assessment Mission Report: The Netherlands Parliamentary Elections 17 March 2021, https://www.osce.org/files/f/documents/4/0/478501_0.pdf.

³¹⁹ College voor de rechten van de mens, 'Meldpunt Onbeperkt Stemmen: Verkiezingen nog steeds niet volledig toegankelijk voor mensen met een beperking' <https://mensenrechten.nl/nl/nieuws/meldpunt-onbeperkt-stemmen-verkiezingen-nog-steeds-niet-volledig-toegankelijk-voor-mensen>.

³²⁰ Internetconsultatie.nl, Tijdelijke experimentwet assistentie bij het stemmen, published on 28 June 2021. The consultation will be open until 20 September 2021.

3.9 Case Study on Romania

3.9.1 Political participation in Romania

According to the Romanian Constitution, Romanian citizens³²¹ aged 18 years or over have the right to vote.³²² Until the judgment by the Constitutional Court, as discussed below, this right was restricted for mentally defective or alienated people if their legal capacity was limited by a court order.³²³ The provision does not mention the degree of the disability, leaving the assessment of the disability up to the court. Next to disability, voting rights can be withdrawn or suspended also as part of a criminal punishment.³²⁴

The minimum age for standing as a candidate in Romanian elections is 23.³²⁵ Voting rights are a prerequisite for eligibility to stand. Therefore, persons with disabilities who have lost their voting rights were not eligible to stand as candidates in elections. Certain categories of persons are also excluded from this right: judges of the Constitutional Court, magistrates, advocates of the people, active members of Armed Forces, police and other categories of civil servants.³²⁶

According to the Constitution, the State has to ensure equal opportunities for persons with disabilities in order to effectively involve them in community life.³²⁷ The rights of persons with disabilities are further specified in the *Law on the protection and promotion of the rights of persons with disabilities*.³²⁸ This law provides rights to accessibility and the obligation of public authorities to promote and guarantee these rights.³²⁹

Generally, votes may be casted only at dedicated polling stations based on the voter's domicile or residence. However, on election day, the person may vote at any polling station within the constituency of their domicile or residence.³³⁰ Romanian citizens residing or having domicile abroad have the right to vote by post.³³¹ Persons doing so are requested to register in advance via an online form.³³² For persons with severe mobility issues, it is also possible to receive a mobile team from the electoral bureau to the person's home. For this purpose, the person's disability must prevent their transport on grounds of illness or invalidity. The arrangement has to be via a written request accompanied with relevant medical documents or other official documents attesting to this fact. This arrangement is made by the dedicated polling station based on the person's domicile.³³³

³²¹ Over the years many problems with voting rights of non-citizen residents, either emigrants or persons who have (re-)acquired Romanian citizenship without residence in the country.

³²² Article 36(1) Constitution of Romania. See also Article 2(4) Regulations on the Elections to the Chamber of Deputies and the Senate 208/2015.

³²³ Article 36(2) Constitution of Romania, Article 2(5)a-b Regulations on the Elections to the Chamber of Deputies and the Senate 208/2015. See also Art. 164(1) of the Civil Code.

³²⁴ Constitution of Romania.

³²⁵ Section 82 [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2020\)023-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)023-e).

³²⁶ Articles 37(1) and 40(3) Romanian Constitution.

³²⁷ Article 50 Constitution of Romania.

³²⁸ Law on the protection and promotion of the rights of persons with disabilities 2006.

³²⁹ Law on the protection and promotion of the rights of persons with disabilities, 448 of 6 December 2006.

³³⁰ Article 84 Regulations on the Elections to the Chamber of Deputies and the Senate 208/2015.

³³¹ Articles 1-2 Law on voting by mail 288/2015 (19 November 2015).

³³² Article 4(1) Law on voting by mail 288/2015 (19 November 2015).

³³³ Article 85(10) Regulations on the Elections to the Chamber of Deputies and the Senate 208/2015, Article 19(6)1 Regulations on the Election of the President of Romania 370/2004.

Voting at the polling stations is facilitated for persons with disabilities through arrangements on access.³³⁴ Overall, the polling station should allow the proper inflow and outflow of voters as well as unobstructed movement.³³⁵ The polling station should ideally be located either on the ground floor or on other floors as long as access for persons with disabilities is ensured.³³⁶ The polling stations should allow for the access of persons with locomotor disabilities by providing access ramps³³⁷ and suitable voting booths.³³⁸

In the voting booth, the presence of any other person than the voter is prohibited. Exceptions can be made, however, to persons who cannot vote alone. A person who is neither one of the candidates nor a member of the polling station staff may assist in voting.³³⁹

3.9.2 Recent developments

The voting rights of persons with disabilities have also been regained in Romania, allowing persons under guardianship to retain their voting rights. On 16 July 2020, the Constitutional Court of Romania held the provision on the placement of judicial interdiction to be unconstitutional.³⁴⁰

Article 165(2) of the Romanian Civil Code reads: *“The person who does not have the necessary discernment to take care of his interests, due to alienation or mental weakness, will be placed under judicial interdiction.”* The Constitutional Court ruled that this provision was unconstitutional on the basis of human rights,³⁴¹ prohibition on discrimination,³⁴² the rights of disabled persons³⁴³ and in the light of Article 12 of the Convention on the Rights of Persons with Disabilities.

The Court stated that the legislator must take into account the degree of disability, which can vary over time. Instead of applying a general measure, the provision should refer to an individual assessment of the person’s mental capacity. There must be protective measures that take account of factors such as the nature of the limited mental capacity, i.e. whether it is permanent or reversible. Furthermore, the existing legislation makes no consideration for the person’s interests, is not subject to regular review and is not restricted to a specified period of time. Therefore, there are insufficient guarantees in place to ensure the protection of fundamental rights and freedoms. The measures must be proportionate and must be analysed for each case, subject to periodic review and take into consideration the will and preferences of the individual with disabilities, which is not the case under

³³⁴ Article 22a Regulations on the Elections to the Chamber of Deputies and the Senate 208/2015.

³³⁵ Article 4(1)g-j Decision 44/2016 on the set of minimum conditions that must be met by the locations where the polling stations operate, as well as their minimum equipment.

³³⁶ Article 5(4)-(5) Decision 44/2016 on the set of minimum conditions that must be met by the locations where the polling stations operate, as well as their minimum equipment.

³³⁷ Article 4(1)k Decision 44/2016 on the set of minimum conditions that must be met by the locations where the polling stations operate, as well as their minimum equipment.

³³⁸ Article 7(2) Decision 44/2016 on the set of minimum conditions that must be met by the locations where the polling stations operate, as well as their minimum equipment.

³³⁹ Article 90 Law for the election of the local public administration authorities 115/2015.

³⁴⁰ Constitutional Court of Romania, 16 July 2020. <https://www.ccr.ro/comunicat-de-presa-16-iulie-2020/>.

³⁴¹ Article 1(3) and Article 20 Romanian Constitution.

³⁴² Article 16 Romanian Constitution.

³⁴³ Article 50 Romanian Constitution.

Article 165(2). The judgement was a victory for many persons with disabilities under guardianship, who regained their voting rights.

Other promising developments are found in legislative amendments. In 2019, the legislation of President, Senate and Chamber of Deputies elections was amended. Polling stations should meet a minimum criterion to facilitate the voting of persons with reduced mobility, such as those whose mobility is limited due to a physical, sensory or locomotor disability or through age, weight or pregnancy. The polling station should be located on the ground floor and have a special access ramp for persons with locomotor disabilities. Overall, barriers such as obstacles or steps should be avoided and the doors should have a width of at least 90 cm.³⁴⁴

Promising initiatives have been taken by the National Authority for Persons with Disabilities. The national strategy on the rights of persons with disabilities for 2021-2027³⁴⁵ lays down the objectives for implementing the UN Convention, which was signed by Romania in 2007. One of these is to increase political participation by disabled persons through removing barriers. Barriers are identified in two phases: when exercising voting rights and when standing as a candidate. It is reported that in 2019 presidential elections, 38 percent of persons with severe limitations experienced barriers to voting. These barriers related to access to polling stations (travelling to the site and the physical inaccessibility at the location) and to the complex procedures for requesting mobile ballot boxes. The persons were unable to rely on alternative, more accessible forms of voting due to the absence of electronic or postal voting (for persons resident in Romania).³⁴⁶

There are no precise data on the issue, but the number of persons with disabilities running for elections is low, and the number of persons elected to the office is even lower. In order to estimate the scale of the issue, raising public awareness and conducting further research is important. It should be noted that the limiting factors for candidacy are not only legal barriers, but perceptual ones, created by the low visibility of persons with disabilities in the public and the non-existing support mechanisms.³⁴⁷

The most recent elections were held on 6 December 2020, with a historically low turnout of 33.3 percent. The turnout can be explained by the COVID-19 crisis and the restrictions to freedom of movement, affecting voting and the election campaign.³⁴⁸ Voters who were infected with COVID-19, their families and those in isolation were permitted to request a mobile ballot box.³⁴⁹ However, the Democratic Alliance of Hungarians in Romania (UDMR) expressed concerns over the effect of the quarantine and home voting to turnout in some regions. The elections and obstacles for voters with disabilities were also observed by the ODIHR mission.³⁵⁰ Persons abroad could vote by mail or at

³⁴⁴ Art. 8(3) Decision no. 33/2019 Hotărârea nr. 33/2019 privind unele măsuri pentru buna organizare și desfășurare a alegerilor pentru Președintele României din anul 2019, Official Gazette, Part I no. 808 of 4 October 2019.

³⁴⁵ Strategia națională privind drepturile persoanelor cu dizabilități 2021-2027, Anexa 1.

³⁴⁶ Strategia națională privind drepturile persoanelor cu dizabilități 2021-2027, p. 44.

³⁴⁷ Strategia națională privind drepturile persoanelor cu dizabilități 2021-2027, p. 44.

³⁴⁸ ODIHR Special Election Assessment Mission: Statement of preliminary findings and conclusions, p. 1.

³⁴⁹ Ibid, p. 3.

³⁵⁰ Ibid, p. 5.

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polling stations; however, due to the COVID-19 restrictions, almost 100 fewer polling stations were set up.³⁵¹

³⁵¹ Ibid, p. 3.

4. Conclusions and recommendations

This report examined the political participation of persons with disabilities, providing an update to the study conducted in 2018 by Dr Andrea Broderick. It aimed to provide an overview of regulatory changes since the last study at EU level and in selected Member States: Bulgaria, Denmark, Estonia, Germany, Ireland, Finland, Hungary, the Netherlands and Romania. As well as examining legal and administrative barriers that persons with disabilities encounter during their democratic participation, special attention was given to legislative or administrative measures concerning elections and political participation taken by the Member States in light of the COVID-19 pandemic.

Section 2 provided an overview of the legal framework on the international and European levels promoting the rights of persons with disabilities. The United Nations Convention on Rights of Persons with Disabilities can be considered as one of the most important instruments for promoting these rights. At the EU level, there is no comprehensive or uniform legislation on elections, and Member States remain free to apply their own legislation within the general principles of the UNCRPD, Charter and EU law. In the absence of a uniform standard of protection of persons with disabilities at EU level, various barriers may be encountered. In all 27 EU Member States, there are rules or organisational arrangements that deprive some voters with disabilities of the possibility of participating in elections.

Therefore, there is a need for a stronger legal and policy framework that guarantees the political rights for persons with disabilities. This is also reflected by multiple initiatives at EU level (EU Disability Strategy 2021-2030) and the efforts of representative organisations, such as the European Disability Forum (EDF), European Parliament's Disability Intergroup, European Union of the Deaf (EUD), all advocating for more accessible elections. In line with the opinion of the European Economic and Social Committee, it could be recommended that common standards on the protection of rights of persons with disabilities would be implemented throughout the EU, strengthening the political participation rights as laid down in Article 29 of the Convention.

Four main barriers and themes of development can be identified from the case studies as presented in Section 3 of this updated report: (i) Persons with disabilities may particularly face barriers on accessibility; (ii) barriers on elections organised in times of COVID-19 and the introduction of new voting methods; (iii) the limitation of voting rights; and (iv) on the right to assistance. The main findings and conclusions are summarised below.

(1) Accessibility

Accessibility has been an important theme, promoted both at EU and national levels. By looking at accessibility, it can be concluded that barriers arising from inaccessibility do not necessarily result from a legal limitation, but rather from practical implementation. All Member State provide a legal obligation to ensure that elections are accessible. However, these measures are often not fully implemented at each polling location; other practical obstacles also arise, such as the lack of information in an easily accessible format. Additional measures could be taken to ensure that all persons have equal access to election campaigns, for example, by providing information in Braille, readers or sign language.

At the polling stations, barriers on accessibility often relate to the physical limitations of the environment – polling booths are not always usable for those using a wheelchair or other mobility aids. As good practice on accessibility, Finland uses a three-fold checklist, namely to ensure that the polling station is accessible on arrival, entry and during voting. Several other positive developments can be identified in the case studies, indicating that accessibility issues are receiving increasing attention. In the Netherlands, as of 2019 municipalities have an obligation to ensure that *all* polling stations (rather than 25 percent) are accessible. In spite of these positive developments, in some of the case studies serious concerns have been expressed of the accessibility of elections for persons with disabilities. In Ireland, many of the polling stations continue to remain inaccessible; the Disability Federation launched a campaign (*#DisabilityVotesCount*) to stress the importance of promoting accessibility. The Federation also noted that there is poor dissemination of information of alternative methods of voting, such as mobile polling booths or postal voting.

Providing other voting methods in addition to the most traditional mode of voting at polling stations may improve the accessibility of the elections. In some Member States, it is possible to choose a polling station or vote at home, at a hospital or another care institution or via post or electronic means. The importance of these methods, particularly remote options, has been amplified by the COVID-19 crisis. The following theme will focus on these findings.

(2) The introduction of new voting methods and elections organised in times of COVID-19

The epidemiological risks caused by COVID-19 have introduced further barriers to political participation, not only for persons with disabilities but also for other vulnerable groups and persons and their families in quarantine. As a result of the crisis, there is pressure to provide alternative methods of voting and to find innovative solutions.

Of the case studies examined in this report, Bulgaria, Finland, Germany, the Netherlands and Romania organised elections during the crisis. Concerns were raised in all as to whether and how elections could be organised while safeguarding both public health and the organisation of democratic elections guaranteeing everyone's right to vote. The question was specifically over how persons confined in mandatory quarantine or self-isolation could exercise their voting rights. As a solution, Bulgaria provided the opportunity of using mobile ballot boxes, which previously were solely available to persons with disabilities; Romania took a similar approach. In Germany, all-postal voting was held in Bavaria. The Netherlands took a more restrictive approach; only those aged 70 or over were eligible to vote by post. This measure was challenged, without success, in court as discriminatory since it failed to consider individuals who were younger but also vulnerable. Of the case studies, Hungary's approach to elections was the most restrictive: none were permitted during the COVID-19 crisis, raising concerns over the concentration of power.

Before the increasing demand to introduce remote voting options during the COVID-19-crisis, the implementation of electronic voting has already been explored in a number of Member States. As online voting is only currently possible in Estonia, it could be expected that this voting method would become more popular in the coming decade.

At best, the new methods of voting may facilitate voting of disabled (and vulnerable) persons, but it could also further restrict their participation. Examples of this can be seen in Estonia, where the Election Act requires that the voting application must provide support for visually impaired persons. However, the 2019 parliamentary elections revealed that voting by electronic means was not configured for use by persons with visual impairments. Similar obstacles were found in Bulgaria, where machine voting has recently been introduced as the main means of voting. The devices have had to be programmed to facilitate zooming for voters with vision impairment: this, however, had not been fully implemented.

While remote voting options such as postal or online voting may overcome accessibility issues experienced in physical environments, it is important to also ensure that the remote options do not create new obstacles and are not used to avoid the existing barriers. Alternative (remote) voting methods should be used to facilitate the exercise of political rights of persons with disabilities as complementary to, rather than replacing conventional voting. As Article 29 UNCRPD states, States should guarantee persons with disabilities their political rights and the opportunity to enjoy them on equal basis with others. Strict interpretation of this provision would also entail that persons with disabilities have equal opportunities to choose the way they which like to vote.

When introducing new voting methods, it is of utmost importance to take account of the special needs of persons with disabilities. Furthermore, it has to be noted that these needs may vary depending on both the type of disability and the barriers; it may not be possible to remove them with a single solution. Therefore, when deciding on best practice for implementing remote or alternative voting options, the experiences and views of persons with disabilities and their representative organisations must be taken into consideration. The example of postal voting in the Netherlands during the crisis highlights the importance of taking account of the needs of persons and of disseminating information when implementing new methods. Due to the complex procedures and frequently adjusted rules, 65 000 postal votes were declared invalid. Therefore, next to gathering information, it is important to provide information to persons with disabilities on precisely how the remote systems work and which assistive technologies are available to support their needs - for example, electronic voting modalities, text-to-speech converters, Braille output and acoustic confirmation signs.

(3) Limitation of voting rights

Guardianship and the limitations on legal capacity and the right to vote have been a prominent theme observed in the case studies. This is particularly the case in Denmark, Germany and Romania, where persons under guardianship have regained their voting rights. In some EU Member States, persons under guardianship or with limited legal capacity are deprived (either automatically or subject to individual decision) of their right to vote and/or stand as candidate in elections. Several Member States have amended their legislation from automatic exclusion to individual decisions or have even abolished the limitation overall. As stated in Article 12 of the UNCRPD, no person should be excluded from their political participation rights on this basis.

In Denmark, persons who were under court-imposed guardianship were fully deprived of their legal capacity and subsequently their political participation rights until 2016. Then, in 2016, the European

Parliament Elections Act and the Local and Regional Elections Act were amended, providing voting rights for these persons; however, restrictions remained for other elections.

The Danish legislation was challenged in front of the European Court of Human Rights (ECtHR), which held there was no violation of the right to free elections and the prohibition on discrimination. The Court recalled that States enjoy wide margin on appreciation on voting rights. As the disenfranchisement affected only a small group of persons and was applied under strict conditions assessing individually the person's mental capacity, the difference was proportionate to the legitimate aim – ensuring a level of mental understanding for voting. Although the applicants were not successful in their claims in front of the ECtHR, as of 1 January 2019, the Danish Guardianship Act was amended providing that guardianship can be imposed partially, meaning that these persons regained their voting rights also in parliamentary elections.

Similar reasoning can be found in the Constitutional Courts in Germany and Romania. The Federal Constitutional Court in Germany held the deprivation of rights to be unconstitutional. This was because the legislation did not identify those persons who are incapable of participating in the democratic process, but rather merely assumed that the appointment of a guardian refers to cases where the person would lack the mental capacity required to participate. Meanwhile, the Romanian Constitutional Court also found such restrictions unconstitutional. It stated that the legislator must take into account the degree of disability of the person. Instead of applying a general measure, the provision should refer to an individual assessment of the person's mental capacity.

Despite of the positive developments in Denmark, Germany and Romania, a number of case studies highlighted the darker reality of the restricted political participation rights of persons with disabilities. In Bulgaria, several NGOs have been actively campaigning to raise awareness and advocating to restore voting rights. In Ireland, persons of unsound mind are deprived of their political participation rights. Limitations on voting rights have also been imposed in Estonia, who have declared in their reply to the UNCRPD Committee that they do not intend to withdraw their interpretative declaration on Article 12. They argue that under their legislation, guardianship and the consequent loss of voting rights are only established in very severe cases and are subject to regular review.

The European Court of Human Rights, and subsequently the national courts, take a different approach to those provided under the UN Convention. Article 12 of the UNCRPD is unequivocal on the issue: voting rights should not be deprived on the grounds of disability or health under any circumstances. The ECtHR has previously held in its judgments that the deprivation of voting rights under these grounds is unlawful in the event that it results from an automatic loss of the voting rights – disenfranchisement is permitted where an individual assessment of the voter's capacity is performed.³⁵² However, as more countries abolish the limitation of voting rights, it is possible that in the coming years, the margin of appreciation could shrink, such that such individually applied limitations are not compatible with human rights. Nevertheless, the difference in interpretation of the rules continues to result in differing rights between the Member States. To ensure the same level of

³⁵² *Alajos Kiss v. Hungary* (European Court of Human Rights) 20 May 2010, compared to *Zsolt Bujdosó vs Hungary* (Committee on the Rights of Persons with Disabilities) 20 September 2013 where the UN Committee finds that all forms of restrictions on voting rights on the basis of disability or health, whether automatic or based on individual assessment, do not comply with the UNCRPD.

protection of the rights of persons with disabilities, a uniform approach should be taken, as advocated by the EESC. A ban on the deprivation of the right to vote in European Parliament elections on the basis of disability should be adopted at the EU level.

(4) Right to assistance

All EU Member States provide a right to assistance; however, there are differences as to who is entitled to assistance and who may provide it. Overall, there is a positive trend in the EU towards providing an opportunity for the person to choose their own assistant, for example by the 2017 legal amendments in Denmark. All Member States discussed in the case studies of this report provide this choice to persons with disabilities.

However, in the Netherlands, only persons with physical disabilities may request assistance. The Netherlands Institute for Human Rights recommends that voters with intellectual disabilities be offered the opportunity for assistance in casting their vote as well. This would bring the Dutch legislation more closely in line with the UNCRPD, as the Convention does not distinguish between rights of voters with physical or intellectual disabilities. On 28 June 2021, a public consultation on a bill amending the electoral law was opened. The aim is to conduct a five-year experiment in a small number of municipalities to also allow persons with intellectual disabilities to be assisted by a member of the polling station. Although such a proposal (if adopted after the consultation) may lead to a positive development in providing the special right to assistance to persons with all types of disabilities during voting, it raises questions over why differentiation is still applied to who may receive assistance from a person they know and trust. It has to be seen what reactions will emerge during the consultation period and how the final bill will be formulated.

It is also important to disseminate knowledge on the right to assistance, not simply to voters themselves but also to polling station officials. On multiple occasions in the Netherlands, it was reported that persons who were entitled to assistance were wrongfully refused such aid, as the polling officials were not aware of these rights.

Furthermore, it is important to add that measures should be taken to promote the opportunities for persons with disabilities to vote independently. Assistance should be viewed as a form of support that a person can request as an option, not as the only means of voting due to the inaccessible or complex procedure of voting.

Final conclusions and recommendations

This updated report confirms the findings of Dr Andrea Broderick in 2018. Although significant efforts have been made in the EU and its Member States, much work remains to be done to ensure that persons with disabilities can enjoy their active citizenship rights.

The case studies reveal that the UNCDRP has not yet been fully and effectively implemented in national legislation and in practice. For these reasons, persons with disabilities continue to face multifaceted barriers in exercising their political participation rights effectively. This is also reflected

by the recently adopted EU Disability Strategy 2021-2030, where one of the priorities of the EU is to support Member States in shaping their national strategies and action plans to further implement the EU legislation and UNCPRD in their national legislation. Next to focusing on effective implementation, it could be recommended that common standards on the protection of rights of persons with disabilities would be adopted throughout the EU.

It is also important not only to focus on ‘active’ political participation rights (voting) but also on ‘passive’ political participation (standing as an election candidate). As noted by Dr Gauthier de Beco, the deprivation of voting rights *“not only affects the enjoyment of political rights but also sends the negative message that they are not supposed to take part in political life. It further discourages disabled people from engaging in political activities, which, in turn, removes disability from the realm of public discourse”*.³⁵³

Indeed, persons with disabilities are not highly active in politics. In the EU, about 15 percent of people have disabilities, compared with only around 1 percent of politicians.³⁵⁴ In the case study of Romania, these issues of low political representation of people with disabilities were presented. The limiting factors for candidacy are not only legal barriers, but also non-existent support mechanisms and perceptual barriers on the low visibility of persons with disabilities in the public. It can be concluded that while it is important to focus on accessibility of voting, it is also essential to remember the accessibility of persons with disabilities to political representation and decision-making.

When deciding on best practice for ensuring the right to political participation of persons with disabilities, the experiences and views of persons with disabilities and their representative organisations must be considered. When introducing new methods of voting, it is of utmost importance to take account the special needs of persons with disabilities. However, as the needs may vary depending on the type of disability, there can be no ‘one-size-fits-all’ solution. Alongside gathering information, it is important to increase awareness of the rights of persons with disabilities by disseminating this information to the persons themselves as well as to those implementing these rights in practise.

To conclude, the EU as a whole should make sustained efforts to facilitate the political participation of persons with disabilities and to support Member States’ efforts to do so. There is still more work to be done to ensure that people with disabilities can exercise their active citizenship rights and participate equally in political and public life.

³⁵³ G. de Beco, ‘Disability in International Human Rights law’ Chapter 8: Political Participation: An Ultimate Priority. Oxford University Press 2021, p. 142.

³⁵⁴ M. Waltz, A. Schippers, ‘Politically disabled: barriers and facilitating factors affecting people with disabilities in political life within the European Union’, 2021 Disability & Society, 36:4, 517-540, DOI: 10.1080/09687599.2020.1751075.