

Election law a growing area – and good for democracy, say experts



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Posted by Neil Rose

Challenging election results is on the rise across the world and this is a good thing, with a new breed of election lawyers emerging in some countries, according to the authors of a new book.

They argue that, since the US Supreme Court ultimately decided the Bush v Gore presidential election in 2000, resolving electoral disputes worldwide has moved from the political arena to the courtroom.

According to *The Routledge Handbook of Election Law*, the first book to offer global analysis of electoral disputes and published yesterday, Austria, Kenya, Switzerland, Iceland, Malawi, and Slovenia are just some of the countries where the courts have recently invalidated elections or referendums.

Co-editor Professor Jurij Toplak, co-editor of the book and one of the world's leading election experts, said: "Elections are the most important political event and a celebration of democracy, but for voters to accept them, they need to see that the candidates and the authorities are following the law."

"Over the past 20 years, courts worldwide have frequently become players in elections. Thus, judges have a vital role in safeguarding democracy. They hold the key to free and fair elections and for maintaining the trust in the process."

He is a law professor at the University of Maribor and Alma Mater Europaea University in Slovenia, and a recurring visiting professor at the Fordham University Law School in New York.

He has advised international organisations and governments on elections in 15 countries in Europe, Africa, Asia and North America, and written successful election appeals that nullified a referendum, reinstated disqualified candidates, and mandated all polling stations in Slovenia to become accessible by wheelchair.

Professor Toplak said "a new breed of election lawyers is emerging" in some countries; nearly every law school in the US started teaching election law after the 2000 election and there were now at least 100 lawyers specialising in the field.

In Europe, election lawyers were more common in countries with many referendums and disputed elections, such as Italy, Switzerland, and France, he said.

"With the increasing number of elections ending in courts, I expect that the number of election lawyers will grow. But the number will stay small, given a limited number of potential cases."

The book details the Perception of Electoral Integrity Index, which measures how experts and scholars view and evaluate elements of the electoral process. Denmark, Finland, Norway, Iceland, Germany, and Sweden ranked highest while the UK was the second lowest in Western Europe, ahead only of Malta.

Professor Toplak explained to *Legal Futures* how the UK rated so poorly: "According to their responses, the main weaknesses of UK elections were that they were unfair to smaller parties, boundaries discriminated against some parties, disabled voters had problems completing ballot papers, citizens were missing from the electoral register, and laws favoured the governing party."

"On a positive note and contrary to many other countries, the electoral authorities perform very well in the UK. Respondents saw no severe problems with the counting process, the announcement of results, or the security of ballot boxes."

He suggested that the UK and US were both ranked so low on these perception rankings because their scholars and media were "incredibly critical of their countries' electoral systems", affecting the widespread opinion of their elections.

"On the other hand, Scandinavian scholars are protective of their laws and elections. In my opinion, these rankings do not do justice to the UK and US. Many scholars disagree with me and believe that British and US electoral processes are worse than those of many other countries."



Toplak: Rankings do not do justice to the UK