

Minutes of the second webinar Global Network on Electoral Justice

“The new emergency laws and the independence of courts that resolve electoral disputes in Europe, Canada and the United States”

Region: Europe, United States of America and Canada

Language: Spanish

Date: **July 10, 2020**

Time: 10:00 am (Mexico City, Panama and Colombia) – 15:00 hrs. GMT

Duration: 2:00 hrs.

Platform: Zoom

The virtual Forum was open to members of the Global Network on Electoral Justice as well as colleagues from various UNDP country offices in the region and from the United Nations global electoral team.

The panelists were:

- o **Jean Phillipe Derosier**, Professor of Public Law, University of Lille
- o **María Mercedes Delgado**, Coordinator of the Technical Cabinet (Justice), Supreme Court of Spain
- o **Warren Newman**, Senior General Counsel, Department of Justice of Canada
- o **Ann Walsh Bradley**, Justice, Supreme Court of Wisconsin

Moderator:

- o **Dan Malinovich** (Electoral Policy Specialist at UNDP)

Dan Malinovich:

He welcomed everyone to the second virtual forum of the Global Network on Electoral Justice, introduced himself and thanked the opportunity to moderate the forum. He began by commenting that the forum would have simultaneous interpretation into English, French and Spanish, and explained how to use this tool (the explanation was made in English and French). Later he gave the floor to Madeleine Dahlstein from the TEPJF who gave the explanation in Spanish.

Malinovich began his intervention by mentioning that the world has passed the marker of half of a million deaths worldwide due to COVID-19, something that we could not have imagined just a few months ago; this includes how we imagine the conduct and postponement of elections.

We often use the cliché that there is no blueprint for democracy or elections, and this can now be adapted to there is no blueprint for postponement or not of elections in the face of COVID-19. Both holding or postponing elections can be categorized as reckless, depending on the context.

This predicament is something that has been recognized all over the world, including by the secretary general of the United Nations who recently stated that “the postponement of elections, referenda or the decision to proceed with them, even with the mitigating measures, can create political tensions and lack of legitimacy... this is not the time for political opportunism. Unfortunately, we are witnessing this type of politization of the pandemic happening worldwide”. The pandemic has been used as a pretext to rule by decree, postponing elections indefinitely, in other cases decisions

have been made to go ahead with the elections while severely hindering the right to campaign which clearly benefits one or the other party or candidate. Even a single act as wearing a facemask has been interpreted as a political statement in some cases.

Procedural issues regarding elections face challenges such as using contactless voting, mailing ballots, e-voting or other methods often turn it into a game of political nature in a zero-sum game. In other words, the question becomes not what is good for the voters, for the election officials or my country, but what is good for me and my party.

In such cases where political consensus become difficult and even impossible, the courts are often the last line of defense in protecting voters' rights and wellbeing, as well as insuring impartiality of the law. This is often a heavy burden on those institutions, and as is the case with many other institutions that provide electoral assistance, such as UNDP, electoral commissions, etc. The courts often find themselves in untested waters, facing difficult choices of damn if you do it and damn if you don't.

In most cases, past experiences offer little guidance for examples. This brings us to the topic of today's webinar: we will find ourselves in untested waters, and perhaps the best thing we can do is to bring together the practitioners and experts to exchange information and experiences and hopefully offer a guiding light to the colleagues around the world.

In that vein as well, UNDP has recently jointly with the Electoral Assistance Division of the Department of Political Peace Building Affairs of the UN, and the WHO and other UN agencies, developed a practical guide for electoral advisors on operations during COVID-19. We are now using it worldwide to assist our colleagues in advising election commissions and other stakeholders in countries to make their own decision on whether to proceed or not with the elections, and if they do, how to do it safely.

This webinar aims to encourage the exchange of experiences and lessons learned around the emergency measures and the rule of law in Europe and North America. We have four distinguished speakers. Following their presentations, we will open the floor for questions and discussions. The interventions should be of 7 to 10 minutes each and asked everyone to kindly turn on their cameras. He introduced the first speaker Jean Phillipe Derosier.

First speaker, Jean Phillipe Derosier, Professor of Public Law at the University of Lille
(he presented in French)

He began by thanking the invitation. Since there are three official languages of the RMJE, he decided to make his presentation in French. He commented that he was very happy to participate in the second forum organized by the GNEJ, the Scientific Committee and the UNDP on this issue that greatly concerns him, namely the functioning of democracy during this period of crisis that we are going through all over the planet.

Regarding the case of France, he commented that its democracy has been on the verge of respiratory arrest, in a metaphorical sense. As an introduction, he presented some dates to provide background: the epidemic came to France during the first days of March, with special attention to the role of the two assemblies because one of the two assemblies of Parliament, the National Assembly, the first chamber, that of the people's representatives, had an outbreak of the epidemic, first with 2 cases on March 5 or 6, 7 cases on March 9 and later up to about 30 cases, which led to the imposition of very strict rules on the operation of the institution.

On March 12, the President of the Republic, Emmanuel Macron, spoke to the nation on television to announce that all schools and universities, from kindergarten to university, would be closed on Monday, March 16, but that democracy would continue, and the elections that were scheduled for March 15 and 22 were maintained. Democracy will continue. On March 14, it was Prime Minister Édouard Philippe who took the floor to announce that that same night of March 14, starting at midnight, all theaters, all cinemas, all gardens, all non-essential shops should close starting at midnight on Saturday, March 14 (on the night of Saturday to Sunday).

But, once again, the elections were held for the next day. He mentioned that there was an obvious contradiction in the decision to stop the country because there was a risk due to the epidemic, but they intended to maintain the first round of elections with the prospect of a second round the following week. This translated into what one would expect, namely a record abstention for these elections. Municipal elections are generally the elections that most mobilize the electorate, with a participation rate higher than 65% and there was a participation rate of 45%, that is, 20 points less than what they are used to.

The first round took place, therefore, with this record abstention and the next day, Monday, March 16, while all schools were closed, the President of the Republic took the floor again to announce that as of the following day, March 17, at noon, the entire population should be confined to their homes, with some exceptions. So starting on March 17 at noon, 11 weeks of total confinement of the population began. The March 23 law established restrictive measures for the population and proposed a second round of municipal elections in June, which in fact finally took place on June 28, once again with very high abstention.

Some elements of this March 23 law. On the method of adoption: as he explained, the measure of confinement of the entire population was already applicable and this included the National Assembly, therefore, it was necessary to adapt the functioning of democracy in terms of the measures that were taken to send deputies and senators to the chamber. It was necessary to adopt rules to guarantee the expression of the vote. The solution found was that all the votes of a parliamentary group were taken by the president of the group, it is up to him to collect the positions of each one and communicate them to the institution, to the board of directors. The deputies then individually had the possibility to modify if they considered that what had been reported was correct. Obviously, this is not the ideal functioning of democracy and especially the institutional functioning beyond the adoption of the law, when there were measures restricting freedom and, at the very least, problems regarding the control that Parliament could exercise over the government.

A second element that this law introduces is the disconnection between the two rounds of municipal elections. There was a real constitutional problem because such a disconnect cannot be considered constitutional even if it was subsequently validated. An election, he mentioned, must be held at the same political moment, the same electoral moment. In some countries it can be separated, but in France when elections go to the second round, this is held within a period of a week or a maximum of two. The presidential election takes place within one week and is foreseen by the

Constitution; all other two-round elections take place on the first Sunday and the Sunday following the second round. Why? Because we want to register the will of the voters in the same electoral dynamics, at the same political moment, at the same democratic moment, and obviously the more time passes, the voter is influenced from various sectors. The great economic and political health crisis that was going through at that time and disconnecting the two rounds was, from my point of view, detrimental to what is called the sincerity of the election, which is a constitutional principle of elections in France.

The March 23 law established this disconnect that was not immediately presented to the Constitutional Council, the Constitutional Court, which can control laws with respect to constitutional principles. It was subsequently revised based on complaints from the candidates on June 17, just 11 days before the date the second round was scheduled, which is June 28, and almost 3 months after the law was approved. Even when the constitutionality of the measure was questioned, by that date we were all convinced that the Constitutional Council would validate the law.

The argument of the Constitutional Council was that, although the two rounds cannot be disconnected in this way, there may be an overriding reason of general interest that forces it to be done. Therefore, it considered that the context had imposed that but in its opinion, there are deeper reasons that led it to validate the law at this time and turn the page of the municipal elections: on the one hand there was the emerging economic crisis and the communes (the first economic actors) and maintaining public order so that they contribute to recovery that can be a matter of general interest. Second, an essential consideration is that small candidates do not necessarily have many financial means to lead electoral campaigns and that, if the elections had been canceled, the campaigns would have had to be relaunched and many candidates would not have been able to participate because they did not have the resources to redo a new campaign.

When the second round was held on June 28, there was again a very high abstention rate, much higher, even though they had come out of the crisis. Why? Because during this period, he stressed, democracy stopped breathing and voters were very concerned about the crisis and their health and very little concerned about these municipal elections. Voters only vote when they feel that something is being done because the usefulness of elections is to find solutions and not just elect mayors.

Second speaker, María Mercedes Delgado, Coordinator of the Technical Cabinet (Justice), Supreme Court of Spain

She began by thanking everyone and commenting that in Spain to address the health crisis produced by COVID-19, the use of national legislation has been chosen over supranational institutions. Specifically, due to the declaration of the state of alarm in the face of other states of exception or siege, which the constitution also contemplates in extraordinary circumstances. However, the use of the state of alarm has not been without controversy due to the decentralized territorial structure of the Spanish state, in view of the impact this declaration has on fundamental rights and the competence of

the autonomous communities in matters of health. That is why it has been decided to use other less invasive legal instruments that respect the principle of autonomy

However, this has also raised problems in relation to the possible limitation of movement of people between autonomous communities; For this reason, the need arose to address legal reforms that clarify its use without generating any doubts. Once the state of alarm has ended, the autonomous communities will take the appropriate measures for the prevention and containment of the virus (analysis of wastewater to anticipate possible outbreaks, the use of masks in an entire autonomous community, or the confinement of a certain area)

Therefore, coordination and cooperation between the central administration and the autonomous administrations is essential in order to achieve more efficiency in the prevention and control of the pandemic. There are already initiatives among the main political parties to adopt measures to remedy the deficiencies in the health information system. This is in order to speed up the information that the autonomous communities must deliver about those infected in order to act early (in the event of outbreaks). The aim is to advance in a public health information system aimed at a European network that will facilitate the operation of a system of relevant health indicators, statistical data and emergency health resources.

One of the proposals was the establishment of a model that has a centralized warehouse of raw data with all the information of the health system that will serve as the basis for health care. Similarly, the principle of coordination is manifested in the supranational sphere. It was the European Commission and Council who drew the roadmap for lifting the containment measures of COVID-19 presented on April 15, so that the member states of the European Union (EU) could plan the different phases of the escalation trying to minimize the impact on the health arena. Within this framework, the agreement of the Council of Ministers was approved in Spain on the transition plan towards the new normal, which has resulted in various regulations.

Once the worst part of the crisis is over, it will also be up to the institutions to outline the process to evaluate national reform plans and decide on the conditionality so that countries can receive EU reconstruction funds for the delicate economic situation after the pandemic, especially in countries like Italy and Spain where the crisis has been most severe. The decision to open the borders is located in this supranational area, following the recommendation of the Council of the Union (application of regulations to necessary travel)

Internally, the opening of borders is not without problems since the government of the community of Madrid is going to appeal the resolution issued by the Ministry of Health regarding health controls at points of entry (specifically Madrid airport). They have not agreed with the control measures adopted such as taking the temperature, forms, and visual health supervision.

From the judicial point of view, one of the consequences caused by the central government's management of the health crisis has been the number of legal claims produced around the different measures taken in the state of alarm as well as in the subsequent regulations. Claims that will have to be resolved by the Supreme Court and by the Constitutional Court as the highest bodies in charge of controlling the possible excess of the established regulation, these control mechanisms are the main guarantee to preserve the rule of law.

We will have to wait for the pronouncements that will be made to define the mechanism used by the executive, the regulations on which it relies and its impact on the limitation of the fundamental rights affected -especially taking into account its duration- having the state of alarm been extended six times. Especially since there were voices that indicated the possibility of using ordinary legislation.

On the other hand, regarding the incidence of the pandemic in the pending electoral processes, in this state of alarm, it is possible to say that the suspension of the elections that were planned in the autonomous communities of the Basque country and Galicia, was due to the limitation of movement of people and activities. Once the state of alarm was suspended, an immediate call was made for elections to be held next Sunday. One question that arises is the influence that the health crisis will have on the electoral processes, and its management on behalf of the autonomous communities.

For example, in Galicia the surveys give the current president of the Galician Board as the winner, having in his favor that it has been one of the autonomous communities with the lowest incidence of the virus and also the first community to leave the restrictions of the state of alarm. However, the development of the electoral process in terms of fear of contagion may also have relevance in the elections.

In the outbreaks that have emerged in recent days, especially in Galicia, 71,000 people from 14 municipalities have been confined. Based on this, some political parties have requested the suspension of the elections in their regions until the health emergency is overcome. This has been analyzed by the Electoral Board of Galicia, which concluded that the conditions of the electoral process have not been affected and that it has no authority to suspend the elections, which only the health authorities can do. One of the principles that should prevail in these cases is proportionality to adequately assess the health risk for voters with their right to political participation.

Third speaker, Warren Newman, Senior General Counsel, Department of Justice of Canada

He thanked the moderator and the organizers for inviting him to participate. He commented that he would make some observations in French, and then in English. First of all, as professor Derosier explained, since March all public institutions ceased to function, but the government continued to operate by electronic means.

He commented that even the jurisdictional institutions had to cancel or postpone their activities; At first, the judicial courts that administer electoral laws in the country issued decrees and directives to suspend their activities and now, with the lack of confinement, the courts have returned to their usual business.

Hence, he continued to ask: what has this meant for the rule of law in Canada? He said that with their political culture, the rule of law has in large, continued to be respected. The Parliament of Canada has continued to sit, the constitution requires that they be a quarter of 15 senators in the upper house, and 20 members of parliament (deputies) in the House of Commons; so with multiparty agreement, members were selected to sit in the various sittings necessary to enact emergency legislation. Most of that legislation has been financial, providing economic assistance to people that were being thrown out of work because of the pandemic (emergency relief).

What has not happened in Canada is that the emergencies act (or in French the law of emergency measures) was not proclaimed in force. In other words, they are not operating under a national emergencies' legislation, although they do have the quarantine act. The quarantine act is a matter within Canada's jurisdiction. The reason why the emergencies act wasn't proclaimed, was first, because it contains many provisions that require constant parliamentary oversight, and in the midst of a pandemic it wasn't obvious that this was the way to proceed. Second, the provinces preferred to proclaim their own public health emergencies, which they could do under the division of legislative powers, because they are primarily responsible for health matters. They proceeded that way and there has been a great deal of coordination at the federal, provincial and territorial level. There are 10 provinces and 3 territories.

The whole process of cease of confinement has been in some respects trickier that the state of emergency because the courts of judicial notice didn't wait to act, and it has taken more coordination because each province and government leader has their own perspective on what is appropriate for their province. Measures continue to be coordinated with the federal government, and this has been done with very little friction in terms of how the public authorities have reacted to the crisis.

Lessons learned proved to be that, as in the US and Europe, much of the effects of the virus have been mostly felt within the urban centers like Montreal and Toronto, as well as by the most vulnerable populations (those who have been in nursing homes, residences). That has led to a reexamination of how we handle elderly care in the country.

He concluded by saying that they could have further emergency measures if necessary. The Parliament of Canada has general legislative authority to make laws for the peace and good governance of Canada, and this general residuary power has an emergency branch to it. The courts have recognized that there is a power in parliament regarding emergency legislation. The parliament must be evident in the face of legislation that is being enacted for emergency reasons, and because it is an emergency it must be temporary in nature; it cannot be permanent legislation because it has the effect of intruding in areas of jurisdiction that are provincial in character. It has not been necessary to proclaim enforced the emergencies act in the country.

Fourth speaker, Ann Walsh Bradley, Justice, Supreme Court of Wisconsin

She thanked the moderator and Mr. Newman for their comments. She mentioned that this webinar in part is focused on the experiences and exchange of experiences that we all have and take away some lessons learned in terms on how we approach the situation we are now worldwide. She mentioned that she serves on the Wisconsin Supreme Court, the high court in the State, and has served for the past 25 years. The COVID-19 pandemic has certainly challenged the court system.

Wisconsin is a center of litigation when it comes to election cases. She talked about one case in particular. In the US they have a federalist system, with a division of powers (federal and states), and they issue the emergency orders like closing businesses, schools, limiting gatherings, and this division of power is not the only division they are facing in the US. They are also divided by partisan politics and in Wisconsin they are highly divided among political lines. As a result of the partisanship,

the Wisconsin Supreme Court has been in the middle of many election and political cases.

She focused on a case called Wisconsin legislature v. Evers. It is the election involving if the election that was held on April 7, whether the governor had the power to cancel the election. In this election there were several races: presidential primary, and one for a seat in the Wisconsin Supreme Court. In the last 10 years, the elections of supreme court justices have also become quite partisan, but partisanship has increased with the outside money that has come in and shake the Wisconsin Supreme Court.

Governor Evers on March 12 issued an emergency order, declaring a public health state of emergency because of COVID-19, and that order was issued three and half weeks before the scheduled election of April 7. On March 26, 10 days before the election, the Governor issued another order to close all schools, all non-essential businesses, require people to stay at home, limited size of public gatherings. All this was done with the April 7 election approaching. Emergency safety orders, like this one, were being issued around the country. in all those states, they were canceling their spring elections, so Wisconsin was faced with the issue of what to do?

Out of the concern for safety, Wisconsin at that time was having a large amount of absentee ballot voting because people were concerned. Yet the voting districts around the state could not get enough poll workers to work on election day. A lot were senior citizens and were refusing to go to work. So, the governor called the National Guard to work as poll workers in case they were needed.

As the number of cases increased in Wisconsin, the governor decided that the election had to be postponed, but the legislature disagreed. Wisconsin legislature has two houses, both are controlled by the republicans, and the governor Evers belongs to the Democratic party. After days of dispute, one day before the elections, the governor issued an order to cancel the elections the next day. Within an hour after that, the republican legislature filled a lawsuit in the court asking for it to be declared invalid.

So, the court met, on an emergency basis, and by 5 pm that day, the Wisconsin Supreme Court issued a decision that allowed for the election to be held the next day. It was a split decision, but the majority said that the governor did not have the power to cancel the date of the election. The next day the election was held in Milwaukee, with only 5 polling places open, Green Bay with 2 polling places open, with only 17 poll workers willing to show up (from 270). The polling places had to stay open late, and all had the National Guard working there (soldiers).

Some cities had very few problems, in large part because the absentee mailing ballots, but absentee ballots also caused a lot of problems. There was such a high demand for these ballots, that the clerks in various towns around the state were not able to mail them out before the elections. People were faced with a difficult choice: do they go to the voting places, where there will be a lot of people, or give up their right to vote?

While other states were canceling their elections, Wisconsin was the first state to hold the in-person election during the midst of the pandemic. The Wisconsin experience and their challenge is to ensure these problems are remedied before the presidential and Congress elections in November.

Dan Malinovich:

He commented that as someone who has worked in electoral assistance around the world, advising countries and sometimes criticizing them for using certain officials (national guard) as electoral servers (precisely for not being able to guarantee fairness in the process), Wisconsin is a very impressive example and it shows that the work of people like him will be more complicated in the future with these precedents. The first thing many countries ask is, how is it done in established democracies and in the US?

He thanked the speakers for their presentations and opened the floor for questions and comments. He began by asking a question for all the panelists on the issue of federalism and how it can hinder the implementation of states of emergency, and in that sense, the reaction to the pandemic in terms of postponing or not the elections. Emerging trends are seen in the issues of federalism versus non-federalism as forms of government. In the same way, what role do supranational institutions play in this, particularly in the case of the European Union? Something to learn from those experiences.

Third speaker, Warren Newman, Senior General Counsel, Department of Justice of Canada

He said he would jump in on the federal side first. In Canada, they do have a federal system and both politically and legally, because the courts have recognized this as a constitutional principle, they have moved to a principle of cooperative federalism, encouraged by the courts. A cooperative regime. The courts will have to preserve the validity and application for the operational conflicts that arise.

So, there has been a great deal of cooperation and coordination in this pandemic in Canada, and the fact that the government decided to forego, for the time being, the mechanisms of the emergencies act, which would have been intrusive into provincial jurisdiction, helped in terms of fostering that cooperative spirit.

In Canada, as in Wisconsin and the rest of the US, they have been spared of being in a federal election year. They had their last federal election on October 21, 2019. And they will have their next one until October 16, 2023. That said, they have a parliamentary system, and the Canadian people elected a minority government. That government is always subject to votes of confidence in the House of Commons under the constitutional principle of responsible government. The government is responsible and accountable to the House of Commons, and if it loses the confidence vote then the prime minister has to resign or ask the Governor General to ensure that general elections occur.

Dan Malinovich:

He thanked Mr. Newman, and commented that a question was presented in Spanish in the chat, by Javier Franco, which was translated by Madeleine: “In the Dominican Republic the elections were verified with a convincing result, without going to the second round, and this is also a good example. However, after the election this

week, sanitary measures have been intensified because more cases have accumulated. How to assess this effort of democracy, health and elections?"

First speaker, Jean Phillipe Derosier, Professor of Public Law at the University of Lille

He began by also answering the question about federalism, although, he stressed, France is clearly not a relevant case for that question. He commented that France is a centralist state, a unitary state, therefore, elections have been nationalized even at the local level. Before, when he spoke of Municipal Elections, he was speaking of general Municipal Elections in which all communes and territories vote at the same time. And that also applies to the regions in the departments when regional and departmental elections are held next year, in March, also under exceptional circumstances.

Therefore, what he answered on this question does not have so much to do with the elections but with the measures that can be taken at the local level in the application of the state of emergency. Some mayors took more restrictive measures than the measures taken at the national level. At the national level, there was the possibility of going for a walk for an hour a day, and to do a little exercise, so that people did not have to spend many months locked up. But a number of city halls took more restrictive measures; Notably, in Paris jogging and outdoor exercise were banned between 10 am and 7 pm.

There were some other measures that were ironic and that were even invalidated by a judge; for example, the imposition of the use of masks the entire time that one was in the street, and the prohibition to sit more than 5 minutes in a public place. There was even a case in which the mayor requested the help of hunters to pursue those who were not complying with the general confinement measures. Fortunately, these measures could be invalidated, which shows the limits of this level of government, but also shows how many mayors, in a municipal electoral context, wanted to show themselves as the protectors of society and launched these measures that bordered on irony and limited public freedoms.

Regarding the question from the colleague from Honduras, he commented that it is a bit like what was known in France, although on a totally different scale because there the elections did not last a week but three months. But it is precisely in relation to the constitutional value of protecting health that these derogatory measures were taken in the conduct of these elections, disconnecting the two rounds of the elections that must have taken place in two rounds in less than a week.

Another element that confirms that the elections happened in a single round in France is that on some occasions the judges did not have more than the second round to make a decision, and they decided to annul the election from this second round because in it there were vices. That decision was made in front of the jurors and the voters.

Dan Malinovich:

He thanked Mr. Derosier, and commented that a question from Pat Merloe of NDI was presented in the chat, which he proceeded to read: “On balancing fundamental rights with public health measures, universal and equal suffrage implies the norm of non-discrimination, mainly in political rights, while public health restrictions limit the opportunities to vote and have an important impact on certain population groups. When do you see the balance between postponing elections and extraordinary measures to limit disenfranchisement? ”

Fourth speaker, Ann Walsh Bradley, Justice, Supreme Court of Wisconsin

She answered from two perspectives: one perspective as a member of the Wisconsin Supreme Court, in an administrative capacity, they have to decide issues like closing down the courts, the right to a jury trial that goes back to the Magna Carta, and yet they suspended these jury trials. On a personal perspective, she said it saddened her that they did that, even if she voted for these. Safety is more important than the individual rights, at least temporarily under the pandemic circumstances.

Third speaker, Warren Newman, Senior General Counsel, Department of Justice of Canada

He asked to speak and said that in Canada public health matters too. He stressed, as he had mentioned previously, that a more critical analysis would have to be carried out after reviewing the first reactions on the state of post-confinement. But for all public institutions in Canada or any other member state of the Global Network on Electoral Justice, this is a matter of public faith and trust in institutions and leaders. His belief in Canada, he commented, in Quebec, is that the public's reaction was to respect the decisions of the health authorities and the head of government.

First speaker, Jean Phillipe Derosier, Professor of Public Law at the University of Lille

He commented that he would answer the question twofold. The protection of public health is an objective of constitutional value that was brought forward in response to the health crisis. The Constitutional Council, its constitutional court, and the Council of State, which is the supreme administrative court, and which judges the different measures taken by the governments, applied this principle in order to justify and validate the restrictive measures.

What is unfortunate about the French case, are two disconnected things, which, although they were connected by the crisis, had nothing to do with each other. First of all, the discourse of closing the entire country at the national level could not be sustained: closing down museums, cinemas, restaurants, bars, etc. but go vote the next day. That is not possible. And that is why they had an extraordinary abstention rate in France with 45% participation; a record abstention was seen in those elections.

Secondly, they implemented a general confinement and this measure was not very democratic. This measure was legally decided by the Government (the legal basis) on March 23, but the confinement began on March 17, therefore the legal basis was established *a posteriori* and the adoption of the law took place under the conditions described. This did not allow the questioning of many issues that should have been discussed and agreed upon.

Therefore, he expressed that they have a measure in France, but that it is applied worldwide or in several countries, which will have an undeniable impact in the next few years, as the 1929 crisis had. But the causes that generated this crisis should shed light on the fact that today, democracies are more established, there is more debate and we cannot just say "in the name of public health we can do whatever we want" and say "stay home or else, you are not just putting your life in danger but also that of the rest of the population." With this argument, the first person who says "yes, but we must discuss this because the measure is a bit liberticidal" could be subjected to negative consequences.

Madeleine Dahlstein of the Electoral Tribunal of the Federal Judiciary of Mexico

Related to the emergency management and the independence of courts, before COVID-19 we saw a general and slow technological revolution within the courts, e.g. online trials; some or most had only e-filing and fewer had hearings on line, and it wasn't until COVID-19 that we started to have temporary orders and practices coming out for different courts to revolutionize in that sense. ¿Is technology here to stay? ¿How reasonable is it that courts make their adjustments sooner than later?

Fourth speaker, Ann Walsh Bradley, Justice, Supreme Court of Wisconsin

Technology is here to stay. There are a lot of horrible consequences from this COVID-19 pandemic, but there are a few things that are encouraging in terms of progress of access to justice issues, access to courts, enhancing the e-filing, adding online availability has been crucial. Before a judge would have never allowed for hearings to be held online. It would have been thought of as impossible, something that cannot be done. And now, in terms of trial courts, it will become routine even after the pandemic passes. It has pushed them into wiser uses of technology and allow greater access to the courts.

Second speaker, María Mercedes Delgado, Coordinator of the Technical Cabinet (Justice), Supreme Court of Spain

She commented that in Spain during the pandemic, the confinement has been total, without the possibility of taking any action, and even in the courts all procedural activity has been suspended. It was through the post-alarm extensions that certain

guidelines were implemented to activate the procedural and administrative deadlines that were totally suspended.

In this sense, on the one hand home office digital working has been implemented. Before in Spain, almost no company or administration applied the teleworking system. Currently, it has not only been implemented at the business level, but also in the general administration of the State where a law has already been approved in which this possibility is allowed. It has been shown that it works effectively and that it can be a conciliatory measure for family life and is important in these situations where health issues are involved.

From the point of view of technology applied to the administration of justice, there are initiatives by the Ministry of Justice with the General Council of the Judicial Power, where progress is being made in the adoption of criteria and measures to be able to implement the technological measures that have been carried out forcibly as a result of the pandemic; I am referring to the holding of hearings, summons and many actions electronically that were previously carried out in person. Therefore, she expressed agreement that technology is here to stay and will surely provide us with many means and many facilities that were not previously available.

Dan Malinovich:

He thanked and commented on the new normal we are currently facing, and what the norm will be like in the future. Thus, he invited the panelists to make final remarks.

Fourth speaker, Ann Walsh Bradley, Justice, Supreme Court of Wisconsin

She commented that this virtual forum has shown that we live in interesting and challenging times. Many times, she said, she does not like attention to be focused on her and emphasized that the attention should be on the state of Wisconsin since they are going through the challenges of the pandemic and electoral issues. She mentioned other cases that are pending but stressed that in the case she spoke about, various problems were illustrated.

Four pending federal lawsuits deal with those problems, and they are requesting that a federal judge should require that more domestic workers be hired in the state of Wisconsin. They are requesting that a federal judge issue an order so that there is more security in the votes (ballots) of abstention or absence. They request the opportunity that on election day, someone approaches the citizens' car to vote (as an alternative to approaching the machines).

Second speaker, María Mercedes Delgado, Coordinator of the Technical Cabinet (Justice), Supreme Court of Spain

She concluded by saying that one of the lessons this crisis has left us at a global and community level, for the prevention and containment of the pandemic, sheds light on the social and economic repercussions that make coordination essential. In Spain the repercussions are tremendous in the negative sense, either due to strikes and other types of economic consequences in the population. The Bank of Spain has already indicated that they are facing the largest public debt in the history of Spain, so it is necessary to undertake reforms to combat the consequences, especially for the most vulnerable sectors of society such as women and youth.

In this sense, it is necessary to reform the labor market since, among other sectors such as industry, it has a higher percentage of men; in others, such as the hospitality industry, young women prevail. However, due to this health crisis, the sector that has really been affected is the hospitality industry. Therefore, the negative consequences of the crisis directly affect women and young people.

The necessary reforms respond to what is demanded by the institutions of the European Union, both the Council and the Commission, which establish the need for reform plans and obtaining reconstruction funds. It is clear that the prevention and containment of the virus is essential so that later, this economic and social crisis does not become a pandemic or that it lasts so long that in the end it is practically impossible to rebuild a country, or that it extends more than necessary and affect more population.

First speaker, Jean Phillipe Derosier, Professor of Public Law at the University of Lille

He concluded by talking about a current event in France; the state of health emergency that was decreed and created from the law of March 23, would be suspended on July 10 at midnight. The reality is that a new law has been adopted that was promulgated on the same date and that will begin to be applied the first minute of July 11 to constitute the new law with other emergency restrictions. It is not about the general lack of focus of the population, but restrictions that go against freedoms, but are considered transitory measures until the expiration date of that law, which will be October 31.

The period of this new law includes the return of the vacation period, which could lead to social tensions due to reforms that are going to be current again; in addition, this law has an important element related to the democracy of the elections: the freedom of demonstrating or gathering may be restricted because the government could use the law to prohibit crowds from gathering under the pretext of catching the virus.

He added that the Senate submitted that law to the Constitutional Council, who validated it but provided some clarifications preserving democracy and considering the preservation of public health, with the right to demonstrate without requesting authorization. He specified that for the Constitutional Council the restrictions may only be carried out in justified places and for justified reasons due to the circulation of the virus and the fight against the epidemic.

He expressed his wish that the next meeting of the working group between UNDP and the Global Network on Electoral Justice could be face-to-face. He thus thanked again for the invitation, the participants, the Scientific Committee and members of the GNEJ.

Dan Malinovich:

He finally thanked the panel, the participants, and spoke of the expectation of the third virtual forum of the GNEJ, whose date would be defined soon.