

# **BRAZILIAN ELECTORAL SYSTEM**





Your Excellency Koen Lenaerts, President of the Court of Justice of the European Union, with respect and to show you my esteem and consideration, herewith I submit this brief document drawn up by myself, Elisa Robson, Federal Deputy (first alternate), and Dr Mauricio dos Santos Pereira, lawyer.

The idea of this document is to bring you information about the current electoral process in Brazil, as well as the theme of Democracy. This last one is so pertinent nowadays and is also the foundation of this European Court of Justice.

We understand the term "neighbourhood" to be of a broad concept capable of absorbing the friendships and rights to dignity, liberties and life of peoples who do not share borders with this conglomerate of European States, thus, taking hold of the Regulation (EU) 2021/947 of the European Parliament and of the Council, which in its items 28, 43 and 46 thus express global feelings about the individual rights of the citizen, let us see:

*(28) The European Neighbourhood Policy aims at deepening democracy , promoting human rights and upholding the rule of law, stabilising neighbourhood countries and strengthening their resilience, including by promoting political, economic and social reforms, as key policy priorities of the Union. To achieve its objective, the European Neighbourhood Policy reviewed in 2015 focuses on the following priority areas: good governance, democracy, the rule of law and human rights, with a particular emphasis on strengthening dialogue with civil society; [...] The profile of Union assistance in the Neighbourhood should be raised.*

*(43) EU Election Observation Missions should contribute to increasing transparency and confidence in electoral processes and should provide an informed assessment of elections and recommendations for further improvement of the electoral process within the framework of the Union's cooperation and political dialogue with partner countries. [...]*

*(46) Civil society organisations encompass a wide range of actors with multiple roles and mandates, including all non-state, non-profit, independent and non-violent structures through which people organise to achieve shared goals and ideals, whether political, cultural, religious, environmental, social or economic in nature. Operating on a local, national, regional or international scale, they include urban and rural, formal and informal organisations. The Union attaches importance to the diversity and specificities of civil society organisations and engages in dialogue with accountable and transparent civil society organisations that share*



*its commitment to sustainable development and to the fundamental values of peace, freedom, equal rights and human dignity.*

*With a view to achieving the Union's objectives and promoting its values and interests, the Instrument should provide for Union support to civil society organisations. Civil society organisations should be adequately consulted and have timely access to the information they need in order to participate in an appropriate way and play a meaningful role in programme design, implementation and monitoring procedures. The Instrument should support the role of organisations supporting democracy, free elections, civil society, human rights and the rule of law worldwide, such as the European Endowment for Democracy, as well as the role of civilian election-monitoring organisations and their European and other platforms at regional and global level.*

The choice of the items above was for us a facilitator so that we can express our views on Democracy when it is umbilically connected to the theme of free elections, which represents the purest and clearest demonstration that the citizen is the State and the original power delegated by it to those who manage the State is the most relevant constitutional foundation to be observed.

Without freedoms there is no democracy, without clean, free and transparent elections there is no security for the elected, the non-elected and the voter/citizen.

In this prism, we use the items above, to, opening the doors to our text, present to you the Brazilian reality regarding the system of elections and the imminent risk that Brazil runs by insisting on maintaining a preferably electronic system, without physical verification of each vote, by the Electoral Court, a means questioned by several experts and already declared unconstitutional in some countries, such as Germany, which is part of this European Union.

For these reasons, with the utmost confidence, we will now expose facts that, already implemented in Brazilian society, may represent, in theory, if maintained in our system, a serious risk to democracy, an institution that must be preserved and certainly is by this Court of Justice, which is usual for any institution in the world truly concerned with freedoms.

It is for no other reason that in Brazil the people's motto is "God, Homeland and Family", in a represent-



tact of the most natural rights of man, institutes that suffer some contemporary resistance, but as the Brazilian State is mostly Christian, we have a remarkably resilient, combative and warrior spirit in the maintenance of this miscegenated religious core. Although we strive for progress and the evolution of the aims of the collectivized society, we do not give up our religiosity and our fundamental rights, which gives us faith in the present with repercussions in our future, in an assertive perspective that our freedom of choices are perennial and the Original Power will never be mitigated.

For all these reasons, Your Excellency, we ask leave to ask this Union of States, through a systematised hermeneutic that aims at human dignity, to look at the truth that is happening in Brazil, which is currently experiencing the best Presidential management ever, as our President has been working steadfastly to combat corruption and calling for safe and transparent elections, with the public counting of votes.

### **Brazilian Constitutional System - Principle of Publicity**

In short, the whole approach we are trying to bring to you is that maximum legality must be the soul of public administrative acts. It is through publicity that the State informs the citizen what is being done in a way that, unsurprisingly, is always a preserved fundamental right.

The parity between this thought and the Brazilian system of elections has a special stage, given that it is the lack of publicity of the public ballot that tarnishes the principle of legality Art. 37 of CF/1988.

As we will see below, the electronic voting system used in the Brazilian elections tacitly revoked the primordial right of the voter to fully participate in the Universal Suffrage, since, who counts the votes is the electronic system not reached by the layman and, even if he is an elector expert in computing, he will not be able to follow absolutely nothing, since the counting of the votes takes place in the realm of bits and bytes, a virtual world impossible of visual monitoring. Thus we bring the teachings below, with which we are in full agreement on the subject:



*Every person, every citizen has the right to be informed and, therefore, to know the things that are being decided by the State. Hence the natural publicity of every administrative act. Not only is everyone assured access to information (art. 51, XIV of the Federal Constitution), but also, obviously, in a more intense and special way, information related to public business, to the activities of public servants, starting with the President and the Ministers. It is clear that this right to information has its most conspicuous form of exertion and ideal field of application in the public area - in public offices - even because private business is not resolved with the Minister of State, nor is there private business done by public agents, in the exercise of public functions. Everything is public (that is: of the people, because this word comes from the Latin: publicum, which means strictly of the people, that is: of all citizens. (GERALDO ATALIBA)*

Without respect for legality, which includes the principle of publicity of public acts, chaos is instituted, that is, the citizen is always suspicious about what is to come, becoming a hostage of fear, alienated from the present and the future, without any minimum legal security, which can institutionalise disorder, weakening the designs of a totally free Constitution and Democracy.

*"Evident but consecrated disorder, and in many nations made necessary by the weakness of the constitution, here is what secret accusations are. Such a custom makes men false and pretended. Anyone who can suspect to see in another an informer, sees in him an enemy. Men then become accustomed to concealing their own feelings, and by practising to hide them from others, they finally end by hiding them from themselves. Unfortunate are men when they reach this point: they err, without clear and immutable principles to guide them, lost and floating in the vast sea of opinions, always busy to save themselves from the monsters that threaten them; they live the present moment always embittered by the uncertainty of the future; deprived of the lasting pleasures of tranquillity and security, only a few moments of pleasure, scattered here and there in their sad life, devoured in haste and disorder, console them for having lived". (CESARE BECCARIA - 1764)*

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**Art. 37** The direct and indirect public administration of any of the Powers of the Union, the States, the Federal District and the Municipalities shall abide by the principles of legality, impersonality, morality, publicity and efficiency and also by the following: (Redaction given by Constitutional Amendment nº 19, 1998) Conf. Geral- do Ataliba - Eficácia do Ato Administrativo -Publicação, in Revista de Direito Público, nº 99, pages 18/19.



The purposes for which this text was conceived are to act against disorder, against the destructuring of Democracy and, above all, against the mitigation of our Sovereignty, I mean, the Sovereignty of the Original Power.

### **The Brazilian Electoral System - History**

For your knowledge, the Brazilian electoral system as it stands today was instituted in 1996. The electronic ballot boxes represented, at the time, a romantic vaunt of innovation in technology, which made Brazilians proud in headlines indicating that Brazil had the fastest and most secure electronic system of elections.

Alerted to the four corners of the world, in 1996 we had about 32 million votes collected through 70,000 electronic ballot boxes, which took place in 57 cities with more than 200,000 voters each, on September 29, 1996, the press released the speech of the then President of TSE, **Marco Aurélio Mendes de Farias Mello**, who said

*"The Electoral Justice has plenty of reasons to believe that the voter will not face difficulties voting with the new system. The machine developed is very simple and has undergone the most exhaustive tests "*

As a technological milestone, the electronic ballot boxes started, in fact, the overthrow of the right of the voter, without the awareness of jurists, politicians and the Supreme Court, because it was implanting a means of cassation of the original sovereign power of the citizen. At the time, everyone, drunk with the "glory of technology", was not fooled by an unconstitutional error, at that time such fact was ignored by almost everyone.

The truth is that the country had created a trap always ready to be triggered by the Superior Electoral Court (TSE), which began to adopt the voting machine as a prosperous daughter, however, full of vices. Note that since always, after the institution of the electronic ballot box, the keys to the results remained under the command of the TSE that had assumed the destiny and control of elections, in

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BECCARIA, Cesare (1738 - 1794). Dos Delitos e das penas, Cap. XV: "SECRET ACUSATIONS", translated from the Italian original Dei delitti e delle pene, translated by José de Faria Costa and revised by Primola Vingiano. Lisbon: Calouste Gulbenkian Foundation, 1998. p. 90- 92. Minister who worked in the Superior Electoral Court, but also acted as a Minister of the Brazilian Supreme Court, double role that works until today, retired on 12/07/2021, Minister Marco Aurelio had an important role in both houses of the electoral justice and the Constitutional Court.



in particular, on the "virtual vote count", maintaining haughtiness over the questionable result.

At that moment, in 1996, the affront to the Federal Constitution took place. The electronic ballot boxes, as implemented, represented an attack on the exercise of citizenship, since the exclusion of the right of the voter to scrutinise the votes was applied, tacitly revoking fundamental democratic rights.

Thus, it is certain to affirm that the installation of electronic ballot boxes from 1996 until the present moment has consolidated an obscure milestone, which has become, in theory, a means of power only for those who dominate them.

The words brought to Your Excellency, has the power of information on the reality of the former permeates the Brazilian voter. As democracy, as also defended by this distinguished Court, is formed by sound foundations among which the freedom of choice in free elections, any obstacle to transparency and the full exercise of the Universal suffrage, represents fair motivation to appeal to whoever defends human dignity, so that they look at what happens in Brazil and, to the extent possible, without entering into the issues of Sovereignty, they can know, debate and who knows, to the extent of the conclusions they reach, suggest to Brazil to institute the public counting of votes, without which there is no legality, nor democracy.

### How the Brazilian Electoral System works

In Brazil, first generation electronic ballot boxes are used to receive the votes of Brazilian voters, 71,804,110 men and 80,468,657 women, as per the table below by age group:

Faixa Etária	Masculino(M)	%M/T	Feminino(F)	%F/T	%N/T	Total(T)
Inválida	80.587	43,850	103.185	56,150	0,000	183.772
16 anos	452.188	44,820	556.609	55,180	0,000	1.008.797
17 anos	714.042	46,910	808.036	53,090	0,000	1.522.078
18 a 20 anos	3.510.310	47,990	3.804.214	52,010	0,000	7.314.524
21 a 24 anos	6.063.419	49,020	6.306.176	50,980	0,000	12.369.595
25 a 34 anos	14.726.234	48,140	15.864.536	51,860	0,000	30.590.770
35 a 44 anos	14.929.029	47,600	16.431.830	52,400	0,000	31.360.859
45 a 59 anos	17.594.085	47,030	19.807.092	52,950	0,020	37.407.371
60 a 69 anos	8.026.887	45,880	9.460.243	54,070	0,050	17.495.814
70 a 79 anos	3.997.723	44,420	4.994.335	55,500	0,080	8.999.058
Acima de 79 anos	1.709.606	42,200	2.332.401	57,570	0,220	4.051.071
<b>TOTAL(TT)</b>	<b>71.804.110</b>	<b>47,150</b>	<b>80.468.657</b>	<b>52,830</b>	<b>0,020</b>	<b>152.303.709</b>

There are more than 152,303,709 voters in consolidated calculations up to May 2022, a number of citizens/electors whose rights to freely choose their candidates must be preserved and guaranteed, not only by the right to vote itself, but by the full possibility of actively participating in the counting of the votes cast in the ballot boxes.

As an axiom of universal right, suffrage is one of the most important rights of a free society, and every State must be free, and must be defended even by its distant neighbour, for it is the maintenance of this right that is the strength of mankind to be free from tyrannies.

Well, without going into the legislation that garnishes the Brazilian electoral system, we expose the stages in which the elector participates, as well as we will expose the stages that are indispensable by law, but that the current Brazilian system does not respect:

The Electronic Ballot Box, illustrative image, but true to the machine used in Brazil:



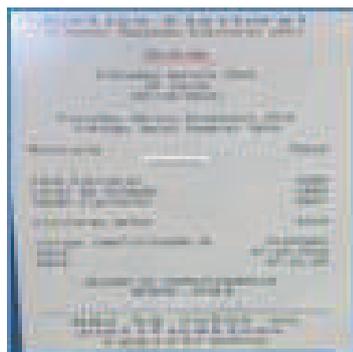


This is the machine that receives the votes of more than 152 million voters, in fact, throughout Brazil there are approximately 400 thousand machines like this one, which even has a device for capturing biometrics.

This machine is packaged in a voting booth (made of cardboard) so that the moment of voting is kept secret, illustrative image below:



1. Before the elections start, the election officials print the so-called "zerézima" which is printed by the ballot box, in a demonstration that the ballot box has no votes stored in its memory, it is zeroed.



2. On voting day, the Elector goes to the clerk, who verifies his/her identity, either by biometrics or by checking a personal document with photo;
3. Once the identification is correct, the electronic ballot box is released for voting, the Elector goes to the booth, enters the number of his candidate and presses the (Green) button to confirm;
  - a. The voter can vote blank or annul the vote.
4. At the very moment when the voter presses the confirmation button, his participation in the elections is lost, like magic, the voter is excluded from the process of universal suffrage;
5. From then on, the voter no longer participates in anything, so he is without any guarantee that his vote has really been counted and if it was really directed to the one he voted for, because this electronic ballot box does not print the vote, it simply keeps it in its internal memory, being put back internally, by the ballot box itself, at the end of the election hours. The counting of all the votes cast in each ballot box is done electronically, without it being possible to follow up, to visualise, to be sure that the count is correct, without it being possible to see if there are errors, etc. Finally, the result comes out in a document called BU (Boletim de Urna).



6. This (BU) shows which votes went to which candidate, without it being possible to be sure that the printout represents exactly what was typed. No one can say everything is right, no one can say everything is wrong, there is no way of knowing.



7. There is no vote-by-vote printing, the individual votes are not kept for possible counting or recounting, and in the current system, the only proof of vote is the ballot paper, which would represent, in theory, the scrutiny carried out by the electronic ballot box itself, that is, without the participation of the voter. There is **NO PUBLIC COUNTING OF THE VOTES**, the voter is obliged to trust that the software has done an absolutely clean count, with integrity and exactly the same as for individual votes. This is not conceivable in any Democracy.

Note that not even the most expert computer technician is capable of knowing exactly what happened inside the electronic ballot box while it "counts the votes" internally. It is impossible for the average citizen/elector to have knowledge about what happens inside the electronic ballot box, being, therefore, a machine programmed to exercise the right of the voter regarding the counting of the votes, an excrescence that has nothing to do with electoral law.

There is an explicit unconstitutionality in the electronic voting system used by the Brazilian TSE, because it illegally removed the right of the voter to analyse and count the votes, a clear demonstration that the system is illegal, because it wounds to death the full exercise of universal suffrage.

It is on this point that we ask you and your peers to be aware that the Brazilian voting system is illegal because it does not allow the public counting of the votes and does not even permit an eventual recount.

There is no way to recount what is in the virtual world managed exclusively by those who program the system. Some servers create the program, some servers are the only ones who know exactly what's in the program, only these servers will be responsible for the electronic counting of millions of votes. This is not democracy, no matter how loyal these servers are to the country, they can't be said to be trustworthy, who can blindfolded believe that these servers did everything correctly?

The **German Supreme Court declared the type system unconstitutional, precisely because this electronic ballot box system excludes voter participation in the public counting of votes, therefore, it does not contemplate the most traditional democratic assumptions.** The following is part of the judgment of that German Court:

## **Federal Constitutional Court - Decisions - Partial incompatibility of the Federal Voting Machine Por- tary with Art 38 GG iV...**

Di Fabio, Lübke-Wolff, Gerhardt,  
Verdict - recognised by right:

### **Item 38**

The particular danger with computer-controlled electronic ballot boxes lies in the fact that elections can be influenced far more effectively by the manipulation of the software at the machine manufacturer than by the elections at the ballot box. Thus, defective software can damage a certain proportion of the Also it is cen- surable that § 35 BWG requires only the secrecy of the vote, but not the observance of the other electoral principles. The verifiability of the election result under Art. 41 BWG is impaired if, due to the design, it can no longer be determined retrospectively whether the election result was lawful. to allocate the votes cast to a certain party, irrespective of the voting decision of the respective voter, or to distribute the total votes cast according to a predetermined proportion between the parties elected. Manipulations are possible both by politically or financially motivated "insiders", in particular employees of the manufacturer, as well as by external third parties who have gained access to the manufacturer's computers (e.g. by means of viruses or Trojan horses); given the complexity of the software used, they cannot always be discovered, even with careful quality control by the manufacturer. Although it is necessary to prevent unauthorised access to the devices between elections by taking appropriate security measures, corresponding controls do not occur in Germany; nor are there adequate regulations in place that could guarantee the protected storage of voting machines.

### **Item 42**

It is also objectionable that § 35 BWG only requires secrecy of the ballot, but not observance of the other electoral principles. The verifiability of the election result provided for in Art. 41 BWG is undermined if, by reason of the design, it can no longer be determined retrospectively whether the election result was lawful.

**Item 154**

The use of Nedap electronic ballot boxes of ESD1 hardware versions 01.02, 01.03 and 01.04 and the ESD2 version 01.01 hardware violates the principle of public elections (Art. 38 in conjunction with Art. 20 para. 1 and 2 GG), because these ballot boxes did not allow for effective control of the voting process and no reliable verification of the election result.

**Item 155**

After voting, the votes were recorded exclusively in electronic memory. Neither the voters, the polling stations, nor the citizens present at the polling station were able to verify that the votes cast were recorded non-falsely by the voting machines. From the control unit's display, election officials could only see whether the ballot boxes had recorded a vote, but not whether votes were recorded by the ballot boxes without altering the content. The voting machines did not have the possibility of recording the votes independently of the electronic storage in the vote storage module, which would allow the respective voter to check his or her vote.

**Item 156**

The main steps in the tabulation of results by the ballot boxes could also not be understood by the public. Since the tabulation of results was exclusively a data processing process that took place in the voting machines, neither the electoral bodies nor the citizens present at the tabulation of results could see whether the valid votes cast were correctly attributed to the candidates and whether the total votes cast for individual nominations were correctly determined. It was not enough that the result of the calculation process carried out in the electronic ballot box could be noted down on the basis of a summary printed on paper or on an electronic display. A public review, through which citizens themselves could have reliably understood the determination of the election result and without any special technical knowledge, was thus ruled out.

As can be seen, Excellency, the conclusion reached by the German Constitutional Court is that the counting of votes done internally by the electronic ballot box's own program does not serve the purposes of an honest, free and legal election, not because it makes a value judgment of the morality of those who control the software, but because there is no way to guarantee 100% that the program has not been violated in any way, and in particular, there is no way to guarantee voter participation throughout the electoral process, especially at the public moment of counting the votes.

Thus, we hope to have demonstrated to you the risks of an electoral system carried out by electronic ballot boxes that do not print vote-by-vote and that issue results by internal counting by the ballot box itself.

Our intention is to demonstrate the truth of the facts and to bring to Your Excellency, without any connotation of criminalizing our Superior Electoral Court, nor its Ministers, but to mark a position acclaimed by Brazilian society that wants and has been 'shouting' in the streets of Brazil for the elections to be conducted by printing the vote with its public counting of the votes.

It is not too much to inform, as you certainly know, that the Brazilian Supreme Constitutional Court, the STF, declared unconstitutional the printing of the vote on the grounds that "there would be a breach of secrecy", which in fact does not exist. The decision of the Brazilian Supreme Court goes against the world democratic assumptions and is, in a way, corroborating so that Democracy in Brazil is not fully exercised by the citizen/elector. Our Electronic System removed the fundamental right of the public ballot, substituting it by computer programs, delivering the counting and decisions of the elections of a continental nation such as Brazil in the hands of a few technicians who control the voting machine.

We hope that you and your peers will be convinced and that the conclusion on the arguments presented here will be for the improvement of Democracies and, having in mind that the Superior Electoral Court, by its president the Minister Edson Fachin, called more than 70 (seventy) ambassadors of several countries to be inspectors of our electoral system, "assuring and guaranteeing security that does not exist", it is opportune that the Brazilian citizen, through the creators of this document, clarifies to you. It is opportune that the Brazilian citizen, through the creators of this document, clarifies to you and to the European Union that you represent, clarifications possibly withheld from the invited Ambassadors.

The hope of the Brazilian people, a distant neighbour, but devoted to democracy as in European countries, is that this distinguished Court is convinced of the illegality represented by the electronic ballot boxes in our electoral system, and that it can convey to its ambassadors the peculiarity of this system and the risk it represents to democracy.

There is no full 100% security in the world in any computer system. It is impossible to accept the word of a member of the TSE, even of a Minister, as if it were impregnable dogma. The Electoral Court of any country is not on the level of Olympus, and its voice cannot be accepted as divine and supreme.

Finally, we renew our collaborative spirit always aiming at a harmonious Brazilian presence, God-fearing, founding our democracies by the freedoms in a vision that the distances between our countries is simply a geographical mark, since the Brazilian people, always so receptive to foreigners, raise flags of good neighbourliness.

This being what we had to report, we protest in renewing our highest feeling of esteem and consideration placing ourselves at your disposal for further and perhaps better clarifications if necessary.

Brazil, 21 June 2022

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