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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**DRAFT SUMMARY REPORT
ON THE SECRECY OF THE VOTE
IN THE CONTEXT OF ELECTIONS BY PARLIAMENT**

by
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**This document has been classified restricted at the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

Introduction

1. *Following a request from the Parliamentary Assembly's Monitoring Committee, the Venice Commission decided, at its 64th plenary session (21-22 October 2005), to prepare a study on secrecy of the vote in the context of elections by Parliament and appointed Mr Chagnollaud as rapporteur.*

2. *A draft questionnaire on secrecy of the vote in indirect elections was drawn up on the basis of comments by Mr Chagnollaud, and adopted by the Council for Democratic Elections at its 16th meeting, on behalf of the Venice Commission (CDL-EL(2006)004rev).*

3. *Replies to the questionnaire have been received from Commission members from the following states: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, Denmark, Estonia, Finland, France, Georgia, Hungary, Ireland, Lithuania, Luxembourg, Malta, Moldova, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Spain, "the former Yugoslav Republic of Macedonia", United Kingdom.*

4. *In the light of the replies to the questionnaire, Mr Chagnollaud has prepared this summary report.*

5. *This study was adopted by the Council for Democratic Elections at its ... meeting and by the Venice Commission at its ... session.*

A. Is there a constitutional and/or legislative provision of a general nature which guarantees secrecy of the vote in your country?

6. The vast majority of countries which replied to the questionnaire have constitutional or legislative provisions guaranteeing secrecy of the vote as a corollary of universal suffrage: only Andorra and Bosnia and Herzegovina, it seems, have no formal safeguards to protect the secrecy of the vote.

If so, does this provision concern equally all types of election or only those which take place by direct vote?

7. Of the countries which guarantee secrecy of the vote through a general provision, only in France do these safeguards apply to all types of election. In the rest, they apply to direct elections only. Of the countries which guarantee secrecy of the vote through specific provisions, only Armenia, Belgium and the Netherlands cover all types of election, i.e. both direct and indirect. In the other countries, the provisions apply to direct elections only.

8. Comments:

- No further reference will be made to Bosnia and Herzegovina and Denmark as it was perhaps not clear to the respondents that what the questionnaire was asking about was elections by Parliament.
- Luxembourg is a special case in that there are no indirect elections in that country.

B. Which elections take place in Parliament?

9. The range of elections that take place in national Parliaments is fairly extensive.

President of the Republic/Head of State: Albania, Estonia, Hungary, Malta, Moldova, Netherlands (King or Regent, if need be), San Marino (election of Captains Regent).

President of the Chamber (and members of parliamentary committees): Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Croatia, Cyprus, Estonia, Finland, France, Georgia, Hungary, Ireland, Lithuania, Malta, Moldova, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Spain, "the former Yugoslav Republic of Macedonia", United Kingdom.

Ombudsman(men): Belgium, Croatia, Finland, Georgia, Malta, Netherlands, Spain, "the former Yugoslav Republic of Macedonia".

Head of the Central Bank and/or members: Armenia, Azerbaijan, Croatia, Estonia, Finland, Georgia, Poland.

Constitutional Court judges: Albania (election of the president), Armenia, Austria, Azerbaijan, Croatia, Estonia, Georgia, Hungary, Poland, Portugal, Russian Federation, Spain.

Other supreme court judges: Armenia, Azerbaijan, Belgium, Croatia, Estonia, Georgia, Hungary, Moldova, Poland, Russian Federation, San Marino, Spain, "the former Yugoslav Republic of Macedonia".

Prosecutor General: Albania, Armenia, Croatia, Hungary, Moldova, Russian Federation, "the former Yugoslav Republic of Macedonia".

Appointments relating to oversight of public finances (members of the Audit Office, auditors, etc): Armenia, Austria, Belgium, Croatia, Estonia, Finland, Georgia, Hungary, Malta, Russian Federation, Spain.

Appointments relating to broadcasting: Armenia, Croatia, Poland, Spain.

For each one:

1. who is authorised to vote and how is the electoral procedure organised?

10. There are no conditions to be met in order for MPs to exercise their right to vote in any of the countries that replied: the only requirement is that they be present, with the notable exception of France where MPs can vote by proxy (the other countries either do not indicate whether this is possible or explicitly state that it is prohibited). The elections and appointments referred to above are normally shared between the upper and lower chambers, assuming, of course, the Parliament is bicameral. In all cases, the President (of the Chamber or Parliament) is elected by assembly. The lower chambers tend to be responsible for the most important elections.

11. As far as the specifics of the electoral procedure are concerned, every country has its own way of doing things: diversity is the rule. **In all the countries that replied to the questionnaire, elections in Parliament are supervised by the bureau and/or the president of the Chamber (or the chairperson of the sitting) except for countries that have (special or other) committees to oversee the ballot, i.e. Armenia, Azerbaijan and the Russian Federation.**

2. is secrecy of vote formally required during voting; if so, on the basis of what provisions (parliamentary rules of procedure, etc)?

12. The vast majority of countries answered in the affirmative. **Only Andorra, Ireland, Malta, Poland and the United Kingdom (except for elections in the House of Lords) do not insist on secret ballots.**

13. Some European countries have specific arrangements, one example being Norway where secrecy of vote is not a formal requirement but is observed in practice. In the **Russian Federation**, secret ballots are required for elections in the upper chamber but not for elections in the lower chamber, where the decision is left to MPs, except when appointing the Commissioner for Human Rights. “**The former Yugoslav Republic of Macedonia**” does admittedly stipulate in its rules of procedure that secrecy of vote is required for elections by Parliament, but this provision has never been applied in practice. As for the other countries which insist on secret ballots, a number deserve special mention. In **Spain, Turkey, Georgia and Azerbaijan**, although secrecy of vote is required for certain specific elections, the decision as to the type of ballot (secret or public) is left, under the parliamentary rules of procedure, to Parliament. **Croatia** requires secrecy of vote only if the number of candidates is greater than the number of posts while **Estonia and Romania** require secrecy of vote only in the case of certain specific elections.

14. The countries where secrecy of vote is required for elections under the parliamentary rules of procedure are as follows: **Albania** (under the Constitution, when electing the President of the Republic), **Armenia, Austria, Belgium, Finland, France, Hungary, Lithuania, Moldova** (under the Constitution), **Monaco, Netherlands, Portugal and San Marino**.

3. what practical arrangements are made to ensure its effectiveness?

15. In countries where secrecy of vote is required, in some form or other, the practical arrangements to ensure its effectiveness traditionally consist of providing sealed ballot papers and a ballot box. This is so in **Croatia, Estonia, Finland, Hungary, the Netherlands, San Marino, Turkey** (voters have three choices) and “**the former Yugoslav Republic of Macedonia**” (lists). In addition to these traditional methods, some countries use electronic systems: **France, Russian Federation and Spain**. A few countries also use polling booths: **Austria, Azerbaijan** (at MPs’ request), **Lithuania, Moldova and Romania**.

16. In most of the countries that replied, voting is supervised by the chairperson of the sitting, the bureau or secretaries, or even by a supervisory committee.

C. Should there be a violation of secrecy of vote, in the framework of an election by Parliament:

1. what are the different types?

17. *It is worth noting that very few European countries have regulatory or legislative provisions to deal with violations of this kind.*

18. Although there is no reference in its rules to violations of secrecy of vote, the **Hungarian** Parliament cites a case where MPs chose to reveal how they had voted, in the June 2005 presidential election.

2. at what moment can it be proved? Is it limited to divulging the contents of the vote during voting?

19. Since most of the countries which replied to the questionnaire have made no provision for - and in some cases have not even envisaged - such an eventuality, they did not answer the question.

20. In the case of **Albania**, however, a violation may be noted at any time and is in fact limited to divulging the contents of the vote. In **France** and **Georgia**, violations may be recorded at

any stage in the voting. In **Romania**, if it is suspected that there has been a violation of secrecy, the ballot may be contested only after the results are announced.

21. *The following countries operate on the basis of assumptions.* In the case of **Moldova**, the violation must be noted (and a complaint filed) before the results are announced by the Constitutional Court because all decisions given by the Court are final, with no possibility of appeal. In the case of **San Marino**, violations may be noted only during the election.

3. are there any means of appeal and before whom (election judge, presidency of the Chamber, etc)?

22. As far as means of appeal are concerned, most countries refer any problems concerning ballots to the Chair of the sitting, the President of the Chamber or the supervisory committee overseeing the voting, depending on how the ballot is organised (cf. question B, 1): **Albania** (chairperson of the sitting), **Croatia** (President of the Parliament), **Estonia** (voting committee or electoral committee), **France** (President or members of the bureau), **Georgia** (chairperson of the sitting), **Netherlands** (President of the Chamber), **Norway** (President of the Chamber), **Russian Federation** (competent committee), **Spain** (bureau of the Chamber).

23. In **Armenia, Moldova** and **Portugal**, appeals may be filed with the Constitutional Court.

24. In **Romania**, only the leaders of parliamentary groups can file an appeal with the bureau of the Chamber in matters concerning voting.

25. In the **United Kingdom**, the only remedy in the event of a violation of secrecy of vote would be for the Clerk of Parliaments (senior official) to refer the matter to the Committee for Privileges.

26. Lastly, in the case of **San Marino**, although the ballot itself cannot be contested, should the Captains Regent (the collegial head of state), acting on a request from a member of Parliament, decide not to suspend a ballot where irregularities are believed to have occurred, this decision may be challenged by any citizen.

27. The other countries do not have specific remedies, and **Belgium** further states that since the chambers are not subject to jurisdictional control, ballots cannot be contested in the courts.

4. to what extent and how can it be sanctioned?

28. Since the law in most countries makes no mention of violations of secrecy of vote, there are no penalties either.

29. In **Albania, Estonia, Moldova** (hypothetically speaking) and the **United Kingdom**, ballots are to be declared null and void in such cases.

30. In **France, Georgia, Romania** and **Spain**, there are penalties for any MP who violates the secrecy of the vote, ranging from a simple warning to temporary dismissal from the Chamber.

5. are there any precedents or precise case-law?

31. Only three countries out of all the "respondents" cited precedents: **Albania** (problems with electronic systems, drawing complaints from the opposition), **Hungary** and **Turkey** (in both cases, there have been instances of MPs divulging how they voted).

32. According to **France**, the Constitutional Council declared itself incompetent to judge the legality of elections in Parliament. That would seem to be the only example of case-law connected with secrecy of the vote in Parliament.

Conclusion

33. To sum up, it will be observed that the principle of secrecy of the vote, aimed at ensuring electoral honesty, has constitutional force only in elections by direct or indirect universal suffrage. In the case of elections held within Chambers for the purpose of making individual appointments, there is no European standard that could be used to establish a general exception to the practice of public voting during sittings. And however morally reprehensible violating secrecy during a ballot might be in cases where such secrecy is the rule, punishing this behaviour, which is rarely recorded incidentally, is no easy task.