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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

INITIAL COMMENTS ON
“LE PATRIMOINE ELECTORAL EUROPEEN”

by
Mr Luis López GUERRA (Spain), member

Pages 12-14 (Stability of electoral systems)

1. Certainly, inclusion of electoral rules in the Constitution increases the stability of these rules. However, a Constitution cannot be an electoral Code. A mixed system, employed in the Spanish Constitution, consists in the establishing by the Constitution of some basic electoral rules (for instance, “criteria of proportional representation”) which must be developed by a special Organic Law, i.e. a Law which needs reinforced majorities in Parliament. The system, therefore, is semi-rigid, and ensures a certain stability.

Pages 14-16 (Organization of elections)

2. The presence of an impartial authority in the Electoral Boards is absolutely needed, at least in the new democracies. In my opinion, the only possibly independent authority is the judicial power. The presence of experts designed by political parties with parliamentary representation guarantees technical knowledge and mutual control, but, left to themselves, very probably they would arrive to political arrangements, favoring the strongest party or coalition. A mixture of judicial personnel and party experts would be a reasonable compromise. The presence of Administration representatives in the Electoral Boards is, on the contrary, very dangerous.

Pages 15-17 (Recourses and Appeals)

3. A double level of recourses (before the electoral board, and, afterwards, before a judicial organ) seems to be the more adequate. The question of standing is complex. Affected political parties should have standing to appeal, as well as candidates and (in some cases, and for specific claims) individual electors whose rights had been violated.

Pages 21-24 (Universal suffrage)

4. A question not posed is the one concerting the *obligation to vote*. In my opinion, abstention is a way of expressing a political opinion; therefore, the vote should be voluntary.

5. I have many doubts about the convenience of voluntary registration for voting (p.24). Experience shows that this type of registration favors person with higher levels of education and higher incomes; poorly educated people tend to avoid registration. In my opinion, official (automatic) voter registration, be it by means of the local census, or by other means, insures greater access to the polls.

Page 25 (Equality of vote)

6. Administrative divisions may force a certain inequality in voters distribution. This fact should not be considered negative in all cases, as it insures some extra political pull to underdeveloped or disadvantaged areas.

Page 26 (Candidates)

7. It seems reasonable to give the political parties some extra facilities to present candidates, compared with individual candidates or electors' aggrupations. Political parties are semi-public organizations, which perform functions which are important for the democratic system. A softening of the administrative requisites to present candidates seems advisable, in my opinion.

8. Concerning publicity of parties or candidates in the private press, it seems to me that the "fairness clause" should be adopted : all the candidates must have the same treatment from all the media, meaning the conditions for electoral publicity (for instance, prices, space availability) should be the same. A newspaper, or TV station (if electoral publicity is allowed) could not sell spaces to a candidate, while refusing selling it (or selling it at higher prices) to the other candidates.

9. Institutional publicity by the authorities (i. e. publicity in favor of participation in general, without reference to a concrete candidate) should be encouraged, in order to (hopefully) reduce abstentions.

10. Political publicity should not be allowed at polling stations, nor, in general during the voting day; in some countries it is forbidden also the day before the election.

Pages 30-and ff.

11. There are some questions maybe worth considering:

a) The day of the poll. Experience shows that polling in work days can deprive many persons of a possibility to vote, as voting implies loss of work, office, school or shop hours. Voting on holidays facilitates participation.

b) Official ballots? In come countries, political parties and candidates can print their ballots, according to official standards. I think that this increases the possibility of undue pressures, and "family voting" as some persons may be provided with specific ballots, and forced (by careful watching) to deposit them in the ballot-box. That may happen in rural areas, where access to alternative ballots may be hindered. The introduction of the official Ballot (also called *Australian ballot*) would reduce this type of dangers.

c) That would require the obligatory use of the voting cabin. If the use of the cabin is "voluntary" many persons would not dare to use it, as it would show they want to vote freely.

d) In the polling board, representatives of the parties should be present, as well as, if possible, some impartial member. This is difficult to obtain: in Spain, the President and two members of the board are chosen by lot among registered electors. Designation by the executive or administrative authorities does not seem to be very reliable.

Page 31 (Lists)

12. Blocked lists reduce the choice of the elector, but they reinforce the internal structure and discipline of political parties. Maybe it could be considered advisable to introduce a system of blocked lists in the initial moments of a democracy, to help strengthening party authority and discipline, allowing more freedom of choice to the elector at a later moment.