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(COMMISSION DE VENISE)

**SECRECY OF THE VOTE
IN THE CONTEXT OF ELECTIONS BY PARLIAMENT**

**SECRET DU VOTE
LORS D'ELECTIONS PAR LE PARLEMENT**

**REPLIES TO THE QUESTIONNAIRE
BY THE VENICE COMMISSION MEMBERS**

**REPONSES AU QUESTIONNAIRE
DES MEMBRES DE LA COMMISSION DE VENISE**

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**QUESTIONNAIRE ON THE SECRECY OF THE VOTE IN THE CONTEXT OF
ELECTIONS BY PARLIAMENT**

A. Is there a constitutional and/or legislative provision of a general nature which guarantees secrecy of the vote in your country? If so, does this provision concern equally all types of election or only those which take place by direct vote?

B. Which elections take place in Parliament ?

For each one :

1. who is authorised to vote and how is the electoral procedure organised?
2. is secrecy of vote formally required during voting; if so on the basis of what provisions (parliamentary rules of procedure etc)?
3. what practical arrangements are made to ensure its effectiveness?

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

1. what are the different types?
2. at what moment can it be proved? Is it limited to divulging the contents of the vote during voting?
3. are there any means of appeal and before whom (election judge, presidency of the Chamber, etc)?
4. to what extent and how can it be sanctioned?
5. are there any precedents or precise case-law?

**QUESTIONNAIRE SUR LE SECRET DU VOTE LORS D'ELECTIONS PAR LE
PARLEMENT**

A. Est-ce qu'une disposition constitutionnelle (et/ou) législative de caractère général garantit le secret du vote dans votre pays ? Concerne-t-elle indifféremment tous les types d'élections ou uniquement celles au suffrage direct ?

B. Quelles sont les élections effectuées par le Parlement ?

Pour chacune d'entre elles :

1. qui est autorisé à voter et comment s'organise la procédure électorale ?
2. le secret du vote est-il formellement requis lors du déroulement du vote ; si oui, par quelles dispositions (règlement des assemblées, etc...) ?
3. quelles sont les dispositions matérielles qui garantissent son effectivité ?

C. En cas de violation du secret du vote, dans le cadre d'élections par le Parlement :

1. quelles en sont les formes ?
2. à quel moment peut-elle être constatée ? Est-elle limitée à la divulgation du contenu du vote lors de son expression ?
3. existe-t-il des voies de recours et devant qui (juge de l'élection, bureau de l'assemblée, etc..) ?
4. dans quelle mesure peut-elle être sanctionnée et comment ?
5. existe-il en la matière des précédents ou une jurisprudence précise ?

ALBANIA / ALBANIE

A. Est-ce qu'une disposition constitutionnelle (et/ou) législative de caractère général garantit le secret du vote dans votre pays ? Concerne-t-elle indifféremment tous les types d'élections ou uniquement celles au suffrage direct ?

L'article 45, paragraphe 1 de la Constitution de la République d'Albanie statue que « chaque citoyen qui a atteint dix-huit ans, même dans le jour des élections, a le droit d'élire et d'être élu », tandis que le paragraphe 4 du même article statue que « le vote est personnel, égal, libre et secret ».

Dans cet article, il n'est pas précisé s'il s'agit de tous les types d'élections ou uniquement de celles au suffrage direct, mais, s'agissant d'une disposition de caractère général qui concerne tous les citoyens ayant atteint l'âge de la majorité légale, on peut déduire que cette disposition vise seulement les élections au suffrage direct.

Evidemment cette disposition ne concerne pas les élections des personnes ou des organes par le Parlement.

B. Quelles sont les élections effectuées par le Parlement ?

Pour chacune d'entre elles :

- 1. qui est autorisé à voter et comment s'organise la procédure électorale ?**
- 2. le secret du vote est-il formellement requis lors du déroulement du vote ; si oui, par quelles dispositions (règlement des assemblées, etc...) ?**
- 3. quelles sont les dispositions matérielles qui garantissent son effectivité ?**

1. Le Parlement élit le Président de la République, le Président du Parlement, l'Avocat du Peuple (Ombudsman), les membres des commissions parlementaires, deux membres de la Commission électorale centrale, le Président du Contrôle Suprême de l'Etat.

Tous les députés sont autorisés à voter. La votation est valide, si est présente la majorité des membres du Parlement, à l'exception des cas où la Constitution prévoit une majorité qualifiée. Seulement la procédure pour l'élection du Président est prévue expressément par la Constitution (article 87).

2. Le secret du vote est formellement requis dans l'article 87 paragraphe 2 de la Constitution pour l'élection du Président de la République par le Parlement.

Dans les autres cas, le secret est requis par le Règlement du Parlement. L'article 6 du Règlement prévoit formellement l'élection par scrutin secret du Président du Parlement. D'après l'article 60/1 du Règlement, le scrutin secret en général se déroule dans des cas qui regardent les personnes. L'article 60/2 du Règlement statue que le scrutin secret (à l'exception des cas dans lesquels ce scrutin est interdit par la Constitution, par la loi ou par ce Règlement) peut être requis par au moins sept députés. Cette requête doit être approuvée par le Parlement.

Le scrutin secret s'effectue en déposant le bulletin de vote dans une urne ou par un dispositif électronique.

3. Il n'y a pas de dispositions qui garantissent l'effectivité de la votation secrète.

C. En cas de violation du secret du vote, dans le cadre d'élections par le Parlement :

1. quelles en sont les formes ?

2. à quel moment peut-elle être constatée ? Est-elle limitée à la divulgation du contenu du vote lors de son expression ?

3. existe-t-il des voies de recours et devant qui (juge de l'élection, bureau de l'assemblée, etc.) ?

4. dans quelle mesure peut-elle être sanctionnée et comment ?

5. existe-il en la matière des précédents ou une jurisprudence précise ?

1. Dans divers cas de votation par dispositif électronique le secret du vote n'a pas été assuré, ce qui a provoqué la réaction de la minorité.

2. La violation peut être constatée à n'importe quel moment. Elle est limitée à la divulgation du contenu du vote.

3. L'article 61 paragraphe 2 du Règlement du Parlement statue que une votation effectuée en violation de la Constitution, de la loi ou du Règlement du Parlement n'est pas valide. Le président de la séance, après consultation avec le Secrétariat pour les procédures et les votations, ordonne l'annulation de la votation et sa répétition immédiate.

Le problème peut être discuté dans la Conférence des chefs des groupes parlementaires.

4. La seule sanction prévue est l'invalidation du vote (voir le point 3 ci-dessus).

5. Il y a des précédents en la matière mais il n'y a pas de jurisprudence précise.

ANDORRA / ANDORRE

Question A : Réponse non.

Question B : Réponse élection du Chef de gouvernement.

1. Les membres du conseil général.

2. et 3. Réponse non

Question C : Réponse non à tous les numéros.

ARMENIA / ARMENIE

A. Is there a constitutional and/or legislative provision of a general nature which guarantees secrecy of the vote in your country? If so, does this provision concern equally all types of election or only those which take place by direct vote?

There are several provisions guaranteeing the secrecy of the vote in Armenia. In particular, it is defined that the elections of the President, of the National Assembly and of the Local Self-Government Bodies as well as the voting at referendum are held by secret vote (Article 4, Constitution and Article 1, Electoral Code). Moreover, in case of those elections (with direct vote) the control over the free expression of the voter is prohibited and is a punitive action (Article 6, Electoral Code). The Electoral Code also describes the setting of a voting booth and the details of the voting process in order to guarantee the secrecy of the vote (Article 48 and 56, Electoral Code). This general principles are also relevant to the election of the following positions elected by indirect vote at the Parliament: Speaker and Vice-Speakers of the National Assembly, Chairmen of the Standing Committees of the National Assembly, two legal scholars to the Council of Justice, Human Rights' Defender (Ombudsman), Members of the National Commission on Radio and Television, five Members of the Constitutional Court, Chairman of the Central Bank, Chairman of the Control Chamber, and Prosecutor General. (Articles 17, 26, 62 and 97 Law Charter of the National Assembly)

B. Which elections take place in Parliament?

The positions that are filled by the elections in Parliament are presented in the previous paragraph. All those elections have the same procedural rules and are arranged in the same manner. Therefore the details are presented jointly below and refer to all the elections held in Parliament. (Article 62, Law Charter of the National Assembly)

1. Who is authorized to vote and how is the electoral procedure organized?

Only the Deputies of the National Assembly have the right to cast votes at the elections in Parliament. The Counting Committee runs the secret voting. This Committee is formed in the first four-day Plenary Session of the National Assembly at each Session-Period (Article 24 Law Charter of the National Assembly). The Deputy Voter List is prepared by the Personnel of the National Assembly based on the prior registration of the Parliament Members at the Plenary Session.

The sample ballots of the secret voting are made under the supervision of the Counting Committee in a quantity ordered by the latter. The ballots include the names of the candidates in alphabetical order. The words "for" and "against" shall stand in the ballots for each candidate that is being voted. The ballots are given by the Counting Committee to the Deputies upon their signature on the voter list. The Deputy fills out the ballot at the electoral booth leaving the name of the candidate in favor of whom he has voted and deleting the names of other candidates. In the case of voting of one candidate the Deputy deletes the word "against" (if he votes in favor of a candidate) or deletes the word "for" (if he votes against).

The Counting Committee opens the ballot box within thirty minutes after the end of the voting. The ballots are declared invalid if they do not correspond to the sample ballots defined by the Counting Committee. The ballots are invalid also if the quantity of the deleted names does not

correspond to the requirements of the election. Finally, the ballot will be considered invalid if it is marked by any other inappropriate note.

Minutes on the results of the elections are prepared by the Counting Committee which is signed by all the Members of the Committee. At the Plenary session of the National Assembly the Counting Committee presents the results of the secret voting. Based on the submissions of the Counting Committee the Presiding Member of the Parliament announces about the election of the Candidate.

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

The secrecy of vote is formally required during any election as well as dismissal of any office holder if being voted at the Parliament (Article 97(8) Law Charter of the National Assembly). Articles 17, 26, 62 and 97 of the Law Charter of the National Assembly define the secrecy of vote at all the elections held in Parliament.

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

The major principles of the voting arrangements are set in the Law Charter of the National Assembly as described in the previous paragraphs. The practical arrangements including the time, place as well as organizational issues of the secret voting are left to the discretion of the Counting Committee. The latter is responsible for ensuring the effectiveness of the voting and its secrecy. The Committee informs the Deputies of the Parliament about the practical arrangements and the procedural details at the Plenary Session of the National Assembly. (Article 62, Law Charter of the National Assembly)

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

1. What are the different types?

The types of the violations of secrecy vote at the Parliament are not specified in the Law. In case of direct vote there is such differentiation defining the following types: forcing the voter to disclose the vote; divulging the content of vote during the voting; intruding into the voting booth (Article 154, Criminal Code)

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

There are no provisions concerning the proof of violation in the framework of elections by the National Assembly of RA.

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

Under the paragraphs 1 and 2 (c) of Article 56 of the Law Charter of the National Assembly, the Deputy of the National Assembly has only a right to deliver a speech concerning the violations at the voting during the Plenary Session of the Parliament.

The only effective mechanism of appeal of electoral violations taken place in Parliament is the appeal to the Constitutional Court. The election of any office holder at the Parliament is made by a Decree of the National Assembly which is adopted by the secret voting. The Constitutional Court has the power to review the constitutionality of the Decrees of the National Assembly (Article 100 (1), Constitution). In such cases one-fifth of the Deputies, the President and the Government can apply to the Constitutional Court (Article 101 (1, 2 and 4), Constitution). In such cases the Constitutional Court shall determine whether the legal acts referred to in the appeal are in conformity with the Constitution or not, proceeding from the following factors: the type and the form of the legal act; the time when the act was adopted, as well as whether it got into force in compliance with established procedures; the necessity of protection and free exercise of human rights and freedoms enshrined in the Constitution, the grounds and frames of their permissible restriction; the necessity of ensuring direct application of the Constitution (Article 68 (7), Law on Constitutional Court).

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

There is no provision holding accountable the violators of secrecy vote in the course of election at the National Assembly.

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

None

AUSTRIA / AUTRICHE

A. Is there a constitutional and/or legislative provision of a general nature which guarantees secrecy of the vote in your country? If so, does this provision concern equally all types of election or only those which take place by direct vote?

Legal obligations to hold elections keeping secret the voter's decision ensue from both international law and national law.

Article 8 of the Austrian State Treaty of May 15, 1955, says that Austria shall have a democratic government based on secret elections. This regulation is both an international and a constitutional provision of a general nature which guarantees secrecy of the vote in Austria. The same applies to *Article 3 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms* too, that places an obligation on the High Contracting Parties to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

Various rules of the *Federal Constitutional Law (FC; Bundes-Verfassungsgesetz, B-VG)* guarantee secrecy of the vote concerning particular elections. According to Article 26 para. 1 FC the *National Council* is elected by the nation in accordance with the principles of proportional representation on the basis of equal, direct, *secret* and personal vote for men and women who at the latest with expiry of election day have completed their eighteenth year of life. Detailed provisions about the electoral procedure are made by Federal law.¹ Elections of *members of a Municipal Council*², of a *Diet*³, *members of the European Parliament*⁴ or of the *Federal President*⁵ are based on the same principle of equal, direct, *secret* and personal suffrage for men and women.⁶

The regulations mentioned reflect a constitutional principle of secrecy of vote which practice is rather strict. As the Constitutional Court points out the voter must have the "absolute certainty" that he remains unobserved and that a determination of his voting is impossible.⁷ For these purposes the legislator is obliged to take positive action to keep secret the voter's decision.⁸ From this point of view the legitimacy of a *postal vote system* is denied, where the voter

¹ Cf. the National Council Electoral Law 1992.

² Article 117 para. 2 FC.

³ Article 95 para. 1 FC.

⁴ Article 23a para. 1 FC.

⁵ Article 60 para. 1 FC.

⁶ The members of the Federal Council and their substitute members are elected by the Diets for the duration of their respective legislative periods in accordance with the principle of proportional representation (Article 35 para. 1 FC). The secrecy of this vote depends on the relevant state law dealing with the rules of procedure of the Diet.

⁷ VfSlg 3843/1960, 10.217/1984.

⁸ VfSlg 10.412/1985. The National Council Electoral Law (NCEL) that takes several measures to ensure effectiveness concerning the secrecy of the vote. S. 57 says that in every polling station a voting booth has to be installed which guarantees that the voter can fill in the ballot and put it in the envelope in an unobserved way. The envelopes have to be intransparent (s. 64 para. 1 NCEL). According to s. 53 para. 3 NCEL the formation of electoral districts consisting of less than 30 voters requires the consent of the electoral State authority that depends on the securing of the election secrecy. Furthermore there are penal regulations that aim at the protection of the election secrecy (s. 268 Criminal Code); cf. Walter/Mayer, *Bundesverfassungsrecht*⁹ (2000) Rz 311.

completes the ballot privately. In the Constitutional Court's opinion this system is inconsistent with the constitutional principle of election secrecy.⁹ Article 26 para. 6 FC grants an exemption saying that voting abroad need not in the case of elections to the National Council, the election of the Federal President, and referenda ensue before an electoral board.¹⁰

B. Which elections take place in Parliament?

For each one:

- 1. who is authorised to vote and how is the electoral procedure organised?**
- 2. is secrecy of vote formally required during voting; if so, on the basis of what provisions (parliamentary rules of procedure etc)?**
- 3. what practical arrangements are made to ensure effectiveness?**

Due to the fact that there are several "Parliaments" in Austria (as a federal state) it is necessary to distinguish between those regulations that deal with the secrecy of the vote in the National Council (1.), those which concern the Federal Council (2.) and the regulations applicable for the Diets (3.).

1. Elections in the National Council

Firstly, there are several elections to be held by the National Council under the rules of the Federal Constitutional Law. The *President of the Public Audit Office* is elected on the proposal of the Main Committee of the National Council for a twelve years period of office (Article 122 para. 4 FC), the three *ombudsman board members* are elected by the National Council on the basis of a joint recommendation drawn up by the Main Committee in the presence of at least half its members (Article 148g para. 2 FC). Furthermore six members and three substitute *members of the Constitutional Court* are appointed by the Federal President on the basis of proposals submitted by the National Council for three members and two substitute members (and by the Federal Council for three members and one substitute member) (Article 147 para. 2 FC).¹¹

Secondly, there are elections to be held according to federal law. The National Council shall e.g. elect the *chairpersons of the Federal Army Complaint Commission* (s. 4 Defence Act). Apart from that there are many regulations made in the Federal Law on the Rules of Procedure of the National Council (RP-NC) which deal with elections to be held in the National Council. The National Council shall elect from amongst its Members the *President* as well as the *Second and Third Presidents*. Following the election of the Presidents, *five Secretaries* and at least *three Whips* shall be elected (s. 5 RP-NC). According to s. 30 RP-NC a *Main Committee* shall be elected. The Main Committee shall elect a *Standing Sub-Committee* which shall have the duties laid down in Article 18 para. 1 and Article 55 para. 2 FC as well as a *Standing Sub-Committee* which shall, in accordance with the provisions of this Federal Law, have competence to deal with projects concerning the European Union (*Standing Sub-Committee on Matters of the European Union*) (s. 31 RP-NC). For the purpose of preliminary deliberation of items of business, the National Council shall elect *Committees*; to this end the Parliamentary Groups shall communicate to the President the names of the members and substitute members to which they are entitled, which shall thereupon be considered elected (s. 32 para. 1 RP-NC).

The ss. 87 and 88 RP-NC contain general principles of parliamentary votes. S. 87 says that elections in the National Council shall constitute a separate item of business (s. 50 para. 2 RP-

⁹ VfSlg 10.412/1985.

¹⁰ S. 60 NCEL contains detailed regulations to ensure effectiveness of the secrecy of the postal vote.

¹¹ Atzwanger/Zögernitz, NRG³ (1999) § 21 Anm 26.

NC). Notwithstanding this provision, the election of a special committee for the purpose of preliminary deliberations on a bill may be moved before this bill is referred by the President or in the course of the first reading of a bill. As a rule elections shall take place by means of ballots and shall be decided by an absolute majority of the votes cast. Balloting shall be secret. The election of committees shall be governed by the provisions of ss. 30, 32 and 33 RP-NC. The President shall communicate nominations received in writing to the National Council; however, ballots bearing the names of other eligible candidates shall be equally valid. The President of the Court of Audit, the members of the Ombudsman's Office as well as the chairpersons of the Complaints Commission under s. 6 Defence Act shall be elected upon nomination by the Main Committee. If no absolute majority of the valid votes cast is achieved during the first ballot, a second ballot shall be held. If the second ballot also fails to produce an absolute majority, there shall be a third ballot based on a short list. The candidates placed on the short list shall be those who have obtained the largest number of votes during the second ballot, and their number shall be twice that of the number of persons to be elected. If several candidates have received the same number of votes during the second ballot, the candidates to be shortlisted shall be determined by the drawing of lots. Should the third, short-listed, ballot also result in a tie, the decision shall again be taken by the drawing of lots. If none of the nominations receives the necessary majority in the first or second ballot, they may be withdrawn and replaced by a single list of candidates. If only one list of candidates is presented, the President may propose that it be voted on in accordance with s. 66 para. 1 or 2 RP-NC. If, however, an objection is raised against this proposal, the election shall take place by secret ballot. The President and the Second and Third Presidents shall always be elected by secret ballot. The President may rule that a secret ballot be held if s/he has doubts about the result of an election held under s. 66 para. 1 or 2 RP-NC.

Election procedure is subject to the regulations of s. 88 RP-NC. In the case of elections by secret ballot the President shall direct in what form Members are to indicate their choice. The election shall take place by the Members depositing their ballots in the voting box. For this purpose, Members shall be called by name and counted. Those not present when their names are counted shall not be allowed to deposit their ballots thereafter. If five Members so demand, voting booths shall be used for balloting. The Parliamentary Administration shall arrange for each Member to be able, in the voting booth, to fill in the ballot and place it in the envelope without being observed by others. The envelopes and ballots shall be handed to the Members by Parliamentary Administration officials appointed for this purpose before they enter the booths; the envelopes shall be placed in the voting box immediately after the Member has left the voting booth. As soon as the President has declared the ballot closed, the staff members of the Parliamentary Administration appointed for the purpose shall, under the supervision of the Secretaries, count the votes and inform the President of the result. If the number of votes or the number of envelopes does not agree with the number of Members that have actually voted, the ballot shall be repeated if the discrepancy is deemed to be likely to affect the result. Ballots that do not clearly show the intention of the voter shall be deemed invalid. The President shall announce the result of the election.

2. Elections in the Federal Council

According to s. 6 para. 3 Rules of Procedure of the Federal Council (RP-FC) the Federal Council shall elect, from among its Members, *two Vice-Presidents* as well as *at least two*

*Secretaries and at least two Whips.*¹² These elections shall be governed by the principles of proportional election (d'Hondt procedure) and shall be subject to the condition that the first-elected Vice-President and the first-elected Secretary shall not be of the same Parliamentary Group as the President. Each Group shall have at least one Whip. Furthermore the Federal Council shall establish, by election, *Committees* for the purpose of preliminary deliberations on agenda items (s. 13 RP-FC) and a *Committee on Affairs of the European Union (EU Committee)* for the purpose of deliberations on projects within the scope of the European Union in pursuance of Articles 23e and 23f FC (s. 13a RP-FC).

SS. 56 and 57 RP-FC contain general principles about elections and their procedure.¹³ According to s. 56 para. 1 RP-FC *elections shall take place by means of ballots* and shall be decided by an absolute majority of the votes cast, unless a decision to the contrary is taken. If only one list of candidates is presented and voting by ballot is not demanded, voting shall be by a show of hands or by the Members rising. Lists of candidates shall be presented to the President in writing and duly signed by the mover prior to entry upon voting at the latest and communicated by the President to the Federal Council. The provisions of s. 56 para. 6 RP-FC notwithstanding, they shall be seconded by at least three Members including the mover. Seconds shall take the form of signatures of the seconders on the motion or a show of hands in response to the President's call for seconds. If no absolute majority of the valid votes cast is achieved during the first ballot, a second ballot shall be held in the same manner. If the second ballot also fails to produce an absolute majority of the votes cast, there shall be a third ballot based on a short list, in which voting is by means of ballots. For the purposes of the second or third (short-list) ballot the mover may withdraw names of candidates and replace them with others. To the extent that the Rules of Procedure stipulate the principle of proportional representation, the decision shall be by a majority of valid votes cast. Lists of candidates governed by this principle shall require the support of more than half of those Members who have the right to propose candidates. No Member shall sign more than one list of candidates (cf. s. 56 RP-FC).

The *election procedure* is organised as follows: The President shall announce the entry upon the election procedure and indicate clearly the list of candidates to be put to the vote. A debate on the lists of candidates shall take place if at least five Members so demand in writing. The President may indicate in which form the candidates for whom the Member wishes to vote are to be designated on the ballot. If voting takes place by means of ballots the President shall order the secretary to call the Members in alphabetical order, who shall place their ballots in the ballot box. Once all the Members have voted, the secretaries shall proceed to count the votes in the presence of the President. In the case of a difference between the number of ballots cast and the number of Members who have participated in the vote, the voting shall be repeated if the difference is such that it might have a bearing on a candidate or list of candidates being adopted or rejected. Ballots shall be deemed valid if they clearly reflect the intention of the voter and bear the name(s) of (an) eligible candidate(s), the lists of proposed candidates notwithstanding. However, in the case of elections governed by the principle of proportional representation, votes can only be validly cast for a candidate or candidates pursuant to s. 56 para. 6 RP-FC. The short-

¹² Concerning the President of the Federal Council comp s. 6 para. 1 and 2 Rules of Procedure of the Federal Council: "(1) The Presidency of the Federal Council shall be held by the Federal Provinces, rotating at six-month intervals in alphabetical order. (2) The first-ranking representative of the Province entitled to the Presidency shall be the President of the Federal Council."

¹³ The RP-FC make a distinction between voting (ss. 54 and 55) and elections (ss. 56 and 57). Voting on a motion (proposal) shall, as a rule, be by a show of hands or by the Members rising when requested by the President (s. 54 para.1 RP-FC). Apart from that there is the possibility to vote by name (s. 54 para. 3 RP-FC, s. 55 para. 5 RP-FC) or by secret ballot (s. 54 para. 4, s. 55 para. 6 RP-FC).

listed ballot shall only contain, as a maximum, twice as many candidates as corresponds to the number of persons to be elected and these shall be those candidates who have received the most votes in the second ballot. If several candidates have received the same number of votes in the second ballot, the candidates for the short-listed ballot shall be determined by the drawing of lots. Candidates thus selected for the short-listed ballot may be withdrawn by the mover and replaced with other candidates. In the short-listed ballot, the election shall be decided by a majority of the valid votes cast. In case of a tie, the decision shall be by the drawing of lots. If an election cannot be taken because of the absence of a quorum the President shall suspend the meeting (s. 57 RP-FC).

3. Elections in the Diets

Elections in the Diets are based on the same principles mentioned above. Basically the Diets elect a President as well as a Second and a Third President.¹⁴ For the purpose of deliberation of items of business, the Diets elect Committees.¹⁵ In some States also the parliamentary Secretaries¹⁶ and the Whips¹⁷ are elected by the Diet. According to Article 101 para. 1 FC the Land Government (consisting of the Governor, the requisite number of deputies, and other members) is elected by the Diet. Furthermore the members of the Federal Council and their substitute members are elected by the Diets for the duration of their respective legislative periods (Article 35 para. 1 FC). As a rule elections shall take place by means of ballots, unless otherwise provided or unless a decision to the contrary is taken. In some States a dissenting decision requires unanimity¹⁸ or a stringent quorum¹⁹. Setting up a voting booth to ensure effectiveness of the secrecy of the vote is compulsory according to several Rules of Procedure.²⁰

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

- 1. what are the different types?**
- 2. at what moment can it be proved? Is it limited to divulging the contents of the vote during voting?**
- 3. are there any means of appeal and before whom (election judge, presidency of the Chamber, etc)?**
- 4. to what extent and how can it be sanctioned?**
- 5. are there any precedents or precise case-law?**

There are hardly any legal means to enforce the secrecy of the vote concerning elections taking place *in* Parliament. The competences of the Constitutional Court which is the only instance of control of elections, are restricted to elections of the Federal President, elections to the popular representative bodies or the constituent authorities (representative bodies) of statutory professional associations, and to elections to a Land Government and to municipal authorities

¹⁴ E.g. s. 1 Rules of Procedure of the Styrian Diet 2005; s. 2 Rules of Procedure of the Viennese Diet 2001; otherwise s. 6 Rules of Procedure of the Tyrolean Diet 1998; only President and Vice-President.

¹⁵ E.g. s. 25 Rules of Procedure of the Styrian Diet 2005.

¹⁶ E.g. s. 20 Rules of Procedure of the Tyrolean Diet 1998; s. 4 Rules of Procedure of the Upper Austrian Diet 1991.

¹⁷ E.g. s. 4 Rules of Procedure of the Upper Austrian Diet 1991; s. 11 Rules of Procedure of the Diet of Salzburg 1998.

¹⁸ E.g. s. 62 Rules of Procedure of the Styrian Diet 2005.

¹⁹ E.g. s. 37 Rules of Procedure of the Tyrolean Diet 1998 (two-thirds); s. 28 Rules of Procedure of the Viennese Diet 2001 (two-thirds).

²⁰ E.g. s. 74 Rules of Procedure of the Carinthian Diet 1996; s. 43 Rules of Procedure of the Upper Austrian Diet 1991.

entrusted with executive power (Article 141 para. 1 FC). The parliamentary rules of procedure only make provisions in regard to the number of votes or the number of envelopes not agreeing with the number of Members that have actually voted. In this case the ballot shall be repeated if the discrepancy is deemed to be likely to affect the result (s. 88 RP-NC, s. 57 RP-FC). But there is no specific legal remedy that could be taken to appeal against or to annul an election result.²¹

²¹ Atzwanger/Zögernitz, NRGÖ³ (1999) § 88 Anm 4 (referring to the RP-NC).

AZERBAIJAN / AZERBAIDJAN

A. Yes. Secrecy of the vote in the Republic of Azerbaijan is guaranteed in the Constitution (Article 2 (II)) and in the Election Code (Article 2.1). Both provisions concern only those elections that take place by direct vote.

B. Election or appointment of the following officials takes place in Parliament by vote:

- President of Parliament; Vice-Presidents of Parliament;
- Chairpersons of the Standing committees of Parliament;
- Prime-Minister; General Prosecutor (more correct, “giving consent” to their appointment);
- Judges of the Constitutional Court, Supreme Court and the appellate courts;
- Members of the Management Board of the National Bank;
- Members of the Central Election Commission;
- Part of the Members of the State Service management Council;
- Part of the Members of the Anti-Corruption Commission;
- Part of the Members of the Judicial Council;
- Members of the Public Television Broadcasting Council.

Parliamentarians are authorized to vote. Voting procedure is laid down in detail in Parliament’s Rules of Procedure. According to this Act, voting in Parliament is conducted in open and in secret (in last case - either by an electronic system or by ballot-paper; if secret voting is carried out by electronic system, information on how the parliamentarians voted, is not inserted in the memory of the system). Whether voting is to be conducted in secret, is decided upon by Parliament. The only case where secrecy of vote is formally required (Article 33 of Rules of Procedure) is election of President of Parliament. Responsibility for ensuring secrecy of voting in Parliament lies on the Counting Commission of Parliament. Rules of Procedure provide for special arrangements for ensuring secrecy (cabins for voting and a ballot-box to be fixed in the session hall).

C. Rules of Procedure of Azerbaijani Parliament do not contain any provisions covering the questions under C of the questionnaire. Nor do we have any precedents and case-law concerning the violations of secrecy of vote. Based on our legislation and practice it is hard to say whether it is a violation of the secrecy of vote when the members of Parliament inform the other MPs of the content of their vote during the voting process.

BELGIUM / BELGIQUE

A.1. La Constitution Belge comporte des dispositions consacrant le secret du vote pour les élections législatives (article 62 en ce qui concerne la Chambre et article 68, §2 en ce qui concerne le Sénat).

Ces dispositions sont répétées pour l'élection des Parlements de Communauté et de Région (voy. p. ex. l'article 26 bis de la loi spéciale du 8 août 1980 ; l'article 21 de la loi spéciale du 12 janvier 1989 relative aux institutions bruxelloises).

Le même principe est consacré par les lois électorales provinciales et communales.

Ces dispositions ne visent que les *élections directes*.

2. Les articles 53 et 55 de la Constitution visent les élections indirectes ainsi que les présentations par la Chambre et le Sénat.

En vertu de l'article 53 « Toute résolution est prise à la majorité absolue des suffrages, *sauf ce qui sera établi par les règlements des Chambres à l'égard des élections et présentations.* »

L'article 55 précise que « *Les élections et présentations de candidats se font au scrutin secret.* »

Des dispositions similaires ont été introduites en ce qui concerne les Parlements des Communautés et des Régions (voy. p. ex. les articles 35, §2 et 36, alinéa 2 de la loi spéciale du 8 août 1980 ; article 28, alinéa 1 de la loi spéciale du 12 janvier 1989 relative aux institutions bruxelloises).

B.1. Les règlements des diverses assemblées concrétisent ces principes. Il en va ainsi de l'article 58 §4 du règlement de la Chambre des représentants (« Le scrutin secret est obligatoire pour les nominations et présentations »).

L'article 157 de ce même règlement détaille la procédure de vote^{22 23}.

²² Art. 157 du règlement de la Chambre des représentants

« 1. Toutes les nominations et présentations auxquelles la Chambre est appelée à procéder sont faites au scrutin secret à la majorité absolue des suffrages, sauf si la Constitution ou la loi prévoit une majorité différente.

Cependant, au troisième tour de scrutin, qui est celui de ballottage, la majorité relative suffit. Dans le cas d'égalité des suffrages, le plus âgé est nommé. Les bulletins blancs et nuls n'entrent pas en ligne de compte pour le calcul de la majorité. Sont nuls, les suffrages exprimés en faveur de candidats qui n'ont pas été présentés avant le scrutin ou dans le délai fixé par le président ainsi que les suffrages exprimés en faveur de plus de candidats qu'il n'y a de sièges à pourvoir.

2. Les secrétaires vérifient le nombre des votants.

3. Un ou deux bureaux de quatre scrutateurs tirés au sort dépouillent le scrutin. Le premier de ces bureaux procède au recensement général.

4. Les résultats des scrutins sont proclamés par le président.

5. Le président de la Chambre fixe, s'il y a lieu, le délai dans lequel les candidatures doivent être présentées. Dans ce cas, la liste des candidats est distribuée aux membres de la Chambre.

6. Si le nombre des candidats correspond au nombre de places à pourvoir, le ou les candidats présentés sont proclamés élus.

Le secret des votes est ainsi garanti par le règlement.

2. La notion d' « élection indirecte » peut être prise de manière plus ou moins large. Ainsi, on peut y inclure la constitution, au sein des organes parlementaires eux-mêmes, des différentes commissions, ou encore leur représentation au sein d'assemblées internationales.

En ce qui concerne la désignation de personnes tierces par rapport aux assemblées, le droit belge distingue les élections et les présentations.

Dans le cas *d'élections*, l'assemblée concernée désigne elle-même directement la personne.

Il en va ainsi notamment pour la désignation des conseillers à la Cour des comptes (par la Chambre seule)²⁴, des médiateurs fédéraux (par la Chambre seule)²⁵, des membres non-magistrats du Conseil supérieur de la Justice (par le Sénat seul à la majorité des deux tiers)²⁶.

Dans le cadre de la *présentation*, le pouvoir de nomination appartient à l'exécutif, mais sur une liste présentée par les assemblées. Tel est le cas pour la Cour d'arbitrage²⁷ et pour le Conseil d'Etat²⁸.

C. Le secret des élections et présentations est consacré par la Constitution en ce qui concerne les Chambres fédérales et par la loi en ce qui concerne les Parlements de Communautés et des Régions.

La mise en œuvre de ce secret revient aux règlements des différentes assemblées.

Ces règlements que les assemblées prennent au titre de leur indépendance organique, de même que leur respect effectif, échappent à tout contrôle juridictionnel²⁹

7. Lorsqu'un président de groupe notifie par écrit au président de la Chambre le nom du membre qui remplace un autre membre en commission et que les deux membres concernés ont signé cette notification, le remplacement a lieu dès réception de celle-ci. Le remplacement est communiqué dans le Compte rendu intégral. »

²³ Comparez avec les articles 82 et 83 du Règlement du Sénat

²⁴ Article 180, Constitution

²⁵ Loi du 22 mars 1995 instaurant des médiateurs fédéraux, article 3

²⁶ Article 151, §2, alinéa 2, Constitution

²⁷ Loi spéciale du 6 janvier 1989 sur la Cour d'arbitrage, article 32

²⁸ Lois coordonnées sur le Conseil d'Etat du 12 janvier 1973, article 70

²⁹ R. ERGEC, *Introduction au droit public, t.I, Le système institutionnel*, Diegem, Story – Scientia, 1994, p 146, A.ALEN, *Handboek van het Belgisch Staatsrecht*, Deurne, Kluwer, 1995, p192.

BOSNIA AND HERZEGOVINA

A. The Constitution of Bosnia and Herzegovina doesn't contain any disposition about secret voting.

B.1. According to articles 1.4. and 3.1. every citizen of Bosnia and Herzegovina has active right to vote and to be elected (in accordance to the Electoral Law provisions). Process of elections is organized to be compatible with the Electoral Law which must be compatible with the relevant Constitutional provisions for the election of State officials. It is important to mention that the Constitutional provision is not based to be compatible with the European Convention on Human Rights and Fundamental Freedoms (see Opinion of the Venice Commission No. CDL-AD (2005) 004 of 11 March 2005 on Constitutional Situation in Bosnia and Herzegovina and Powers of the High Representative).

2. and 3. Secret voting system is secured by the Electoral Law provisions and Regulations issued by the Electoral Commission of Bosnia and Herzegovina. Obligation of the Electoral Commissions (State and lower lever commissions) is to secure secret voting system including process of voting of the enabled persons. Entire electoral process is monitored by the independent international and/or national monitors. Finally, ballot does not include any personal information nor signature or any other personal mark.

C.1. Possible violation of election process in respect to secret voting system are:

If voter mark his ballot;

If voter announce after he voted for who he voted.

C.2. At the moment of voting and counting of votes.

3. There are two level procedure to lodge a complaint by political subjects and monitors to all electoral bodies including local electoral bodies, municipal electoral commission etc. Depending of the nature of the complaint different competencies has been established for different electoral bodies to review a complaints. In any case it has been provided that an appeal could be lodged if any party is not satisfied with the decision of the first instance body. Competencies for review of complaints are established by the Electoral Law.

4. Three sanctions were established by the Electoral Law if any political subject violates Electoral Law procedure:

1. Fine up to 10.000 KM
2. Removal of the candidate from the list of candidates
3. Annulment of the verification for any political subject.

5. There are no precedent of precise jurisprudence in respect of complaints that relates to violation secret voting system.

CROATIA / CROATIE

A. The Constitution of the Republic of Croatia, as well as the Law on election of the members of the Croatian Sabor (HS) (parliament) provide for the direct and secret voting - but these provisions *do not* refer to the subject of our questionnaire.

The Rules of procedure of HS, however, stipulate (Article 229, para 1) that voting at sessions shall be open, unless the very Rules of procedure require secret voting. This exception is foreseen in Article 231, para 1, which reads: "Voting is secret, in principle, in case of elections or appointments when the number of candidates is superior to the number of persons to be elected or appointed".

B. HS is electing or appointing a certain number of bodies or bearers of functions, such as: judges of the Constitutional Court, the public ombudsman, the ombudsman for the protection of the rights of children, chief state prosecutor, State judiciary council, president of the Supreme court, State prosecuting council, the Governor of the Croatian National Bank (as well as his deputy and the vice-governor), Chief auditor of the Republic, members of the Programme Council of the Croatian radio and TV etc.

1. Voting is taken by the members of the HS, publicly - as explained - unless the Article 231 para 1 of the Rules of procedure is applied. Public (open) voting can be held by showing of hands, individually or by electronic voting.

2. See above.

3. Secret voting is taken by voting lists, prepared by the Secretary of HS. Lists contain names of candidates, sorted by alphabetic order. Parliamentarians vote by circling the order number(s) in front of the desired name(s), fold the list and put them in the voting boxes. After all present members depose their lists the president declares the end of the voting, and boxes are opened for accounting of votes. All votes are counted and the president announces the results of the elections or of the appointment (at the very same session at which the voting took place).

C. Until now there were no recorded cases in practice of the violation of secrecy of vote. Should such case happen, the complaint would have to be made to the president of HS (in case of irregularities at general or local elections, any complaint has to be sent to the State electoral commission or to the Electoral commission of the respective county; an appeal against the decision of the State electoral commission may be made to the Constitutional Court of the Republic of Croatia).

CYPRUS / CHYPRE

A. Is there a constitutional and/or legislative provision of a general nature which guarantees secrecy of the vote in your country? If so, does this provision concern equally all types of election or only those which take place by direct vote?

In Cyprus, the electorate is defined by the Constitution. It is composed of Cypriot citizens who have the voting qualifications and are members of the Greek and Turkish communities.

According to the Constitution of 1960, they elect separately the President and the Vice President of the Republic (Article 1) and the Greek and Turkish members of the House of Representatives (Article 62.2) *by universal suffrage and by direct and secret ballot.*

Article 62

“1. The number of representatives shall be fifty*

Provided that such number may be altered by a resolution of the House of Representatives carried by a majority comprising two-thirds of the Representatives elected by the Greek community and two-thirds of the representatives elected by the Turkish community.

2. Out of the number of representatives provided in paragraph 1 of this Article seventy per cent shall be elected by the Greek community and thirty per cent by the Turkish community separately from amongst their members respectively, and in the case of a contested election, *by universal suffrage and by direct and secret ballot held on the same day. ...*”

**(Since 1996 the seats are 80 - 56 (70%) by the Greek Cypriot Community and 24 (30%) by the Turkish Cypriot Community)*

Article 25.2 of the International Covenants on Civil and Political Rights adopted by the General Assembly Resolution 2200 A (XXI) of 16th December, 1966, which was ratified by the Republic of Cyprus by Law No. 14/69. Article 25.b provides that:

« Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

a.

b. To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage *and shall be held by secret ballot, guaranteeing the expression of the will of the electors* ».

Article 3 of Protocol No. 1 (P1-3) provides for "free" elections "at reasonable intervals", "*by secret ballot*" and "under conditions which will ensure the free expression of the opinion of the people".

B. Which elections take place in Parliament?

2. Who is authorised to vote and how is the electoral procedure organised?

i. Elections of the members of the House of Representatives - RELEVANT DOMESTIC LAW AND PRACTICE

The qualifications of the voter are provided by the Constitution and supplemented by the Electoral Law.

Article 28 of the Constitution safeguards the right of equality and embodies the principle of non-discrimination. The principle of equality is a fundamental principle in a democratic society and applies to the perforation of the political will of the people, the constitution and function of the organs of the political power. ***The principle of equality governs the function of a democratic regime at the level of election,*** constitution and function of the organs expressing the will of the people.

Article 31 of the Constitution safeguards as the inalienable right of every citizen, the right to vote in any election provided for by the Constitution. It is worth mentioning that this right guaranteed by Article 31 forms part of the fundamental rights and liberties guaranteed by the Constitution.

Article 63 of the Constitution provides that every citizen of the Republic who has attained ***the age of eighteen years old*** and has such residential qualifications as may be prescribed by the Electoral Law shall have the right to vote.

Article 5 of the Election of Members of the House of Representatives Law 1979 (Law 72/79) provides as follows:

The right to elect belongs to those who have the qualifications provided for under Article 63 of the Constitution, that is to say citizens of the Republic who have attained the age of eighteen and have had their ordinary residence in Cyprus for a period of six months immediately before the date fixed by the Minister, by publication in the Official Gazette of the Republic, as the date of acquisition of the electoral qualifications.

Voter requirements:

Age: 18 years

Cyprus citizenship

Residence in the country for at least six months prior to elections

Disqualifications: insanity, imprisonment, disfranchisement by court decision

Eligibility for Candidates:

Qualified electors

Age: 25 years

Cyprus citizenship

Ineligibility of Candidates:

Conviction of an offence involving dishonesty or moral turpitude,

Electoral offence

Incompatibilities:

Minister

Member of municipal council
Membership of the armed or security forces
Public or municipal office

The House of Representatives has 59 members elected for a five year term, 56 members by **proportional representation** and 3 observer members representing the Maronite, Roman-Catholic and Armenian minorities. 24 seats are allocated to the Turkish community. Cyprus has a multi-party system, with two or three strong parties and a third party that is electorally successful.

According to article 62.1 (see as above) of the Constitution the number of representatives is 50. Out of this number 35 are elected by the **Greek Cypriot** Community and 15 by the **Turkish Cypriot** Community. The Turkish Cypriot seats remain vacant since 1964 when the Turkish Cypriot representatives withdrew from the House.

However, for the smooth running of the House of Representatives and of the Committees in particular, the House decided in July 1985 by adopting law 124, to increase the seats to 80. Of these 56 (70%) representatives are elected by the Greek Cypriot Community and 24 (30%) by the Turkish Cypriot Community, as provided in article 62.2 of the Constitution.

In June 1995 the House of Representatives amended the Electoral Law which provided for reinforced representation system. The system was replaced by proportional representation.

The current electoral law provides for a simple proportional representation system. The number of seats in each constituency is determined by law with constituencies coinciding with [administrative districts](#). Seat allocation for the Greek Cypriot Community are as follows:

Districts	Seats
Nicosia	21
Limassol	12
Famagusta	11
Larnaca	5
Paphos	4
Kyrenia	3
Total:	56

Voters first select the list of a single party (or coalition of parties or isolated independent candidate) and then, within the list, mark one preference for every four seats to be filled in their constituency. Seats are distributed among lists within each constituency by dividing the total number of votes cast for each list by the electoral quota. Remaining seats are distributed among parties or coalitions of parties which have gained at least one seat in any constituency pursuant to the first distribution or, for single parties, at least 1.8% of all valid votes cast throughout the island (for coalitions of 2 or more parties, the applicable figures are 10% and 20%, respectively). Notwithstanding the above, 3.6% of the total number of votes cast is required for lists of single parties which participate in the second distribution in order to be entitled to a second seat. Vacancies arising between general elections are filled by the unsuccessful candidates of the same party in the constituency concerned who received the

highest number of preferential votes after the last successful candidate. Voting is compulsory, unjustified failure to do so resulting in a fine and/or imprisonment.

In accordance with Article 67 of the Constitution of the Republic of Cyprus, the House of Representatives may dissolve itself only by its own decision carried by an absolute majority.

Any such decision must determine the date of the general elections, which must not be less than 30 days and not more than 40 days from the date of the decision. The first meeting of the new House must not be later than 15 days after the general elections.

A general election for the House of Representatives is held on the second Sunday of the month immediately preceding the month in which the term of office of the outgoing House expires. When a vacancy occurs in the seat of a Representative such vacancy shall be filled by a by-election to be held within a period not exceeding forty-five days of the occurrence of such vacancy on a date to be fixed by the House of Representatives. If an election under the abovementioned paragraph 1 or 2 of this Article cannot take place on the date fixed by or under this Constitution owing to extraordinary and unforeseen circumstances such as earthquake, floods, general epidemic and the like, then such election shall take place on the corresponding day of the week next following

ii. Election of President of the House

Following the election of the Representatives there shall take place an election of the President of the House under the provisions of Article 72 of the Constitution.

Article 72 of the Constitution provides as follows:

1. The President of the House of Representatives shall be a Greek, and shall be elected by the Representatives elected by the Greek Community, and the Vice-President shall be a Turk and shall be elected by the Representatives elected by the Turkish Community. Each shall be elected separately as above at the same meeting at the beginning and for the whole period of the term of office of the House of Representatives.

2. In case of any vacancy in either of the offices provided in paragraph 1 of this Article, an election as provided in such paragraph shall take place with all due speed and at an extraordinary session if necessary in order to fill such vacancy.

3. In case of temporary absence or pending the filling of a vacancy as provided in paragraph 2 of this Article in either of the offices of the President or the Vice-President of the House, their functions shall be performed by the eldest Representative of the respective Community unless the Representatives of such Community should otherwise decide.

4. In addition to the President and the Vice-President of the House there shall be appointed from amongst the Representatives and by the President and the Vice-President of the House respectively two Greek and one Turkish Clerks of the House and two Greek and one Turkish Administrative Clerks of the House who shall be attached respectively to the office of the President and the Vice-President of the House.

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

No secrecy of vote is required for the laws and decisions passed by MPS

The laws and the decisions of the House of Representatives shall be passed by a simple majority vote of those Representatives present and voting, with few exceptions- in those cases an increased majority is needed. For instance the House decides to dissolve itself with an absolute majority.

However any modification of the Electoral Law and the adoption of any law relating to the municipalities and the adoption of any law imposing duties or taxes shall require a separate simple majority of the Representatives elected by the Greek and the Turkish Communities respectively taking part in the vote (**Article 78**).

C. Should there be a violation of secrecy of vote, in the framework of an election by Parliament:**6. What are the different types?**

Non-applicable.

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

Non-applicable.

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

Matters affecting the election of members of the House of Representatives are specifically regulated by the Constitution, namely Article 85 and warranted by its provisions.

Article 85 makes the Supreme Court sitting as Electoral Court solely competent to resolve questions affecting the validity of elections of Representatives and acts leading thereto.

Article 145 of the Constitution reads as follows:

“The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on any election petition, made under the provisions of the Electoral Law, with regard to the elections of the President or the Vice-President of the Republic or of members of the House of Representatives or of any Communal Chamber”.

No similar provision is made in the Constitution in respect of elections to local authority boards.

Election Petitions can be filed before the Supreme Court concerning e.g. complaints of erroneous application of the Election of Members of the House of Representatives Law 72/79, as amended.

The Court will not normally order a recounting as a means of ascertaining the true facts in the course of a hearing of an application for recounting of the preference votes cast for the petitioner of an election petition, only in exceptional cases.

8. To what extent and how can it be sanctioned?

Non-applicable.

9. Are there any precedents or precise case-law?

Non-applicable.

DENMARK / DANEMARK

A. Is there a constitutional and/or legislative provision of a general nature which guarantees secrecy of the vote in your country? If so, does this provision concern equally all types of election or only those which take place by direct vote?

I understand that the questionnaire concerns the parliament's elections members of committees etc. On this topic we have no constitutional nor legislative provision as to secrecy.

B. Which elections take place in Parliament?

Again I understand that the completely general question only relates to elections of members etc. Election of members of the parliamentary committees begins with the organisation of various groups of parliamentarians. Members of the committees are selected proportionately (1, 2, 3)

For each one:

- 1. Who is authorised to vote and how is the electoral procedure organised?**
- 2. Is secrecy of vote formally required during voting; if so on the basis of what provisions (parliamentary rules of procedure etc)?**
- 3. What practical arrangements are made to ensure its effectiveness?**

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

Not relevant.

- 1. What are the different types?**
- 2. At what moment can it be proved? Is it limited to divulging the contents of the vote during voting?**
- 3. Are there any means of appeal and before whom (election judge, presidency of the Chamber, etc)?**
- 4. To what extent and how can it be sanctioned?**
- 10. Are there any precedents or precise case-law?**

ESTONIA / ESTONIE

A. Is there a constitutional and/or legislative provision of a general nature which guarantees secrecy of the vote in your country? If so, does this provision concern equally all types of election or only those which take place by direct vote?

There is no general provision in Estonian Constitution which guarantees secrecy of the vote in general. Still, there are provisions concerning different elections. According to Article 60 sec 1 of the Constitution, voting in the elections of the Parliament (*Riigikogu*) shall be secret. Article 156 sec 1, voting in the elections of the representative body of a local government shall be secret. These elections are direct elections.

According to Article 72 sec 2 of the Constitution the voting in the *Riigikogu* shall be open. Voting by secret ballot shall be held in the cases prescribed by the Constitution or by the *Riigikogu* Procedure Act, only in the election or appointment of officials.

In Constitution, Article 79 sec 4 provides secret voting in the elections of the President, who is elected in Parliament or in a special electoral body, if no candidate can obtain enough votes in favour.

B. Which elections take place in Parliament?

According to the Constitution and the *Riigikogu* Procedure Act, the Parliament elects the President of the Republic, the President and Vice-Presidents of the *Riigikogu* and appoints to office the Chief Justice and justices of the Supreme Court, the Auditor General, the Chancellor of Justice and the Deputy Chancellor of Justice-Advisers, the Chairman of the Board of *Eesti Pank* (National Bank) and appointment of members to the Board of *Eesti Pank* and the Commander or Commander-in-Chief of the Defence Forces.

According to the Article 89 sec 3 of the Constitution, the authorisation to the candidate for Prime Minister to form a government shall be decided by an open vote.

All other persons nominated by the *Riigikogu* are nominated by a decision by an open vote. Those persons are the auditor who audits annually the State Audit Office and some members of councils supervising or directing legal persons in public law or Councils established by a law, e.g. Council of Stabilisation Reserve Fund, Broadcasting Council, Council of the State Forest Management Centre, Estonian Health Insurance Council. Neither of those has been regulated in Constitution or in the *Riigikogu* Procedure Act. In all of them the candidate(s) are determined in the draft decision which can be adopted or rejected.

For each one:

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

11. In all elections in Parliament all members of Parliament have the right to vote, except elections of chairman and deputy chairman of committees of the *Riigikogu* (members of committees have the right to vote).

In elections of the President and of the President and Vice-Presidents of the *Riigikogu* ballot papers shall be used for voting (Article 81 sec 2 of the *Riigikogu* Procedure Act). Voting shall be organised by Central Electoral Committee.

Election of the President

Before the declaration of voting, the chairman of the election committee shall introduce the voting procedure and the procedure for verification of voting results and election results to the members of the *Riigikogu* or electoral body. A member of the *Riigikogu* or electoral body has the right to pose questions to the chairman of the election committee concerning the voting procedure and the procedure for verification of voting results and election results.

The election committee shall inspect and seal the ballot box.

The names of the candidates shall be entered on the ballot in alphabetical order.

The election committee shall give a ballot and an envelope bearing the seal of the election committee to the members of the *Riigikogu* or electoral body. The ballot shall be given on the basis of a list upon presentation of identification. The member of the *Riigikogu* or electoral body shall sign against receipt of the ballot.

The ballot shall be completed in a voting booth. The member of the *Riigikogu* or electoral body shall mark the ballot with a cross in the space beside the name of the candidate in favour of whom he or she votes. If the name of only one candidate is entered on the ballot, the member of the *Riigikogu* or electoral body shall mark the ballot with a cross in the space if he or she votes in favour of the candidate.

After completing the ballot, the elector shall place the ballot in the envelope and give it to the election committee, which shall affix the seal of the election committee to the envelope.

Thereafter, the elector shall deposit the envelope in the ballot box.

If the ballot is spoiled before it is deposited in the ballot box, the member of the *Riigikogu* or electoral body has the right, upon returning the spoiled ballot, to receive a new ballot from the election committee, with regard to which a notation shall be made on the list.

The chair of the sitting shall declare the voting closed one hour after the declaration of voting.

Elections of the President and Vice-Presidents of the *Riigikogu*

In the elections of the President and Vice-Presidents of the *Riigikogu*, the President of the *Riigikogu* shall be elected first. The Vice-Presidents of the *Riigikogu* shall be elected concurrently after the election of the President of the *Riigikogu*. Candidates may be nominated by members of the *Riigikogu*. Candidates for President of the *Riigikogu* shall be nominated first. After the President of the *Riigikogu* is elected, candidates for Vice-Presidents of the *Riigikogu* shall be nominated. The nominated candidates shall grant their consent concerning their nomination.

Members of the *Riigikogu* have one vote in the election of the President of the *Riigikogu* and one vote in the election of the Vice-Presidents of the *Riigikogu*. The candidate who receives more

than one-half of the valid votes shall become President of the *Riigikogu*. If no candidate receives the required number of votes, an additional round of voting shall be held between the two candidates who receive the greatest number of votes. In the event of an equal number of votes, lots shall be drawn. If only one candidate is nominated in the election of the President of the *Riigikogu*, he or she is elected if he or she receives more votes in favour than against.

The candidate who receives the greatest number of votes shall become First Vice-President of the *Riigikogu*. The candidate who receives the second greatest number of votes shall become Second Vice-President of the *Riigikogu*. An additional round of voting shall be held between the candidates if they receive an equal number of votes.

Other elections in *Riigikogu*

In all other elections, voting shall take place by an electronic voting system.

If it is not possible for the electronic voting system to be employed, voting shall take place, if a secret vote is prescribed, by ballot. In this case, voting shall be organised, the voting results shall be determined and any protests shall be resolved by a voting committee which includes one representative from each faction of the *Riigikogu*. In practice, the electronic system has never failed since its introduction in 1992.

All members of Parliament shall have one vote. The elections take place by adoption of a parliamentary decision. There is one candidate in the draft decision. Decision is adopted if it receives more votes in favour than against.

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

According to Article 79 sec 2 of the *Riigikogu* Procedure Act (2), voting shall be secret only in the following cases:

1. election of the President of the Republic;
2. election of the President and Vice-Presidents of the *Riigikogu*;
3. appointment to office of the Chief Justice and justices of the Supreme Court;
4. appointment to office of the Auditor General;
5. appointment to office of the Chancellor of Justice and the Deputy Chancellor of Justice-Advisers;
6. appointment to office of the Chairman of the Board of *Eesti Pank* (National Bank) and appointment of members to the Board of *Eesti Pank*;
7. appointment to office of the Commander or Commander-in-Chief of the Defence Forces.

The release from office of the abovementioned appointed officials is held by open vote.

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

In elections by using paper ballots, before the declaration of voting, the National Electoral Committee or the voting committee shall examine and seal the ballot box. Thereafter, the chair of the sitting shall familiarise the members of the *Riigikogu* with the voting procedure.

The National Electoral Committee or the voting committee shall provide each member of the *Riigikogu* with a ballot paper according to the list of members of the *Riigikogu*. The member of

the *Riigikogu* shall present an identity document. The member of the *Riigikogu* shall receive a ballot paper against his or her signature. The member of the *Riigikogu* shall complete the ballot paper in a voting booth. The member of the *Riigikogu* shall mark the ballot paper with a cross in the space beside the name of the candidate in favour of whom he or she wishes to vote or with the answer of which he or she is in favour. If the name of only one candidate is entered on the ballot paper, the member of the *Riigikogu* shall mark a cross in the space marked in favour or opposed on the ballot paper.

After completing the ballot paper, the member of the *Riigikogu* shall place the ballot paper in the ballot box. If a member of the *Riigikogu* spoils his or her ballot paper before placing it in the ballot box, he or she has the right to obtain a new ballot paper from the voting committee. The member of the *Riigikogu* shall return the spoiled ballot paper to the National Electoral Committee or the voting committee.

In the elections using the electronic system, the vote of each member of Parliament is held secret and the system gives information only how many votes are present, missing, voted in favour, against or impartial and how many did not vote.

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

1. What are the different types?

The types of violation are not prescribed in law. As there is no practice concerning violations of secrecy in elections in Parliament, it is not possible to give a clear answer. Probably, voting outside the voting booth, marking the ballot papers, using different colours to complete the ballot paper or showing the ballot paper to any other person could all be dealt as violations.

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

There are no time-limits to prove the violations when the election procedure is going on. If the violation takes place after the actual voting procedure, the claim has to be submitted promptly after the announcement of the voting results.

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

In elections by electronic system, if the voting procedure is violated in the course of voting or if a member of the *Riigikogu* is not able to vote due to a technical failure in his or her voting controls, the chair of the sitting shall suspend voting and shall confirm the decision by a stroke of the gavel. A member of the *Riigikogu* shall indicate such a failure by raising his or her hand.

In voting by ballot papers, members of the *Riigikogu* may submit protests concerning the organisation of voting or the voting results to the National Electoral Committee or the voting committee. Protests concerning the organisation of voting shall be submitted promptly after the close of voting. Protests concerning the voting results shall be submitted promptly after announcement of the voting results. The National Electoral Committee or the voting committee shall resolve any protests without delay.

There are no means of appeal to the decisions of the presidency of the Parliament or voting chamber. In the elections of the President or the President or Vice-Presidents of the *Riigikogu*, it is possible to submit a complaint to the Supreme Court of Estonia. The complaint has to be submitted within three days from the decision of the Central Electoral Committee.

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

The voting results may be declared void. In this case, the voting procedure has to be accomplished once again. According to the practice of the Supreme Court concerning direct elections, the results may be called void only if the violation may have had an impact on the results.

There are no punishments against violation of secrecy in any elections in Parliament.

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

There have been no complaints concerning the elections or appointments taken place in the Parliament.

FINLAND / FINLANDE

A. Is there a constitutional and/or legislative provision of a general nature which guarantees secrecy of the vote in your country? If so, does this provision concern equally all types of election or only those which take place by direct vote?

Article 25 (1) of the Constitution guarantees the secrecy of vote in the election of the Parliament. Provisions on the secrecy of the vote in other elections are included in the Law on Elections, which has the status of an ordinary law. This law regulates the elections parliamentary, presidential and municipal elections as well as elections for the European parliament.

B. Which elections take place in Parliament?

The Parliament elects the Speaker and the Vice Speakers, the members of the Committees of the Parliament, the Ombudsman and the Vice Ombudsmen, the State Auditors, the members of the Board and the Auditors of the Central Bank, the Auditors of the Parliament, the members of the Board of the Parliament Library and the members of the Board of the National Social Security Institute. In the parliamentary rules of procedure, there are common rules for all the elections taking place in the Parliament. According to these provisions, the procedure is based on closed ballots. Only the members of the Parliament are authorised to vote.

For each one:

- 1. Who is authorised to vote and how is the electoral procedure organised?**
- 2. Is secrecy of vote formally required during voting; if so on the basis of what provisions (parliamentary rules of procedure etc)?**
- 3. What practical arrangements are made to ensure its effectiveness?**

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

- 1. What are the different types?**
- 2. At what moment can it be proved? Is it limited to divulging the contents of the vote during voting?**
- 3. Are there any means of appeal and before whom (election judge, presidency of the Chamber, etc)?**
- 4. To what extent and how can it be sanctioned?**
- 5. Are there any precedents or precise case-law?**

There are no specific rules on the violation of the secrecy of the vote, nor are there any cases where such a violation has occurred.

FRANCE

I. Est-ce qu'une disposition constitutionnelle (et/ou) législative de caractère général garantit le secret du vote dans votre pays ? Concerne-t-elle indifféremment tous les types d'élections ou uniquement celle au suffrage direct ?

Dans l'objectif d'assurer la liberté de l'électeur, le secret du vote est élevé au rang de règle constitutionnelle. En effet, l'article 3, al. 3 de la Constitution dispose que « le suffrage [...] est *toujours* universel, égal et secret ». On remarque que la formulation de l'article 3 laisse au Constituant la liberté de choisir entre suffrage direct et indirect selon le type d'élection politique visée. Cependant, les trois principes caractérisant le vote, dont le secret, doivent être, *en tout état de cause*, respectés. Par ailleurs, le principe du secret du vote est repris, de manière catégorique, dans le Code électoral. Selon l'article L.59, « le scrutin est secret ». Ce principe général du droit électoral est garanti par des sanctions pénales (C. élect., article L. 113, L. 116) et par une série de garanties comme le passage obligatoire par l'isoloir (C. élect., article L. 62), l'opacité des enveloppes (C. élect. R. 54) ou la standardisation des bulletins de vote (C. élect. R. 30).

Par ailleurs, le principe du secret du vote est considéré comme respecté dans l'hypothèse du vote par procuration qui suppose toutefois que le suffrage soit connu du mandataire. La loi du 31 décembre 1975, tout en supprimant le vote par correspondance, a fait du vote par procuration la modalité exclusive du vote des absents. Dans le but d'empêcher un usage abusif du vote par procuration, les modalités prévues par les articles L. 71 à 78 et R. 72 à 80 du Code électoral, ont été rendues plus restrictives par la loi du 30 décembre 1988 qui prévoit notamment qu'un même mandataire ne pourra recevoir plus d'une procuration dans le cas de procurations établies en France (C. élect. article L. 73, al. 1). Le déroulement du vote par procuration est en outre soumis aux mêmes modalités que celles visant à garantir le secret du vote. En ce sens, l'article L. 74, al. 1 du Code électoral renvoie à la procédure générale de l'article L. 62 (notamment passage par l'isoloir).

II. Quelles sont les élections effectuées par le Parlement ?

On examinera uniquement les élections effectuées par l'ensemble des parlementaires, en écartant ainsi à la fois la procédure de participation des députés au collège électoral du Sénat et celle de nominations ayant lieu au sein des organes des assemblées. La fonction électorale du Parlement, ainsi entendue, justifie des dérogations concernant les règles générales régissant la votation tant par l'établissement du scrutin secret (A) que par les modalités de son déroulement (B). Ces dérogations s'appliquent uniquement lorsqu'en matière de nominations personnelles, il y a lieu de recourir au scrutin. Si, pour certains types de fonctions, la nomination par scrutin est le principe, pour d'autres, elle demeure une exception entourée de conditions procédurales (C)

A. L'établissement du scrutin secret pour les nominations personnelles

A l'Assemblée nationale, comme au Sénat, le vote s'exprime « soit à main levée, soit par assis et levé, soit au scrutin public ordinaire, soit au scrutin public à la tribune » (article 63, al. 1 RAN et article 53 RS). Hors ces cas, les deux Règlements prévoient que le vote a lieu à main levée et c'est d'ailleurs le mode de votation le plus fréquent. Une dérogation expresse est toutefois établie dans l'hypothèse où les assemblées fonctionnent en tant que corps

électoral, c'est-à-dire principalement en matière de désignations personnelles. En effet, « le vote à main levée est de droit en toutes matières, sauf pour les désignations personnelles » (article 64, al. 1 RAN et article 54, al. 1 RS). La fonction électorale des Assemblées justifie ainsi un recours exceptionnel au vote secret. Tant le Règlement de l'Assemblée nationale que celui du Sénat disposent, dans des termes quasi-identiques, que « lorsque l'Assemblée doit procéder, par scrutin, à des nominations personnelles, le scrutin est *secret* » (article 63, al. 2 RAN), ou bien que « [...] les nominations en assemblée plénière ou dans les commissions ont lieu au scrutin *secret* » (article 61, al. 1 RS).

Une délégation de vote, dans les cas où les parlementaires procèdent à des nominations par scrutin secret, est-elle possible ? Une première lecture des Règlements de deux Assemblées irait dans le sens de l'exclusion de ce procédé lors des scrutins secrets. En effet, l'article 62, al.2 du Règlement de l'Assemblée nationale dispose que le droit de vote des députés « *dans les scrutins publics* peut être délégué par eux dans les conditions fixées par l'ordonnance n° 58-1066 du 7 novembre 1958 ». Dans le même esprit, le Règlement du Sénat prévoit que la délégation « [...] vaut pour les scrutins en *séance publique* et pour les votes en commission » (article 64, al. 1bis RS). Toutefois, dans sa décision n° 73-49DC du 17 mai 1973 le Conseil constitutionnel infirme cette impression. Saisi par le Président du Sénat d'une résolution tendant notamment à écarter l'hypothèse de délégation pour les scrutins secrets, le juge constitutionnel la déclare non conforme à la Constitution. Il se fonde sur l'ordonnance n° 58-1066 du 7 novembre 1958, prise en application de l'article 27 de la Constitution, dont le 2^e alinéa énonce la possibilité d'une délégation en tant que dérogation valable au principe du vote personnel des parlementaires. Il estime que l'ordonnance susvisée, portant loi organique autorisant exceptionnellement les parlementaires à déléguer leur droit de vote, « n'apporte *aucune restriction* à l'autorisation conférée aux membres du Parlement de déléguer leur droit de vote dans les cas qu'elle énumère (motifs valables de la délégation) » (cons. 9). En tout état de cause, les Règlements des deux Assemblées entourent l'exercice du vote par délégation de précautions procédurales. Dans des termes quasi-identiques, ils disposent que la délégation doit être notifiée au Président de l'assemblée concernée avant l'ouverture du scrutin ou du premier des scrutins auxquels l'intéressé ne peut prendre part. Cette notification doit indiquer le nom du sénateur appelé à voter au lieu et place du délégant, ainsi que le motif de l'empêchement, dont l'appréciation appartient au Bureau. La délégation ainsi que sa notification doivent, en outre, indiquer la durée de l'empêchement. A défaut, la délégation est considérée comme faite pour une durée de huit jours. Sauf renouvellement dans ce délai, elle devient alors caduque à l'expiration de celui-ci (article 62, al. 3, 4 RAN et article 64, al. 2 RS).

B. L'organisation de la procédure électorale

Dans les deux Assemblées, le caractère effectif du scrutin secret est garanti par une série de règles procédurales qui s'appliquent dans toute hypothèse de nomination personnelle. Le Règlement de l'Assemblée nationale distingue entre deux procédures, susceptibles de s'appliquer, selon que le scrutin secret a lieu à la tribune ou dans les salles voisines de la salle des séances (article 69, al. 1 RAN). Dans le premier cas, après l'appellation nominale de tous les députés par les huissiers, on procède à l'émargement des noms des votants. Le vote a lieu au moyen d'une urne électronique. Il a lieu par bulletin, si celui-ci ne fonctionne pas. *Chaque député remet son bulletin à l'un des secrétaires*, qui le dépose dans une urne placée sur la tribune. Le résultat est constaté par les secrétaires et proclamé par le Président (article 66, al. 5, 6 et 7 RAN). Dans le second cas, lorsque le scrutin se déroule dans les salles voisines de la salle des séances, des scrutateurs tirés au sort procèdent à l'émargement des listes de votants.

Ensuite, chaque député dépose son bulletin dans une urne placée *sous la surveillance de l'un des secrétaires* du Bureau. Puis, les secrétaires dépouillent le scrutin et le Président en proclame le résultat en séance (article 69, al. 2 RAN). On remarquera que la différence principale entre les deux procédures réside dans le rôle accordé aux secrétaires : alors que dans le premier cas le bulletin est confié aux secrétaires qui, eux, le déposent dans l'urne, dans le second cas le bulletin est déposé dans l'urne directement par le député électeur. Cette dernière modalité est également appliquée au Sénat.

En effet, le Règlement du Sénat prévoit une procédure unique qui s'applique à toute nomination personnelle au scrutin secret ayant lieu en assemblée plénière. On peut découper cette procédure en trois étapes. D'abord, après consultation du Sénat, le Président indique l'heure d'ouverture et la durée du scrutin. Une urne est placée dans l'une des salles voisines de la salle des séances, *sous la surveillance de l'un des secrétaires* assisté de deux scrutateurs. Ensuite, chaque sénateur dépose son bulletin dans l'urne et les scrutateurs émargent les noms des votants. Enfin, les secrétaires font le dépouillement du scrutin et le Président proclame le résultat (article 61, al. 3, 4, 5 et 6 RS). Il y a lieu de remarquer que le recours à cette procédure reste explicitement facultatif. En effet, le Règlement du Sénat dispose que « pour les nominations en assemblée plénière, le Sénat *peut* décider que le vote aura lieu » de la manière ci-dessus décrite (article 61, al. 2).

Par ailleurs, le Règlement du Sénat contient des précisions quant à la majorité requise pour les nominations personnelles. En dérogeant au principe de la majorité absolue des suffrages exprimés (article 52, al. 1 RS), le Règlement dispose que « lorsque le Sénat procède par scrutin à des nominations personnelles en séance plénière, si la majorité absolue des suffrages exprimés n'a pas été acquise au premier ou au deuxième tour de scrutin, au troisième tour la majorité relative suffit ; en cas d'égalité des suffrages, le plus âgé est nommé » (article 52, al. 2 RS). Le Règlement de l'Assemblée nationale reprend la même règle dans les dispositions spécifiques détaillant chaque cas de nomination personnelle (cf. infra).

C. Les nominations personnelles témoignant de la fonction électorale du Parlement

L'élection des Présidents des deux assemblées ainsi que celle des membres de la Haute Cour de Justice et de la Cour de Justice de la République sont effectuées selon le principe du scrutin secret, expressément énoncé dans les dispositions relatives des Règlements de deux Assemblées (1). En revanche, pour les autres nominations personnelles, le recours au scrutin demeure souvent une hypothèse exceptionnelle soumise à des conditions procédurales (2).

1. Les nominations personnelles régies par le principe du scrutin secret

Dans les deux Chambres, le recours au vote secret est formellement requis pour l'élection des Présidents (a) et pour la nomination des juges titulaires et suppléants à la Haute Cour de Justice et à la Cour de Justice de la République (b).

a. L'élection des Présidents et des autres membres des Bureaux des assemblées

Aux termes de l'article 32 de la Constitution, « le Président de l'Assemblée nationale est élu pour la durée de la législature. Le Président du Sénat est élu après chaque renouvellement partiel ». Les Règlements respectifs de deux Chambres exigent expressément le secret du vote, disposant que « le Président [...] est élu au scrutin *secret* à la tribune » (article 9, al. 2 RAN et article 3, al. 4 RS). Par ailleurs, dans les deux Chambres, l'élection présidentielle est

effectuée au scrutin secret uninominal majoritaire à trois tours. Une majorité absolue des suffrages exprimés est exigée aux deux premiers tours, alors qu'une majorité relative suffit pour le troisième. En cas d'égalité de suffrages, le plus âgé est élu (article 9, al. 2 RAN et 3, al. 6 RS).

La nomination des autres membres du Bureau (vice-présidents, questeurs, secrétaires) est soumise à une procédure qui diffère selon la Chambre concernée :

- *A l'Assemblée nationale*, ils sont choisis par accord entre les présidents de groupe. Ceux-ci « se réunissent en vue d'établir, dans l'ordre de présentation qu'ils déterminent la liste de leurs candidats aux différentes fonctions » (article 10, al. 3 RAN). Si le nombre des candidats est égal à celui des sièges, les candidatures sont affichées et prennent effet dès leur publication au Journal officiel (article 10, al. 5 RAN). En revanche, en cas de désaccord ou lorsque le nombre des candidats est supérieur au nombre des sièges à pourvoir, la nomination a lieu au scrutin plurinominal majoritaire (article 10, al. 6 RAN). En l'absence de mention spécifique, la règle générale, selon laquelle « lorsque l'Assemblée doit procéder, par scrutin, à des nominations personnelles, le scrutin est *secret* » (article 63, al. 2 RAN) s'applique.

- *Au Sénat*, l'élection des vice-présidents et celle des questeurs ont lieu, « au scrutin *secret*, par scrutins séparés et par bulletins plurinominaux » (article 3, al. 7 RS). Les modalités du suffrage sont les mêmes que celles prévues pour l'élection du président (article 3, al. 8 RS). Il n'en est pas de même de l'élection aux fonctions de secrétaire. Celle-ci est effectuée sur la base d'une liste de candidats, établie selon la représentation proportionnelle des groupes et compte tenu de la représentation acquise aux groupes aux autres postes du Bureau. Cette liste est remise au Président qui la fait afficher (article 3, al. 9 RS). Elle est, ensuite, ratifiée par le Sénat et le Président procède à la proclamation des secrétaires (article 3, al. 11 RS).

b. Les nominations à la Haute Cour de Justice et à la Cour de Justice de la République

Dans les deux Chambres, qu'il s'agisse de l'élection de la Haute Cour ou de la Cour de Justice de la République, « il est procédé à l'élection par scrutin *secret*, plurinominal » (article 157, al. 2, article 157-1, al. 2 RAN ; article 85, al. 2 RS et article 86bis, al. 3 RS respectivement). Les Règlements se fondent sur l'ordonnance n° 59-1 du 2 janvier 1959 portant loi organique sur la Haute Cour de Justice ainsi que sur la loi organique n° 93-1252 du 23 novembre 1993 sur la Cour de Justice de la République. En effet, dans les deux lois organiques le principe du scrutin secret est explicitement posé (article 2, al. 3 et article 1, al. 1 respectivement). Dans le cadre de ces nominations, sont élus, à chaque tour de scrutin, dans l'ordre des suffrages, les candidats qui ont obtenu un nombre de voix au moins égal à la majorité absolue des suffrages exprimés. En outre, il est procédé à autant de tours de scrutin qu'il est nécessaire, jusqu'à ce que tous les sièges soient pourvus. En cas d'égalité des suffrages pour les derniers sièges à pourvoir, les candidats sont proclamés élus dans l'ordre d'âge des candidats titulaires, en commençant par le plus âgé, jusqu'à ce que tous les sièges soient pourvus (article 157, al. 4 et article 157-1, al. 5, 6 RAN ; article 85, al. 4, 5, 6 et article 86bis, al. 4, 5 RS respectivement).

2. Les nominations personnelles impliquant un recours exceptionnel au scrutin secret

Ce cas de figure concerne les nominations aux différentes commissions parlementaires ainsi que celles aux assemblées internationales et européennes. Les conditions émises pour un recours au scrutin par les Règlements de deux Assemblées diffèrent notablement, ce qui nécessite un examen séparé des réglementations applicables à chacune d'elles.

A l'Assemblée nationale, le chapitre VI du Règlement prévoit deux procédures générales de nominations personnelles susceptibles de s'appliquer « lorsque [...] l'Assemblée doit fonctionner comme un corps électoral d'une autre assemblée, d'une commission, d'un organisme ou de membres d'un organisme quelconque [...] » (article 24 RAN).

La première procédure, consacrée par l'article 25 RAN, est d'application dans toute hypothèse où une nomination obéirait à l'exigence d'une représentation proportionnelle des groupes. Dans ce cas de figure, le Président de l'Assemblée fixe le délai dans lequel les présidents des groupes doivent lui faire connaître les noms des candidats qu'ils proposent. A l'expiration de ce délai, les candidatures transmises au Président de l'Assemblée sont affichées et publiées au *Journal officiel*. La nomination prend immédiatement effet dès cette dernière publication. L'absence de scrutin est ainsi la règle pour la nomination des membres des commissions permanentes et des commissions d'enquête (les articles 37, al. 1 RAN et 140, al. 3 RAN respectivement renvoyant expressément à la procédure fixée par l'article 25 RAN). Il en va de même de la nomination des membres des commissions spéciales et des commissions mixtes paritaires. En effet, les articles 34 RAN et 111 RAN respectivement, sans renvoyer à l'article 25 RAN, reprennent, pour l'essentiel, les modalités de nomination prévues par ce dernier.

La deuxième procédure de nomination, consacrée par l'article 26 RAN, vise l'hypothèse où le nombre des candidats est supérieur au nombre des sièges à pourvoir ou lorsque le texte constitutif dispose qu'il y a lieu à scrutin. Dans ce cas de figure, l'Assemblée procède à la nomination par un vote, suivant le cas, au scrutin uninominal ou plurinominal (article 26, al. 4 RAN). La majorité absolue est requise aux deux premiers tours de scrutin ; au troisième tour, la majorité relative suffit et, en cas d'égalité de suffrages, le plus âgé est nommé (article 26, al. 7 RAN). En l'absence de mention spécifique, la règle générale selon laquelle « lorsque l'Assemblée doit procéder, par scrutin, à des nominations personnelles, le scrutin est *secret* » (article 63, al. 2 RAN), est d'application. Le recours au scrutin, suivant les modalités arrêtées par l'article 26 RAN, est expressément prévu pour la nomination des représentants de l'Assemblée nationale aux assemblées internationales ou européennes (article 29, al. 1 RAN). En revanche, pour la nomination des membres à la Commission mixte paritaire, il y a lieu à scrutin uniquement dans le cas où le nombre de candidats est supérieur au nombre de sièges à pourvoir (article 111, al. 5 RAN, qui renvoie exceptionnellement à la procédure de l'article 26 RAN).

Au Sénat, l'article 8 du Règlement organise une procédure de nomination applicable, tant pour les commissions permanentes (mention expresse dans l'al. 1 de l'article 8 RS) que pour les commissions spéciales et les commissions d'enquête (renvoi des articles 10, al. 2 et 11, al. 2 RS respectivement). Pour la désignation des membres de ces trois types de commission, une liste de candidats est établie, conformément à la règle de la représentation proportionnelle, par les bureaux des groupes et le délégué des sénateurs ne figurant sur la liste d'aucun groupe (article 8, al. 2, article 10, al. 1 et 11, al. 2 RS). Cette liste est ensuite affichée et le Président du Sénat fait connaître qu'il a été procédé à son affichage. Le recours au scrutin est soumis à une triple condition : il faut d'abord qu'une opposition soit faite à la liste des candidats ainsi présentés, dans un délai d'une heure suivant l'avis du Président

concernant l'affichage (article 8, al. 4 RS) ; il faut ensuite que le motif de l'opposition soit autre que le non-respect des règles de la représentation proportionnelle et que l'opposition soit rédigée par écrit et signée par trois présidents de groupe ou par soixante sénateurs (article 8, al. 7 RS) ; il faut, enfin, qu'elle soit prise en considération par le Sénat (article 8, al. 8 RS). Lorsque ces trois conditions sont réunies, le Sénat procède à la nomination « à un ou plusieurs votes par scrutin uninominal, en assemblée plénière ». Le recours au scrutin pour la nomination des membres à la Commission mixte paritaire est soumis aux mêmes conditions (article 9, al. 5 à 9 auquel renvoie l'article 12, al. 4 RS) à la seule différence que le texte de l'opposition doit être signé par un président de groupe ou par trente sénateurs (article 9, al. 6 RS). En l'absence de mention spécifique au secret du vote, on le déduit de la règle générale de l'article 61, al. 1 du Règlement, selon lequel « [...] les nominations en assemblée plénière [...] ont lieu au scrutin *secret* ». En ce qui concerne la nomination des représentants aux assemblées internationales et européennes, aucune mention spécifique ne figure dans le Règlement du Sénat. On peut toutefois considérer que la procédure de l'article 8 du Règlement est applicable, dès lors que cette nomination doit tenir compte de la représentation proportionnelle des groupes dans le Sénat (article 110 RS).

III. Le contrôle du secret du vote dans le cadre d'élections par le Parlement

L'exercice de la fonction électorale du Parlement, organisé de manière exclusive par les Règlements des deux Assemblées, ne peut faire l'objet d'un recours juridictionnel. On relèvera, à cet effet, la décision du 16 avril 1986 du Conseil constitutionnel portant sur la régularité de l'élection du Président de l'Assemblée nationale. Saisi, par une députée, candidate à la présidence de l'Assemblée nationale, d'un "recours" lui demandant de constater que les remplaçants des députés devenus ministres ne pouvaient participer au scrutin ayant abouti à la proclamation du Président de l'Assemblée nationale le 2 avril 1986, le juge constitutionnel s'est déclaré incompétent. Dans l'unique considérant de sa décision, il estime qu' « aucune disposition de la Constitution ne donne compétence au Conseil constitutionnel pour statuer sur la régularité de l'élection du Président de l'Assemblée nationale [...] ». Ainsi, le contrôle de la régularité des procédures mettant en œuvre la fonction électorale du Parlement s'exerce selon les seules modalités prévues par les Règlements de deux Assemblées, selon lesquelles la violation des règles procédurales, en la matière, est susceptible d'entraîner des sanctions disciplinaires.

A l'Assemblée nationale, il revient aux secrétaires de constater la fraude dans les scrutins, notamment en ce qui concerne le caractère personnel du vote. Sur leur proposition, le Bureau de l'Assemblée peut décider d'imposer une peine disciplinaire de privation, pendant un mois, du quart de l'indemnité allouée au député. En cas de récidive pendant la même session, cette durée est portée à six mois (article 77-1 RAN). Dans l'hypothèse grave où un député entreprendrait de paralyser la liberté des votes, en se livrant à des agressions contre ses collègues et malgré le rappel à l'ordre du Président, celui-ci « lève la séance et convoque le Bureau » (article 77, al. 1 RAN). Ce dernier peut proposer à l'Assemblée de prononcer la peine de la censure avec exclusion temporaire entraînant « l'interdiction de prendre part aux travaux de l'Assemblée et de reparaitre dans le Palais de l'Assemblée jusqu'à l'expiration du quinzième jour de séance qui suit celui où la mesure a été prononcée » (article 73, al. 6 RAN) ainsi que « la privation de la moitié de l'indemnité parlementaire [...] pendant six mois » (article 77, al. 2 RAN).

Au Sénat, en l'absence de peine spécifique pour la violation du secret du vote, on peut estimer qu'une procédure telle que celle de l'article 77-1 du Règlement de l'Assemblée nationale

s'applique par analogie. En effet, on peut considérer qu'il incomberait alors aux secrétaires, de par leur rôle de surveillance du déroulement du scrutin (article 61, al. 3-6 RS), d'avertir le Bureau du Sénat de toute irrégularité de procédure, y compris de la violation éventuelle du secret du vote.

GEORGIA / GEORGIE

A. Is there a constitutional and/or legislative provision of a general nature which guarantees secrecy of the vote in your country? If so, does this provision concern equally all types of election or only those which take place by direct vote?

Provisions of the Constitutional and other legislative acts which refers to the secrecy of the vote and to the guarantees of secrecy of the vote:

1. Constitution of Georgia:

- a) In accordance with paragraph 1 of Article 49, The Parliament of Georgia shall consist of members of the Parliament elected by on the basis of universal, equal and direct suffrage by secret ballot;
- b) In accordance with paragraph 1 of Article 55, The Parliament of Georgia shall elect the President and the Vice-Presidents of the Parliament by a secret ballot;
- c) In accordance with paragraph 1 of Article 70, The President of Georgia shall be elected on the basis of universal, equal and direct suffrage by secret ballot.

2. Following to paragraph 3 of Article 10 of the Constitutional Law on the Status of the Autonomous Republic of Adjara, The Supreme Council of the Autonomous Republic of Adjara shall be elected on the basis of universal, equal and direct suffrage by secret ballot.

3. Organic Law of Georgia the Election Code of Georgia:

- a) In accordance with Article 4, Elections in Georgia shall be held on the basis of universal, equal and direct suffrage, and by secret vote;
- b) In accordance with paragraph 1 of Article 8, Elections in Georgia shall be held by secret ballot. Following to paragraph 2 of the same Article, Any intervention, restricting the possibility to freely express the will of voters shall be prohibited. Also any control on the free expression of the will of voters shall be prohibited;
- c) In accordance with sub-paragraph "a" of paragraph 3 of Article 50, voting booths shall be arranged in the polling station for the secrecy of votes. Following to paragraph 5 of the Same Article. The PEC Chairman shall bear the responsibility for ensuring the secret voting;
- d) In accordance with sub-paragraph "e" of paragraph 2 of Article 54, the voter shall fill in the ballot paper(s) in the voting booth for the secret voting. Member of the election commission does not have a right to violate the secrecy of vote.

4. In accordance with paragraph 1 of Article 21 of the Law of Georgia on Local Self-government, local self-government representative body – *sakrebulo* shall be elected on the basis of universal, equal and direct suffrage by secret ballot by the citizens of Georgia Residing on the corresponding territory.

5. In accordance with Article 164 of the Criminal Code of Georgia, encroachment upon the privacy of voting of the participant of elections, referendum or plebiscite shall be punishable by fine or by corrective labour for up to one year in length or by imprisonment for the term not in excess of two years.

All above mentioned provisions concern only elections which take place by direct vote.

B. Which elections take place in Parliament?

Elections which take place in Parliament of Georgia:

1. Parliament of Georgia shall elect:
 - a) President of the Parliament of Georgia;
 - b) Vice-Presidents of the Parliament of Georgia;
 - c) Chairman of the Committee of the Parliament of Georgia;
 - d) Chairman of Temporary Investigation Commission and Chairman of other Temporary Commissions of the Parliament of Georgia;
 - e) 9 members of the Council of the National Bank of Georgia – upon the submission of the President of Georgia;
 - f) President of the Chamber of Control of Georgia – upon the submission of the President of the Parliament of Georgia;
 - g) Ombudsman of Georgia;
 - h) 4 members of the highest Council of Justice of Georgia;
 - i) 3 members of the Constitutional Court of Georgia;
 - j) President of the Supreme Court of Georgia and judges of the Supreme Court of Georgia – upon the submission of the President of Georgia;
 - k) Chairman and 6 members of the Central Election Commission of Georgia - upon the submission of the President of Georgia.

For each one:

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

In the Parliament of Georgia in the process of the election of above mentioned state officials only the members of Parliament are authorised to vote, also on the ground of Article 140 of the Rules of the Parliament of Georgia, Member of Parliament votes personally and transfer of the right to vote or ballot card to the other person is inadmissible. In accordance with Paragraph 3 of Article 60 of the Constitution of Georgia, Voting shall always be by open except for the cases defined in the Constitution and law. Following to Articles 141-142 of the Rules of the Parliament of Georgia the procedure of voting is open (hand rising, reading a list, printing out the last names by using the electronic system of voting, by nominal ballot papers- nominal ballot) or secret (with ballot paper by using electronic system of voting without filling in last names). Before each voting the Chairman of the plenary sitting makes a statement concerning the form of voting. At the process of holding the secret voting, Temporary Commission for Counting Votes or Procedural Issues and Rules Committee establishes the place for voting and the form of ballot paper.

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

Election of the Following public officials in the Parliament of Georgia is obligatory to be held on the basis of secret voting:

- a) President of the Parliament of Georgia – on the basis of paragraph 1 of Article 55 of the Constitution of Georgia and paragraph 1 of Article 107 of the Rules of the Parliament of Georgia;
- b) Vice-Presidents of the Parliament of Georgia – on the basis of paragraph 1 of Article 55 of the Constitution of Georgia and paragraph 1 of Article 115 of the Rules of the Parliament of Georgia;

- c) Ombudsman of Georgia – on the basis of paragraph 3 of Article 6 of the Organic Law of Georgia on the Ombudsman;
- d) 3 Members of the Constitutional Court of Georgia– on the basis of paragraph 3 of Article 7² of the Organic Law of Georgia on the Constitutional Court of Georgia.

3. What practical arrangements are made to ensure its effectiveness? *See part C. of the Questionnaire*

C. Should there be a violation of secrecy of vote, in the framework of an indirect vote

Following Mechanisms are established to guarantee the principal of secrecy of vote in the process of elections in the Parliament of Georgia:

Following to Articles 139-142 of the Rules of the Parliament of Georgia quorum shall be examined before the voting. Aimed to participate in the voting, a Member of Parliament, who did not pass the final registration, is obliged to pass the registration by oral statement before voting. During the assessment of the results of voting, majority of attendants shall be calculated from the total amount of that Members of Parliament who were presented at the Parliament before voting and from the Members of Parliament who passed the registration before voting. If the necessary amount of the Members of the Parliament for the voting is not attending the plenary sitting, election shall be postponed.

Member of Parliament shall vote personally. Transfer of the right to vote or ballot card to other person is inadmissible. If a Member of Parliament did not participate in the voting, he/she shall not be permitted to vote concerning this issue after the announcement of the voting results. At the moment of voting process, a Member of Parliament is prohibited to leave the sitting hall.

During the secret voting by the ballot papers, Temporary Commission for Counting Votes or Procedural Issues and Rules Committee of the Parliament establishes the place for voting and the form of ballot paper. Ballot papers shall not be different from each other. Ballot paper filled in by violating the procedure determined by the Rules of the Parliament shall be considered invalid.

In case if the results of voting appear to be the subject of doubt, by the request of fraction, majority or minority the data of the election can be read out.

Properly motivated statement on the doubt concerning the voting results shall be submitted to the chairman of the sitting immediately, who shall transfer the issue to the "Mandaturtukhutses" (Person responsible to protect the order in the Parliament's building and sitting hall of the Parliament of Georgia) for the examination. The latter shall examine the issue and immediately deliver the opinion to the Parliament. If the result of the mentioned opinion confirms the falsification of the votes, new voting shall take place only in case if the amounts of doubtful votes are changing the final voting results. Until the settlement of the existed dispute concerning the voting results it is inadmissible to hold other election.

Appropriate office of the staff of Parliament shall register taking and return of the ballot card by the Member of Parliament. Transfer of the ballot card to the other person is inadmissible and following to the Rules of the Parliament of Georgia is the subject of liability.

The following forms of pressure shall be put on the Member of Parliament for violation of the procedures of registration or forms of voting:

- a) Notification by bringing in the protocol;
- b) Retain of the salary in amount of from 1 to 6 month salary.

The chairman of the sitting shall inform the Parliament on result of each voting. Mentioned results shall be published in the official gazette of the Parliament and in the Internet Site.

HUNGARY / HONGRIE

A. The Hungarian Constitution (Act 20 of 1949) declares the “basic principles of elections” in Article 71, para. 1:

“Members of Parliament, Members of the European Parliament, members of representative bodies of local governments, Mayors and the Mayor of the Capital are elected by direct, secret ballot by voting citizens, based on their universal and equal right to vote.”

Thus secrecy is mentioned exclusively in the context of direct vote. Secrecy is one of the basic principles of elections but the constitution does not define or specify its content. And neither do the laws on electoral matters (as Act 34 of 1989 on the election of Members of Parliament, or Act 100 of 1997 on the electoral procedure).

B. The constitution, several laws, and the Standing Orders³⁰ of the Parliament regulate the cases when the election of high officers of the State takes place by indirect vote. These are as follows according Article 19, para. 3, point k) of the Constitution:

1. the President of the Republic,
2. the Prime Minister,
3. the members of the Constitutional Court,
4. the Parliamentary Commissioners (i.e. the ombudsmen),
5. the President and Vice-Presidents of the State Audit Office,
6. the President of the Supreme Court,
7. the Chief Public Prosecutor.

Standing Order no. 132 lists the same high officers, and declares that they “*are elected by Parliament in accordance with the rules laid down in the Constitution or in separate Acts. ... The election shall be held by secret ballot, except for the election of the Prime Minister*”.

The Prime Minister is elected by the majority of the votes of the Members of Parliament. The Parliament decides on the election of the Prime Minister together with the Government’s programme (Article 33 of the Constitution). The vote is obviously not secret.

In the six cases where the indirect vote is secret, basically the same procedural rules apply. In the case of the election of the President of the Republic some specific rules are added.

The general rules of the indirect electoral procedure:

The Hungarian Parliament consists only of one chamber with 386 deputies. All members of the Parliament are entitled to vote. The vote according the above-quoted Standing Order no. 132 is secret. Secret vote can take place not only at the election of high officers but in other cases as well (e.g. in the procedures of incompatibility and impeachment against the President of the Republic, Standing Order no. 133). The general rules of procedure valid for all cases of secret vote are regulated by Standing Order no. 63. This article provides only three rules:

- in the event of secret balloting the notaries of the Parliament³¹ act as vote-counting committee,

³⁰ Parliamentary resolution 46/1994 (IX.30.) on the standing orders of the parliament

³¹ The Notaries are elected from the members of the Parliament. They assist the Speaker in chairing the sessions.

- the voting takes place on voting slips placed in envelopes, making use of polling-booth and ballot-box,
- minutes signed by the notaries shall be taken on the voting.

The House Committee³² in 1998 took a position on the procedure of secret ballot; this stand has been since then amended several times. The stand specifies the rules of the secret ballot. It establishes a working group that takes care of the technical procedure. They prepare one day before the voting the voting slips, and place them in envelopes. The voting slips are of different colours for each candidate. Before beginning the secret ballot, the notaries state the main rules of procedure. During the voting at least two notaries stand by the ballot-box, while the others distribute the voting slips to the members of Parliament.

The members of Parliament may refuse to vote. In this case the procedure is the following: the notaries invalidate the voting slip by writing on it the name of the member of Parliament. This fact is registered in the minutes and it is considered an information of public interest. The vote is considered null and void if it was not cast on the official voting slip, the voting slip was not sealed, or the voting slip was not dropped into the ballot-box. These cases are not taken into consideration when determining the quorum. The vote is invalid if it is not possible to determine for whom was the vote cast. These votes are taken into consideration for the quorum.

During the last presidential election (in June 2005) the stand was amended by the following provision: *“during the secret ballot nobody is allowed by no means to control the vote of the members of Parliament. On the area designated for the ballot the vote shall not be registered by any technical means, and the members of Parliament shall not create any possibility for that.”* This position was taken by the House Committee after that during the second round of the presidential election in June 2005 eight members of Parliament had shown to their faction members their voting slips in order to avoid accusations of having voted for the candidate of the opposite political side.³³ This provision turned the right to the secrecy of vote into an obligation prohibiting the members of Parliament to make their vote public voluntarily.

The House Committee took position on the procedure of presidential election in 1995. The rules for the secrecy of the vote are the same as for the other cases of secret ballot: the voting takes place on voting slips placed in envelopes, making use of polling-booth and ballot-box. The only difference is that all the candidates are listed on the same voting slip.

C. None of the legal provisions regulating the voting procedure (constitution, separate acts, Standing Orders, the stands of the House Committee) establish any sanction for the violation of the secrecy of vote. The House Committee does not have either any competence to examine the secrecy of the vote.

³² According to Standing Order No. 24 the chairman of the House Committee is the Speaker of Parliament, its members the Deputy Speakers of Parliament, and the leader of each party faction. In the House Committee only the faction leaders have the right to vote.

³³ This incident served as reason for the Parliamentary Assembly to ask for the present opinion.

IRELAND / IRLANDE

A. Is there a constitutional and/or legislative provision of a general nature which guarantees secrecy of the vote in your country? If so, does this provision concern equally all types of election or only those which take place by direct vote?

As this question does not concern voting in Parliament it has been omitted from this document.

B. Which elections take place in Parliament?

Procedure for votes other than elections in the Houses

13 Article 15.11 of the Constitution provides that “all questions in each House shall...be determined by a majority of the votes of the members present and voting, other than the Ceann Comhairle, or presiding member, who shall have and exercise a casting vote in the case of an equality of votes...” Voting may be by division and if so, is generally conducted by electronic means, save in the case of the following exceptions as provided for in Standing Order 69³⁴ namely, election of Ceann Comhairle (Speaker), nomination of the Taoiseach (Prime Minister) and members of the Government, and motion of confidence in the Government.

Votes are taken in public as the electronic voting system used in the Dáil Chamber is a public voting system in that an array of lights arranged in a horseshoe pattern corresponding to the arrangement of the seating in the Chamber (which reflects party affiliation) appears on a large display panel on the wall over the Speaker’s Chair in the Chamber. Therefore, when a Member casts his/her vote, the light corresponding to his/her seat is illuminated on the display panel and the increasing Yes and No total is also shown as they vote. In addition, a printout of the vote results is handed to the Tellers in the Chamber and it is only after the result has been verified by the Tellers and announced by the Speaker that the vote is formally concluded.

A video image of the display board is fed to the Broadcasting Unit which is broadcast on television monitors around the Parliament’s precincts during votes. In addition, the results of each vote appear in the daily official verbatim report of the parliamentary debates which are placed on sale to the public and are available on the internet.

Similarly voting in the Seanad is generally conducted by electronic means. The results are fed into the internal broadcasting system, as well as appearing in the Seanad debates and on the Internet.

Elections in Parliament

14 Elections for the position of Chairman and Deputy-Chairman of both Houses of Parliament are held in Parliament. The Chairman of the Dáil (House of Representatives) is known as the Ceann Comhairle, and the Deputy Chairman as the Leas-Cheann Comhairle. The

³⁴ Dáil Standing Orders relative to Public Business 2002 - Standing Order 69.

Chairman of the Seanad (Senate) is known as the Cathaoirleach, and the Deputy Chairman as the Leas-Chathaoirleach.³⁵

15 Although the Taoiseach and Members of the Government are appointed by the President, the Taoiseach must have been nominated by the Dáil, and the Members of Government must have been nominated by the Taoiseach and approved by the Dáil.³⁶ As stated in reply to Question 13 above, a division demanded on the election of the Ceann Comhairle and on the nomination of the Taoiseach and members of the Government is conducted by manual means, ie, members walk through the division lobbies.

Election of Ceann Comhairle and Leas-Cheann Comhairle in the Dáil

Who is authorised to vote and how is the electoral procedure organised?

16 The election of Ceann Comhairle and Leas-Cheann Comhairle in the Dáil is governed by Standing Orders, and all members may vote in these elections. The first business of a new Dáil after a General Election is to elect from its Members the Ceann Comhairle. The Ceann Comhairle is elected by the Dáil by way of a motion made without notice by any member who has taken his or her seat according to law.³⁷ Such motion or motions are received by the Clerk of the Dáil, who acts as Chairman until the Ceann Comhairle is elected.³⁸ If more than one member is proposed as Ceann Comhairle, the Clerk shall, in the order in which the members shall have been proposed, put the question “That.....(*naming the member*) be elected and do now take the Chair of the Dáil as Ceann Comhairle”.³⁹ Once a Question is carried, the nominated member is elected. Standing Orders require that the question on the election of the Ceann Comhairle be decided like other questions unless there is an equality of votes, in which case the question is decided in the negative.⁴⁰

If a division is demanded on the election of the Ceann Comhairle or Leas-Cheann Comhairle, two tellers are appointed from each side.⁴¹ The members file through the lobbies on their chosen side and each member’s vote is recorded. On completion of the count, the tellers sign a division paper, which is handed to the Clerk or the Chairperson, as the case may be, who then announces the numbers in favour and against the nomination and declares the decision.⁴² The results of the votes are recorded in the Dáil Debates.

17 An election shall also be held for the position of Leas-Cheann Comhairle, and motions may be made to this effect after notice. The election of a Leas-Cheann Comhairle takes place on a different day to that of the election of the Ceann Comhairle. Unlike the motion for the election of the Ceann Comhairle, the motion for the election of Leas-Cheann Comhairle must be made after notice and the text of the motion(s) appear on the Dáil Order Paper in order of receipt.

18 Each House of the Oireachtas has power under its Standing Orders to establish Committees for specific purposes. Each House decides the Orders of Reference, membership

³⁵ Article 15.9.1 of the Constitution states “Each house [of the Oireachtas] shall elect from its members its own Chairman and Deputy Chairman and shall prescribe their powers and duties”

³⁶ Article 13

³⁷ Dáil Standing Orders relative to Public Business 2002 – Standing Order 6

³⁸ Dáil Standing Orders relative to Public Business 2002 - Standing Order 6

³⁹ Dáil Standing Orders relative to Public Business 2002 - Standing Order 6

⁴⁰ Dáil Standing Orders relative to Public Business 2002 - Standing Order 6

⁴¹ Dáil Standing Orders relative to Public Business 2002 - Standing Order 68

⁴² Dáil Standing Orders relative to Public Business 2002 - Standing Order 71

and powers of Committees. The first duty of a Committee is to elect a Chairman and Vice-Chairman. Standing Order 77 provides that the rules as to procedure in the Dáil shall apply to procedure in Committee of the whole Dáil and in Standing, Select or Special Committees. Therefore, as regards the election of the Chairperson of a Committee, the Clerk to the Committee takes the Chair and asks for nominations for the position of Chairperson. The Clerk puts the Question “*That Deputy xx be elected Chairperson of the Committee.*” The Clerk puts this Question for each nomination in the order in which they are received until such time as a Chairperson is elected.

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

18 It can be seen that there is no provision for secrecy of vote in these elections – rather votes are taken and recorded publicly.

What practical arrangements are made to ensure its effectiveness?

20 As there is no provision for secrecy, this question does not apply to the Irish system.

Election of Cathaoirleach and Leas-Chathaoirleach in the Seanad

Who is authorised to vote and how is the electoral procedure organised?

21 The procedures for electing a Chairman and Deputy Chairman in the Seanad – Cathaoirleach and Leas-Chathaoirleach - are broadly similar to the procedure in the Dáil, with the exception that it is the longest-serving Senator who acts as Chairperson until the Cathaoirleach is elected. All Members of the Seanad may vote in the election of Cathaoirleach and Leas-Chathaoirleach, nominations are made by any member and put to the Seanad as a question which in the event of an equality of votes will be decided in the negative. Divisions operate in the same way as in the Dáil.

22 Immediately following the election of a Cathaoirleach, a date will be fixed for the election of a Leas-Chathaoirleach. Seanad committees also elect a Chairman and vice-Chairman.

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

23 It can be seen that there is no provision for secrecy of vote in this election – rather votes are taken publicly and recorded.

What practical arrangements are made to ensure its effectiveness?

24 As there is no provision for secrecy this question does not apply to the Irish system.

Nomination of Taoiseach and approval of Members of Government by the Dáil

Who is authorised to vote and how is the electoral procedure organised?

25 Once the Ceann Comhairle has been elected to the Dáil, the next item of business to be taken is the nomination of the Taoiseach. The Standing Orders of the Dáil do not give detailed

consideration to the nomination of Taoiseach and approval of Members of Government, save to provide that divisions may not be conducted by electronic means in those instances.⁴³ The process of nomination is that Members will put forward and debate the nomination of an individual member for Taoiseach - the main political parties will usually put forward their leaders - and the house will vote on those nominations as they would any other question in the manner described above for the election of Ceann Comhairle. The names of those voting in favour and against any nominee are recorded in the Dáil debates.⁴⁴

26 Having been appointed by the President, the Taoiseach will nominate Members of Government to the Dáil. This motion is then debated and put to the house by one question. The names of those voting in favour and against the nominees are recorded in the Dáil debates. Pursuant to the Constitution, the President shall then, on the nomination of the Taoiseach and with the previous approval of the Dáil, proceed to appoint the other members of the Government.

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

27 It can be seen that there is no provision for secrecy of vote in this election.

What practical arrangements are made to ensure its effectiveness?

28 As there is no provision for secrecy, this question does not apply to the Irish system.

Conclusion

29 It can therefore be seen that votes in Parliament, including elections, are not by way of secret ballot, and details of how a particular member has voted are available for inspection on the public record of debates.

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

30 As there is no provision for secrecy of vote in the context of an election by Parliament these questions do not apply to the Irish situation.

What are the different types?

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

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

To what extent and how can it be sanctioned?

Are there any precedents or precise case-law?

⁴³ Dáil Standing Orders relative to Public Business 2002 - Standing Order 69(1) (b).

⁴⁴ Available on www.oireachtas.ie

LITHUANIA / LITUANIE**A. Is there a constitutional and/or legislative provision of a general nature which guarantees secrecy of the vote in your country? If so, does this provision concern equally all types of election or only those which take place by direct vote?**

In general the secrecy of vote is guaranteed by the constitutional provisions:

- Article 55 (1) of the Constitution: “The Seimas shall consist of representatives of the Nation – 141 Members of the Seimas who shall be elected for a four-year term on the basis of universal, equal, and direct suffrage by secret ballot.”
- Article 78 (2) of the Constitution: “The President of the Republic shall be elected by the citizens of the Republic of Lithuania for a five-year term by universal, equal, and direct suffrage by secret ballot.”
- Article 101 (3) of the Constitution: “The Government must also resign in the following cases: <...> 2) when the Seimas, by majority vote of all the Members of the Seimas, by secret ballot expresses no-confidence in the Government or in the Prime Minister; 3) when the Prime Minister resigns or dies; 4) after elections to the Seimas, when a new Government is formed. A Minister must resign when more than half of all the Members of the Seimas, by secret ballot, express no-confidence in him. The President of the Republic shall accept the resignation of the Government or a Minister.”
- Article 119 (2) of the Constitution: “The members of municipal councils shall be elected for a four-year term, as provided for by law, from among citizens of the Republic of Lithuania and other permanent residents of the administrative unit by the citizens of the Republic of Lithuania and other permanent residents of the administrative unit, on the basis of universal, equal and direct suffrage by secret ballot.”

These constitutional provisions are detailed in corresponding laws, i.e. Law on Elections of Seimas, Law on Elections of President, Law on Elections of Municipal Councils.

There are also legislative provisions on secret ballot, which are not provided directly in the Constitution, for example, Law on Referendum, Article 2 (1): “Taking part in the referendum shall be free and based upon the democratic principles of the right of elections: universal, equal and direct suffrage and secret ballot.”; Law on Elections to the European Parliament, Article 2 (1): “Elections to the European Parliament (or elections)” means elections of members of the European Parliament to the seats allocated for the Republic of Lithuania, in which members of the European Parliament are elected in general, equal, free, direct elections by secret ballot; Article 6 “Secret ballot”: “1. Voters shall vote in person and by secret ballot. It shall be prohibited for a person to vote instead of another person or to vote by proxy. A voter who, by reason of his physical disability, is unable to cast a ballot himself, may vote with the assistance of another person whom he trusts as laid down in Paragraph 5 of Article 64 of this Law. If the secret of another person’s voting has come to the knowledge of anyone, it shall be prohibited to disclose it.

2. It shall be prohibited to control the will of the voters during the elections. It shall be prohibited during the voting to influence the will of an elector to vote for or against any candidate or a list of candidates. A voter must have adequate conditions to mark his ballot in privacy and without interference. It shall be prohibited to handle the ballot in such a way that the secret of voting might be disclosed.”

Voting procedures in Lithuanian Parliament (Seimas) are detailed in Chapter XVII “Voting and vote tallying” of the Statute of Seimas. The Article 115 deals with secret ballot:

“Article 115. Secret Balloting

1. Issues concerning the election of the Seimas Chairman, Deputy Chairmen, decision on non-confidence in the Government, the Prime Minister or an individual minister, non-confidence in any official of the Seimas or dismissal of the head of a State institution appointed by the Seimas, as well as when a vote shall be taken on formulations of the charge during the impeachment proceedings shall be voted on only by secret ballot.
2. An issue concerning appointment of the Constitutional Court Judges shall also be voted upon by secret ballot.
3. On the decision of the Seimas, other personal issues may also be voted on by secret ballot.
4. Secret balloting shall be done during recess of sitting.
5. Ballot papers shall be stamped and distributed by the tellers’ group. Upon receiving their ballot papers, the Seimas Members shall sign the record of issued ballot papers.
6. There must be a secret voting booth and ballot box in the voting place. The ballot box must be put in such a way that, upon approaching it, the members casting their votes would have to cross the secret voting booth.”

Article 116. Open Ballot Voting

1. Voting shall be done by open ballots when it is necessary to elect several candidates to some posts from a larger number of candidates and when it has not been resolved to vote by secret ballot.
2. In open voting, the procedure for voting and establishing the results shall be the same as in voting by secret ballot except that secret ballot voting booths shall not be used, and ballot papers shall be filled out in the chamber.
3. It is not necessary to sign the ballot papers.

Article 117. Ballot-papers

1. A standard ballot-paper for secret and open voting shall be approved by the Seimas prior to voting.
2. Issues concerning the dismissal of some official or declaration of non-confidence in an official shall be voted on with ballot-papers on which the propositions of: "Confidence" and "Non-confidence" or "To relieve of his post" and "Not to relieve of his post" shall be inscribed.
3. With one ballot-paper it is only possible to vote on either the dismissal of one official

or the declaration of non-confidence in a collective institution or one of its members, or the removal of an official from his post.

4. On one ballot-paper it is only possible to write the surnames, in alphabetical order, of candidates to the same post.
5. In all cases, ballot-papers must have a heading which clearly indicates the issue being voted upon.
6. On the ballot-paper, the member casting his or her vote shall cross out the surname of the candidates against whom he or she is voting or the proposition which he or she does not accept.
7. Ballot-papers which are not of the approved sample or unstamped, as well as ballot-papers on which more surnames than the number of officials being elected or more than one proposition given for election remains, shall be deemed invalid.
8. Additional surnames and propositions which are written in shall not be counted.
9. The record of calculation of votes by ballot-papers shall be signed by the chairman of the tellers' group and the presiding officer.
10. Voting ballot-papers shall be preserved in the Seimas archives until the end of the term of office of the Seimas.”

B. Which elections take place in Parliament?

For each one:

1. **Who is authorised to vote and how is the electoral procedure organised?**
2. **Is secrecy of vote formally required during voting; if so on the basis of what provisions (parliamentary rules of procedure etc)?**
3. **What practical arrangements are made to ensure its effectiveness?**

The Statute of Seimas provides for the following “internal” elections⁴⁵ in the Parliament:

- 1) Election of Seimas Chairman and his Deputies (Articles 187-191):

“Article 187. The Term of Office of Seimas Leadership

1. The Seimas Chairman, shall be elected by secret ballot at the first sitting of the Seimas following the elections.
2. The Seimas Chairman and his Deputies shall be elected from among the Seimas Members at the first session of the Seimas for the entire term during which the Seimas is in office.

⁴⁵ Our analysis is based on the Statute’s provisions, in which term „elections“ is used.

3. Upon the resignation, demise, or dismissal by the Seimas of any of the above Seimas officials from office, or upon the election or appointment thereof to another office, elections for a new official to fill the post shall be held during the next sitting of the Seimas in accordance with the procedure provided for in this Statute.

Article 188. Nomination of Candidates for Seimas Leadership Positions

1. Candidates to the office of Seimas Chairman may be nominated by written application by at least 1/10 of the Seimas Members.

2. Candidates to the offices of deputies of the Seimas Chairman shall, upon having coordinated with parliamentary groups, be nominated by the Seimas Chairman in such a manner that the Board of the Seimas would include one or two representatives of the Seimas minority. Said officials shall be elected by secret ballot.

<...>

Article 190. Election of Seimas Leaders

1. Voting for each candidate shall be done separately.

2. If more candidates than necessary are nominated for election to one office, voting shall be done by ballot with a list of candidates.

3. A candidate shall be deemed elected if more than half of the voting Seimas Members vote for him or her, with the exception of repeat voting, in which case the candidate who has received a relative majority of votes shall be deemed elected.

4. In the event that no candidate receives the required majority of votes, or if it is impossible to determine which of the candidates have been elected due to a tie, a repeat vote shall be held.

Article 191. Repeat Elections to Leading Positions of Seimas

1. In voting for an empty post when there are more than two candidates, all of the candidates, with the exception of those who received the lowest number of votes, shall remain on the ballot for repeat balloting.

2. If several candidates have tied for the least number of votes and two or more candidates received more votes than they, the candidates with the least number of votes shall be removed from the next ballot. Otherwise, all of the candidates shall remain on the next ballot.

3. If the situation remains unchanged after the repeat vote, the election shall be postponed to another day. If two candidates receive the required number of votes, the provisions of paragraph 4 hereof shall apply.

4. If there are two candidates for an vacant office during a repeat vote, the Seimas Member who received more votes shall be deemed to have been elected. In the event of a tie, a repeat vote shall be held the next day; if no candidate is elected during the repeat vote, a new election shall be held.

5. When elections to several unfilled offices are held simultaneously and the number of candidates exceeds the number of offices, the names of all of the candidates who were nominated but not elected, shall be entered on the ballots for repeat voting. After the repeat vote, the candidates who received the most votes shall be deemed to have been elected. If, after a repeat vote, elected candidates can not be identified, balloting shall be repeated on another day.”

2) Elections of the Chairman and Deputy Chairman of a Seimas Committee (Article 46):

“Article 46. Elections of the Chairman and Deputy Chairman of a Seimas Committee

1. The committee shall elect its chairman and deputy chairman.

2. The Assembly of Elders of the Seimas shall approve proposals for the Seimas committees the representatives of which parliamentary groups should be elected chairman and deputy chairman of a Seimas committee.

3. The committee chairman and deputy chairman shall be elected from the representatives of different parliamentary groups, and the total number of chairmen and deputy chairmen of the committees accorded to the Seimas parliamentary groups must be in proportion to the number of the Seimas Members belonging to them.

4. The committee chairman and deputy chairman shall be approved by the Seimas. If the Seimas does not approve the presented candidate, the committee must select another candidate.

5. A member of the Board of the Seimas (except the case of the Committee on European Affairs), Seimas Member - Government member, the chairman or deputy chairman of a Seimas commission may not serve as a committee chairman and deputy chairman.

6. A representative of the Opposition parliamentary group or their coalition which has more than ½ of the Seimas Members belonging to the minority of the Seimas, shall be elected chairman or deputy chairman of the Committee on the Budget and Finance and the Committee on Audit. The chairman of the Committee on the Budget and Finance shall have two deputies.

7. The chairman and deputy chairman of a committee shall be re-elected when the committee is formed anew.

8. A committee may re-elect the chairman or deputy chairman at any other time, at the same time applying to the Seimas for approval of the new chairman or deputy chairman. In the event that the Seimas does not approve the new chairman or deputy chairman, the former chairman or deputy chairman shall remain, and the committee may apply to the Seimas concerning the same issue only during the next regular session.”

3) Elections of a Sub-committee chairman (Article 47 (3)):

“3. A sub-committee chairman shall be elected by the committee and approved by the Seimas.”

4) Elections of the chairman or deputy chairman of a standing commission or a commission, whose term of power extends beyond one year (Article 74 (1)):

“1. The chairman or deputy chairman of a standing commission or a commission, whose term of power extends beyond one year, shall be elected and approved according to established procedure for committees. A member of the Board of the Seimas or a Government member, may not become a commission chairman or his deputy. The Seimas shall appoint the chairman of an Ad Hoc Commission.”

5) Elections of Chairman, Deputy or assistants of Inter-parliamentary Relations Groups (Article 81 (4)):

“Article 81. Parliamentary Delegations and Inter-parliamentary Relations Groups

1. The Seimas parliamentary delegations in international organisations and forums shall be formed in the same manner as ad hoc commissions.

2. Inter-parliamentary relations groups shall be formed on the basis of self determination by Seimas Members.

3. Having received the recommendation of the initiators, the Chairman of the Seimas shall inform the Seimas Members regarding the commencement and end of joining inter-parliamentary relations groups and of the initiators of the formation thereof and shall announce the date and location of the first meeting.

4. Following the first meeting of the group in the course whereof the group chairman, deputy or assistants shall be elected, the group chairman shall announce formation of the inter-parliamentary group. Based upon a statement by the chairman of the group, the group shall be registered at the Seimas.
<...>”

6) Elections of the Chairman of the Vote Tellers Group (Article 119 (6)):

“6. The tellers' group shall elect a chairman from its members.”

7) Elections of the Chairman of the meeting of the Seimas Members (Article 103 (2)):

“Article 103. Meeting of the Seimas Members

1. The Seimas may convene a meeting of all the Seimas Members for preliminary discussion of issues; the rules of this Statute shall not be valid at such meetings. No decisions shall be adopted by the Seimas at such meetings.

2. The Seimas Members shall elect the chairman of the meeting and may establish provisional rules of procedure of the meeting.”

For all these elections the provisions of Article 115 of the Statute of Seimas applies, i.e. issues concerning the election of the Seimas Chairman, Deputy Chairmen, decision on non-confidence in any official of the Seimas shall be voted on only by secret ballot; on the decision of the Seimas, other personal issues may also be voted on by secret ballot.

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

- 1. What are the different types?**
- 2. At what moment can it be proved? Is it limited to divulging the contents of the vote during voting?**
- 3. Are there any means of appeal and before whom (election judge, presidency of the Chamber, etc)?**
- 4. To what extent and how can it be sanctioned?**
- 5. Are there any precedents or precise case-law?**

In Lithuania, there were no precedents or case-law concerning the violation of secrecy of vote in the framework of the internal elections by Parliament; there are no legislative provisions concerning the procedure of investigation of the violations of secrecy of vote in the internal elections by Parliament.

LUXEMBOURG

Question A : Il n'y a pas de dispositions spéciales dans la Constitution concernant le secret de vote. En revanche la loi électorale du 18 février 2003 (texte coordonné - Livre 1er Dispositions générales communes aux élections législatives, communales et européennes) contient certaines dispositions concernant le secret du vote.

Questions B et C : Notre législation ne prévoit pas d'élections au suffrage indirect.

Secret du vote

Loi électorale du 18 février 2003 et portant modification

- de la loi du 31 octobre 1977 portant fusion des communes de Asselborn, Boevange/Clervaux, Hachiville et Oberwampach
- de la loi du 27 juillet 1978 portant fusion des communes de Arsdorf, Bigonville, Folschette et Perlé
- de la loi du 23 décembre 1978 portant fusion des communes de Harlange et Mecher
- de la loi du 23 décembre 1978 portant fusion des communes de Junglinster et de Rodenbourg

Article 66

Les membres des bureaux sont tenus de recenser fidèlement les suffrages.

Les membres des bureaux, les calculateurs et les témoins des candidats sont tenus de garder le secret des votes.

Il est donné lecture de cette disposition et de celles de la présente loi qui s'y rattachent, et mention en est faite au procès-verbal.

Article 78

L'électeur reçoit des mains du président un bulletin de vote, plié en quatre à angle droit, et qui est estampillé au verso d'un timbre portant l'indication de la commune et le numéro du bureau.

Il se rend directement dans l'un des compartiments; il y formule son vote, montre au président son bulletin replié régulièrement en quatre, le timbre à l'extérieur, et le dépose dans l'urne.

Il lui est interdit de déplier son bulletin en sortant du compartiment-isoloir, de manière à faire connaître le vote qu'il a émis. S'il le fait, le président lui reprend le bulletin déplié, qui est aussitôt annulé et détruit, et invite l'électeur à recommencer son vote.

Si l'électeur, par inadvertance, détériore le bulletin qui lui a été remis, il peut en demander un autre au président, en lui rendant le premier, qui est aussitôt détruit. Il en est fait mention au procès-verbal.

En cas d'élections législatives et européennes simultanées, l'électeur de nationalité luxembourgeoise reçoit des mains du président deux bulletins de vote de couleur différente, l'un pour les élections européennes, l'autre pour les élections législatives. L'électeur ressortissant d'un autre Etat membre de l'Union européenne ne reçoit que le seul bulletin de vote pour les élections européennes.

Article 82

Nul n'est tenu de révéler le secret de son vote, à quelque réquisition que ce soit, même dans le cadre d'une instruction ou contestation judiciaire ou d'une enquête parlementaire.

Article 108

Tout président, assesseur ou secrétaire d'un bureau et tout témoin de candidats qui a révélé le secret d'un ou de plusieurs votes, est puni d'une amende de 5.000 à 15.000 euros.

MALTA / MALTE

A. Is there a constitutional and/or legislative provision of a general nature which guarantees secrecy of the vote in your country? If so, does this provision concern equally all types of election or only those which take place by direct vote?

Article 56 (10) of the CONSTITUTION OF MALTA, which deals with the election of members of the House of Representatives (in Maltese *Kamra tad-Deputati*) reads:

“(a) voting shall be by ballot and shall be carried out in such a manner as not to disclose the way in which the vote of any particular voter is given; and

(b) no person shall be permitted to vote on behalf of another.

Provided that provision may be made by law whereby, if a person is unable, by reason of blindness, other physical cause or illiteracy to mark on his ballot paper, his ballot paper may be marked on his behalf and on his directions by some other person officially supervising the poll at the place of voting.

Subsection (11) of the same Article 56 continues:

Ballot papers shall be drawn up in such a manner as to enable illiterates to distinguish between the political parties to which candidates belong”.

The GENERAL ELECTIONS ACT Chapter 354 of the Laws of Malta further specifies in Article 68. (1) “The Commission [the Electoral Commission] shall ensure that, as far as possible, there is in each polling booth an adequate distance between the place where the Assistant Commissioners sit and the voting compartments within which voters are to mark their ballot papers. The voting compartments shall be constructed in such a manner as to exclude the possibility that any person may see how the voter is marking his ballot paper”.

With regards to voting for local Government the LOCAL GOVERNMENT ACT Chapter 363 provides in its Third Schedule two very detailed articles. Article 34 (3): “In each polling booth the Electoral Commission shall provide a number of separate cubicles wherein each voter may record his vote in secret and behind a curtain or other device to enable him to vote in secret, and in each cubicle shall provide such facilities as it deems necessary including, however, a notice in the form specified in the Fourteenth Schedule”.

The following Article is even more fastidious in detail.

“41. (1) Any voter who declares to, and shows to the satisfaction of, the assistant commissioners that he is unable by reason of blindness, other physical cause or illiteracy to mark his ballot paper, may request an assistant commissioner to mark the paper on his behalf indicating for which candidate or candidates he wishes to vote and the order in which he wishes to record his vote: Provided that the voter may not ask for any particular assistant commissioner to mark the ballot paper on his behalf.

(2) The assistant commissioners are bound to secrecy with regard to the voting of persons whom they have assisted to vote.

(3) There shall be not less than two assistant commissioners present when the vote is being recorded under the provisions of subregulation (1), but no other person shall be allowed in the polling booth.

(4) When an assistant commissioner is authorised to assist a voter to record his vote, the assistant Commissioner shall require such voter to confirm his declaration on oath, and on

satisfying himself of the correctness of such declaration he shall record the vote of such voter on the ballot paper, in accordance with the indication made by such voter and following the procedure set down hereunder:

(a) The assistant commissioner shall ask the voter:

"Which of the candidates do you most desire to see elected?" and shall place the figure 1 on the ballot paper opposite the name of the candidate indicated by the voter.

(b) The assistant commissioner shall then ask the voter:

"For which of the candidates do you desire to express a second choice?" and shall place the figure 2 on the ballot paper opposite the name of the candidate indicated by the voter.

(c) The assistant commissioner shall repeat the operation in reference to a third or any subsequent reference until the voter shall declare that he does not desire to express any further choice.

(d) In order to assist such voters in indicating their preferences, the electoral commissioners shall permit.

the display in the polling places of photographs of the candidates, if the same are supplied by the candidates themselves or by a political party on their behalf. Each photograph may bear, in addition to the name of the candidate represented, the badge and name of the party, if any, to which he belongs".

THE EUROPEAN ELECTIONS ACT Chapter 467 makes the provisions of the General Elections Act Chapter 354 applicable to the elections for the European Parliament.

Within the House of Representatives voting is always open. The STANDING ORDERS do not provide for a secret vote on any issue, motion, or for the purpose of election to a Parliamentary or Public Office (Speaker or President of the House, Deputy Speaker, Deputy Chairman of Committees, Ombudsman, Auditor General, President of the Republic). Article 85 states: "A Member is not obliged to vote. Votes shall be taken openly and entered in the minutes of the proceedings of the House. The Speaker or the Chairman, as the case be, shall forthwith declare to the House the result of the division and shall state the number of the "Ayes" and of the "Noes"."

B. Which elections take place in Parliament?

Parliament elects its officers, as well as the Ombudsman, the Auditor General and the President of the Republic. The election takes the form of a motion proposing a particular person, to which members vote by replying Yes or No.

For each one:

- 1. Who is authorised to vote and how is the electoral procedure organised?**
- 2. Is secrecy of vote formally required during voting; if so on the basis of what provisions (parliamentary rules of procedure etc)?**
- 3. What practical arrangements are made to ensure its effectiveness?**

All elected representatives (*deputati*) are entitled to vote. They are not obliged to vote. The Speaker has a casting vote. All elections are organised in the usual way: the Speaker or the member presiding call for the vote. If his declaration of the result is challenged, there is a roll

call and all members have to give their vote by voicing their consent, assent or abstention. If there are contestations, the Speaker can ask for members to stand up and be counted.

There are no secret votes.

The clerk of the House counts and registers the votes in open House, and as soon as a vote is declared, the doors of the chamber are shut and the marshals see that only those present when the vote is called, exercise their vote. The doors are opened after the result of the vote is declared.

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

- 1. What are the different types?**
- 2. At what moment can it be proved? Is it limited to divulging the contents of the vote during voting?**
- 3. Are there any means of appeal and before whom (election judge, presidency of the Chamber, etc)?**
- 4. To what extent and how can it be sanctioned?**
- 5. Are there any precedents or precise case-law?**

As there is no possibility of a secret vote, this part is not applicable to Malta.

MOLDOVA

A. Is there a constitutional and/or legislative provision of a general nature which guarantees secrecy of the vote in your country? If so, does this provision concern equally all types of election or only those which take place by direct vote?

The Constitution of the Republic of Moldova contains a general provision concerning the secrecy of the vote. Hereby, the Article 38 para.1 denotes that „the foundation of the state power is the will of the people made known through free elections held at regular intervals and based on universal, equal, direct and free suffrage”. The similar provision contains the Article 61 para.1 which says that „the members of Parliament are elected by voting based on universal, equal, direct, secret and freely expressed suffrage”. The rules concerning the ways of ensuring the secrecy of the vote are established by the Electoral Code, approved through the Law no.1381 of 21st of November 1997.

At the same time, the Constitution of the Republic of Moldova contains provisions on the election of the President of the Republic of Moldova (Article 78) and of the President of the Parliament (Article 64 para.2) by the Parliament by secret ballot.

B. Which elections take place in Parliament?

For each one:

- 1. Who is authorised to vote and how is the electoral procedure organised?**
- 2. Is secrecy of vote formally required during voting; if so on the basis of what provisions (parliamentary rules of procedure etc)?**
- 3. What practical arrangements are made to ensure its effectiveness?**

According to the Articles 64 and 78 of the Constitution of the Republic of Moldova, the President of the Parliament and the President of Moldova are elected by the Parliament by secret ballot. The Parliament appoints as well the other persons (e.g. the President of the Supreme Court of Justice, according to the Article 116 of the Constitution, and the General Prosecutor, according to the Article 125 of the Constitution), but in these cases there are no provisions on the secrecy of the vote and such procedure was not applied in practice.

I. The Elections of the President of the Parliament

1. The President of the Parliament is elected by deputies. According to the Parliament's Regulations, adopted through the Law no.797 of 2d of April 1996, *after the legal constitution of the Parliament, the President of the Parliament is elected for the mandate period of the Parliament, by secret ballot, with the ballot paper on which are written names and surnames of all the proposed candidates by the Parliamentary groups. Each Parliamentary group shall make only one proposal. The candidate that obtained the majority of the votes is declared elected. If none of the candidates obtained the necessary number of votes, a second ballot shall be held to choose from the first-placed two candidates, determined in the descending order of the number of votes cast for them in the first ballot. In the case of the parity of votes the elections shall be repeated, in which the Parliamentary groups propose the same or different candidates.* The Regulations do not specify other provisions concerning the

elections of the President of the Parliament, especially the electoral procedure regulations. Usually, The Parliament forms the Commission for the election by secret ballot of the President of the Parliament. The Commission is dissolved on the basis of law on the date of the election of the President of the Parliament.

2. During the election the secrecy of the vote is strictly respected. As mentioned above, the Constitution as well as the Parliament's Regulations contains the provisions that clearly establish the secrecy of the elections. However, there are no legal provisions that would establish the vote procedure that could, respectively, be appealed to in order to guarantee the secrecy of the vote.

3. Even though the election procedure is not settled, in practice measures are taken that guarantee the secrecy of the vote. Hence, the ballot paper can not contain data that would enable to identify the voter, the voting is held in the polling booth where only the voter would stay. Generally, it should be mentioned that the respect of the secrecy of vote and the establishment of different measures in order to ensure it is a consequence of the deputies' opposition to some attempts of violation of that constitutional principle.

II. The election of the President of the Republic of Moldova

1. The President of the Republic of Moldova is elected by the deputies. The election procedure is established through a special Law no.1234 of 22d of September 2000 "Concerning the procedure of the election of the President of the Republic of Moldova". The Law contains some provisions of the electoral procedure – the setting of a special commission and the establishment of its tasks, some aspects concerning the voting.

2. The secrecy of vote is strictly respected during the election. As it was already mentioned, the Constitution and the Law "Concerning the procedure of the election of the President of the Republic of Moldova" contain provisions that clearly establish the secrecy of the elections. Even though the law contains some provisions, the election procedure is not exhaustively brought under regulation.

3. Even though the election procedure is only partially settled, in practice the measures are taken in order to guarantee the secrecy of vote. Hence, the ballot paper can not contain data that would enable to identify the voter, the voting is held in the polling booth where only the voter would stay. Generally, as it was mentioned earlier, the respect of the secrecy of vote and the establishment of different measures in order to ensure it is a consequence of the deputies' opposition to some attempts of violation of that constitutional principle.

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

- 1. What are the different types?**
- 2. At what moment can it be proved? Is it limited to divulging the contents of the vote during voting?**
- 3. Are there any means of appeal and before whom (election judge, presidency of the Chamber, etc)?**
- 4. To what extent and how can it be sanctioned?**
- 5. Are there any precedents or precise case-law?**

1. In the Republic of Moldova there was no person that invoked and no cases of violation of the secrecy of vote were stated during the general election nor during the elections that took place in the Parliament.

2. The legislation does not contain clear provisions on the limit of period until would be possible to state the violation of the secrecy of vote. In the case of the Presidential elections any violation of the election procedure shall be contested only till the moment of the validation by the Constitutional Court of the election results on the basis of Article 79 para. 1 of the Constitution, being that in accordance with the Article 140 para. 2 of the Constitution the decisions of the Constitutional Court are final and can not be attacked.

There are no clear regulations concerning the prohibition to show the result of the vote during the exercise of the right to vote.

3. The legislation does not establish special rules on the contest of the violation of the secrecy of vote. In such conditions general rules would be applied, in accordance to which the Parliament decision could be contested in the Constitutional Court.

4. In the absence of special provisions the Constitutional Court shall pass the decision on the violation of the secrecy of vote and we can assert that the respective decisions will be declared unconstitutional, once the decision to change the established practice – the decision of the 14th of September 1995 that declared unconstitutional the Parliament decision no. 545-XIII of 21st of July 1995 on the recall of the deputy-President of the Parliament before the deadline - would not be taken.

5. In the Republic of Moldova there was no person that invoked and no cases of violation of the secrecy of vote were stated during the general election nor during the elections that took place in the Parliament.

MONACO

A. Est-ce qu'une disposition constitutionnelle (et/ou) législative de caractère général garantit le secret du vote dans votre pays ? Concerne-t-elle indifféremment tous les types d'élections ou uniquement celles au suffrage direct ?

En Principauté de Monaco, des dispositions constitutionnelles et législatives garantissent le secret du vote lors d'élections par le Parlement, étant précisé que celui-ci est composé d'une chambre unique nommée « Conseil National », et que les conseillers nationaux sont élus au suffrage universel direct.

1. D'une part, une disposition constitutionnelle garantit indirectement le secret du vote lors d'élections par le Conseil National.

En effet, la constitution monégasque du 17 décembre 1962, révisée, dispose en son article 61 alinéa 1, que l'organisation et le fonctionnement de l'Assemblée parlementaire sont déterminés par le règlement intérieur arrêté par le Conseil.

Il convient de préciser qu'en application de l'article 61 alinéa 2 dudit règlement intérieur, celui-ci, avant sa mise en application, doit être soumis au Tribunal Suprême, Haute Juridiction qui se prononce sur sa conformité aux dispositions constitutionnelles et, le cas échéant, législatives.

Or, le règlement intérieur du Conseil National, discuté et adopté par l'Assemblée dans sa séance du 28 mai 1964, contrôlé constitutionnellement par le Tribunal Suprême suivant Décision du 28 octobre 1964, contient diverses dispositions, notamment en ses articles 3, 4, 5, 15, 17, 23 et 61 garantissant le secret du vote lors d'élections par le Parlement, en ce qui concerne son Bureau et ses commissions, ainsi qu'il sera vu plus loin.

2. D'autre part, certaines dispositions législatives garantissent également le secret du vote lors d'élections par le Parlement, telles que :

- l'article 5 de l'Ordonnance Souveraine du 15 avril 1911 sur le fonctionnement du Conseil National, qui dispose que les délibérations sont prises à la majorité absolue des votants et qu'en cas de partage, sauf le cas de scrutin secret, la voix du président est prépondérante, l'article susmentionné ajoutant qu'il est voté au scrutin secret toutes les fois que le tiers des membres présents le réclame et dans les cas où ce mode de scrutin est prescrit par la loi.

- l'article 3 de la Loi n° 771 du 25 juillet 1964 sur l'organisation et le fonctionnement du Conseil National, qui dispose que le président et le vice-président du Conseil National sont élus au scrutin secret et à la majorité absolue des membres en exercice.

Il est donc constaté la garantie du secret du vote lors d'élections par le Parlement en Principauté de Monaco.

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Il convient enfin de préciser qu'indépendamment du Conseil National, l'unique autre élection d'une assemblée politique concerne l'élection du Conseil Communal, celle-ci se faisant également au suffrage universel direct.

Le Conseil Communal est la seule administration municipale puisque la Principauté de Monaco ne forme qu'une seule commune (article 1^{er} de la Loi n°959 du 24 juillet 1974 sur l'organisation communale).

Le vote au scrutin secret est toujours exigé en matière d'élection du Maire et des Adjoints (article 19 de la Loi n°959 susmentionnée).

B. Quelles sont les élections effectuées par le Parlement ?

Pour chacune d'entre elles :

- 1. qui est autorisé à voter et comment s'organise la procédure électorale ?**
- 2. le secret du vote est-il formellement requis lors du déroulement du vote ; si oui, par quelles dispositions (règlement des assemblées, etc...) ?**
- 3. quelles sont les dispositions matérielles qui garantissent son effectivité ?**

1. Les élections effectuées par le Parlement concernent :

a. en premier lieu l'élection du Bureau du Conseil National (article 1 du règlement intérieur) qui est composé par :

- le Président (article 3 du règlement intérieur),
- le Vice-Président (article 4 du règlement intérieur),
- les Secrétaires (article 5 du règlement intérieur).

b. en second lieu l'élection des membres des commissions permanentes et de chaque président de commission (articles 15 et 17 du règlement intérieur)

2. Les modalités d'autorisation du vote et d'organisation de la procédure électorale sont les suivantes :

a. Le Président est élu au scrutin secret et à la majorité absolue des membres en exercice. Si la majorité requise n'est pas obtenue, l'élection a lieu, au second tour de scrutin, à la majorité relative étant précisé qu'en cas d'égalité de suffrages, le candidat le plus âgé est déclaré élu.

Les Secrétaires du bureau d'âge dépouillent le scrutin, dont le résultat est immédiatement proclamé par le Doyen d'âge (article 3 du règlement intérieur).

Le Vice-Président est élu immédiatement après le Président, dans les mêmes conditions que celui-ci (article 4 du règlement intérieur).

Après l'élection du Président et du Vice-Président, il est procédé à l'élection des Secrétaires qui sont également élus à la même majorité et dans les mêmes conditions (article 5 du règlement intérieur).

b. Le Conseil National comporte quatre commissions permanentes :

- la Commission des Finances et de l'Economie nationale,
- la Commission des Intérêts sociaux et des Affaires diverses,
- la Commission de Législation,
- la Commission des Relations extérieures (article 13 du règlement intérieur).

Chaque Commission permanente doit comporter cinq membres au moins ; il est procédé à leur élection immédiatement après l'élection du bureau de l'Assemblée.

Les membres des Commissions permanentes sont élus dans les mêmes conditions que celles prévues pour la constitution du bureau de l'Assemblée, c'est à dire au scrutin secret et à la majorité des membres en exercice (article 15 du règlement intérieur).

Chaque Commission désigne un président parmi ses membres, et cette désignation s'effectue également dans les mêmes conditions de scrutin secret que vu précédemment (article 17 du règlement intérieur).

Il convient de préciser que les votes en commission ont lieu à main levée ou par scrutin secret, étant précisé que le vote par scrutin secret est formellement requis si deux commissaires, au moins, le demandent.(article 23 du règlement intérieur).

Enfin, les votes des Conseillers, lors des séances du Conseil National, s'expriment soit à main levée, soit par appel nominal, soit au scrutin secret (article 61 du règlement intérieur)

3. Des dispositions matérielles garantissent l'effectivité du secret du vote.

En premier lieu, de manière générale, le Président fait observer le règlement et peut, le cas échéant, suspendre la séance et, après consultation du Vice-Président, la lever.

Le Président assure également la sécurité intérieure de l'Assemblée et peut, à cet effet, requérir tous officiers de police judiciaire relevant des services de sûreté (article 43 du règlement intérieur).

Egalement, les Secrétaires constatent les votes et le résultat des scrutins (article 44 du règlement intérieur).

Enfin, le vote des Conseillers est personnel (article 60 du règlement intérieur), ce qui concourt à l'effectivité du secret du vote.

Dans le cadre de ces dispositions, l'effectivité du secret du vote et l'observation en général des dispositions régissant le règlement intérieur est donc assurée.

C. En cas de violation du secret du vote, dans le cadre d'élections par le Parlement :

1. **quelles en sont les formes ?**
2. **à quel moment peut-elle être constatée ? Est-elle limitée à la divulgation du contenu du vote lors de son expression ?**
3. **existe-t-il des voies de recours et devant qui (juge de l'élection, bureau de l'assemblée, etc..) ?**

- 4. dans quelle mesure peut-elle être sanctionnée et comment ?**
- 5. existe-il en la matière des précédents ou une jurisprudence précise ?**

Les lois régissant l'organisation du Conseil National et le règlement intérieur de l'Assemblée parlementaire ne comportent pas de dispositions concernant spécifiquement la sanction de la violation du secret du vote.

Cependant, il convient de préciser que d'un point de vue général, toute manifestation troublant l'ordre est interdite (article 52 du règlement intérieur), le Bureau de l'Assemblée assurant l'application et l'exécution du règlement (article 8 du règlement intérieur).

Il n'existe pas en la matière de précédents ou de jurisprudence en matière de violation du secret du vote dans le cadre d'élections par le Parlement.

En définitive, le Bureau du Conseil National s'assure du respect du secret du vote et d'un point de vue général de l'observation des dispositions régissant le règlement intérieur.

NETHERLANDS / PAYS-BAS

A. Is there a constitutional and/or legislative provision of a general nature which guarantees secrecy of the vote in your country? If so, does this provision concern equally all types of election or only those which take place by direct vote?

1. Article 53, paragraph 2 of the Netherlands Constitution provides that the election of both the members of the Second Chamber (House of Representatives) and the members of the First Chamber (Senate) of Parliament shall take place by secret vote.

The members of the second Chamber are elected by direct election, while the members of the First Chamber are elected by indirect election. The Constitution does not make any difference between the two election procedures as far as the secrecy of the votes is concerned.

2. Article 129, third paragraph, provides that Article 53, second paragraph is equally applicable to the election of members of the Provincial Councils and of the Municipal Councils. The members of both these representative councils are elected by direct vote.

For these elections the Election Law contains very detailed regulations. Article J.15 of the Election Law provides that the polling stations shall be organized in such a way as to guarantee secret voting.

3. For other representative bodies, the Constitution delegates the election procedures to ordinary legislation and delegated legislation. Thus, Article 133, first paragraph of the Constitution provides, *inter alia*, that the composition of the District Water Boards shall be regulated by provincial regulation in accordance with rules laid down in the law. The law concerned is the Water Board District Law. Article 25, paragraph 3 of the Water Board District Law provides that voting in the elections of members of the boards shall be secret.

4. Apart from these voting procedures for the election of members of political representative bodies, the secrecy of voting is neither regulated in the Constitution nor in any general law. It finds regulation in the specific law, Royal decree or ministerial regulation establishing and/or regulating the body concerned, or in the regulations or rules of procedure of these bodies.

Thus, the Standing Orders of the Second Chamber of Parliament contain regulations for voting procedures by members of the Second Chamber. Article 69, third paragraph, provides that voting takes place by show of hands. However, Article 74 provides that voting on persons for appointments, nominations and elections takes place by ballot.

For the First Chamber, Article 108 provides that voting takes place by name call, unless the Chamber decides, at the proposal of the Chair or any one of the members, that voting will take place by sitting and rising. However, Article 113, first paragraph provides that voting on persons takes place by ballot.

B. Which elections take place in Parliament?

1. The Second Chamber and the First Chamber each decide, in their old composition, on the admission of new members after examination of the credentials of each of them (Article 2, third paragraph of the Standing Orders of the Second Chamber, and Article 3 of the Standing Orders of the First Chamber respectively).

2. The Second Chamber and the First Chamber each appoint their Chair from among their members, as well as their Registrar (Article 61 of the Constitution).

The Second Chamber appoints its Deputy-Chairs; it determines the number of Deputy-Chairs (Article 5 of the Standing Orders of the Second Chamber).

The First Chamber appoints two Deputy-Chairs (Article 8 of the Standing Orders of the First Chamber).

3. The Chair of the Second Chamber and the Chair of the First Chamber appoint the members and deputy-members of the several Commissions. In the case of the Second Chamber; the Commissions appoint their chairs and deputy-chairs from among their members; in the case of the First Chamber, the Chair appoints the chairs and deputy-chairs of the Commissions (Article 25, second paragraph, and Article 26, first paragraph respectively of the Standing Orders of the Second Chamber; Article 36, second paragraph and Article 37, first paragraph respectively of the Standing Orders of the First Chamber).

4. The United Assembly of the two Chambers of Parliament decides by a two-third majority of the votes cast on the adoption of a law appointing the heir to the Throne, if there is the prospect that the King has no heir (Article 30, first paragraph of the Constitution).

If the King dies or in case of abdication without there being a heir to the Throne, the United Assembly of the two Chambers of Parliament will appoint a King by two-third majority of the votes cast (Article 30, second paragraph of the Constitution).

If the King has not yet reached majority age, the parental authority and guardianship are regulated by law adopted by the United Assembly of the two Chambers of Parliament (Article 34 of the Constitution).

For the time the King has not yet been born, has not yet reached majority age, has been declared not to be in the position to exercise royal authority, or there is no heir to the Throne after the King has died or has declared his abdication, a Regent is appointed by law adopted by the United Assembly of the two Chambers of Parliament (Article 37 of the Constitution).

5. The Second Chamber appoints the National Ombudsman (Article 78a, second paragraph of the Constitution).

6. The appointments mentioned under 4 and 5 are some of the rare examples of appointments by Parliament outside the framework of the internal structure of the two Chambers.

The Prime Ministers and the other members of Cabinet are not appointed by Parliament but by the King (Article 43 of the Constitution). Parliament has also not the power to make a proposal for appointment. However, after appointment, Government needs the express or tacit confidence of a majority of the two Chambers of Parliament.

Governors of the provinces and majors of the municipalities are also appointed by the King without nomination by Parliament (Article 131 of the Constitution). There is political responsibility of the Minister concerned towards Parliament (Article 42, second paragraph of the Constitution).

In some cases the King makes appointments on the nomination of the Second Chamber of Parliament. Thus, the members of the General Audit and of the Supreme Court are appointed by the King on the basis of a nomination of three candidates by the Second Chamber of Parliament (Articles 77, first paragraph and 118, first paragraph respectively of the Constitution).

7. Both the Second Chamber and the First Chamber, as well as the United Assembly, of parliament may take a decision only if more than half of their members are present at the meeting (Article 67, first paragraph of the Constitution).

Both the Second and the First Chamber, as well as the United Assembly, of Parliament decide by majority of the votes cast (Article 67, second paragraph of the Constitution), unless a qualified majority is required; which is the case for decisions approving amendments of the Constitution (Article 137, fourth paragraph of the Constitution) and several decisions concerning the Throne (see *supra*, paragraph 4).

In the case of the Second Chamber, if an equal division of votes and if all members are present, the proposal is rejected; if not all members are present, the decision is postponed till the next meeting; if the votes are again equally divided, the proposal is rejected (Article 72 of the Standing Orders of the Second Chamber).

In the case of the First Chamber, the decision is also postponed till the next meeting if all members are present (Article 110, second paragraph of the Standing orders of the First Chamber).

Decisions may be taken without voting if none of the members asks for a vote (Article 69, fourth paragraph of the Standing Orders of the Second Chamber and Article 105, second paragraph of the Standing Orders of the First Chamber).

In the case of voting concerning election, appointment or nomination, a decision requires the absolute majority of valid ballots. If none of the candidates obtains the required majority, a second vote will take place. If again none of the candidates obtains the required majority, a third vote will take place.

In the case of the Second Chamber, the third vote concerns the four candidates who obtained most votes. If only three of four candidates obtained any votes, the vote will concern the two candidates who obtained most votes. If no candidate obtains the required majority, a fourth vote will take place concerning the two candidates who obtained most votes at the third vote. If again the votes are equally divided, a decision will be taken by lot. (Articles 77, 79-81 and 83 of the Standing Orders of the Second Chamber).

If the vote concerns appointments, nominations or elections which are not provided for in the Constitution, the Second Chamber may apply different rules in a specific case (Article 84 of the Standing Orders of the Second Chamber).

For voting on persons in the Commissions of the Second Chamber the same rules apply, be it that in the third vote the only candidates are always the two who obtained most votes in the second vote. (Article 85 of the Standing Orders of the Second Chamber).

In the case of the First Chamber, the third vote will concern the two candidates who obtained most votes in the second vote. If this procedure cannot be applied because two or more candidates have obtained the same number of votes, a separate vote will decide which candidate(s) will be eligible in the third vote. If the votes on this issue or in the final vote are equally divided, a decision will be taken by lot. (Articles 115-117 of the Standing Orders of the First Chamber).

Members of Parliament vote without instruction (Article 67, third paragraph of the Constitution).

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

1. In cases of voting by ballot, the Chair of the Second Chamber and the First Chamber, as the case may be, appoint four members to collect the ballots and count the votes. If the vote indicated on the ballot is not clear, the Chamber decides on the issue. Ballots that have not or not correctly been completed, are not taken into account to determine the majority. (Articles 74, 75 and 77 of the Standing Orders of the Second Chamber and Articles 113 and 114 of the Standing Orders of the First Chamber respectively).

2. The Chair of the Second Chamber has the power to see to it that the provisions of the Standing Orders are respected (Article 6.b of the Standing Orders of the Second Chamber).

The Chair of the First Chamber has the power to determine the outcome of votes (Article 12 of the Standing Orders of the First Chamber).

3. Decisions of the Second and the First Chamber, and of the United Assembly of Parliament are not subject to review by administrative courts (Article 1.1, second paragraph under b. of the General Administrative Law Act).

4. It is not excluded that a member of Parliament, or any other interested party, may bring a tort action with a civil court against the Second Chamber or the First Chamber of Parliament complaining about a violation of secrecy of vote, but it is highly unlikely that the court will consider such a complaint well-founded and order damages to be paid. In no case may a court annul the outcome of the voting or determine the results.

5. Members of Parliament enjoy immunity for what they have said in meetings of Parliament and Commissions of Parliament, or have submitted in written form (Article 71 of the Constitution). For crimes of office they may be judged by the Supreme Court, if their prosecution is ordered by Royal decree or by decision of the Second Chamber of Parliament (Article 119 of the Constitution).

NORWAY

A. In Norway, a statute from 2002 regulates the general elections *to* the national Parliament (“Storting”), *to* the county (fylke) parliamentary assemblies as well as *to* the municipal (kommune) parliamentary assemblies.

According to this statute, all general elections *to* these bodies shall be conducted by secret voting.

B. *Inside* the Parliament, the elections are limited to appointing presidents, vice-presidents and secretaries to the plenary and to the two other bodies of the Parliament (“Odelstinget” and “Lagtinget”). Elections to different committees inside Parliament may also be held.

These elections are organised according to the internal regulations given by the plenary, covering all aspects of the Parliament’s activities (“Stortingets forretningsorden”).

All members of Parliament or the subordinated bodies take part in these elections. It is probably correct to say that these elections are organised in a flexible way, they will normally be conducted by secret voting, but this is not formally required under all circumstances.

C. These questions do not capture the status quo in a meaningful way, seen from the Norwegian perspective. There is no procedure foreseen to challenge a possible violation of the internal regulations, there are no sanctions. If a member of Parliament should claim that the elections are carried out in violation of these internal regulations, the issue will be handled by the presidents, or as a last instance, the Plenary of the Storting. I am not aware of incidents of this nature in the past.

POLAND / POLOGNE

A. There are no constitutional or legislative provisions of a general nature which guarantee the secrecy of the vote. In the Constitution of the Republic of Poland (2.April 1997) there are only provisions concerning the guarantee of the secrecy of vote related to the election which takes place by direct vote. Article 96 p. 2 states that elections to the Sejm shall be universal, equal, direct and proportional and shall be conducted by secret ballot. Article 97 p. 2 regulates that the elections to Senate shall be universal, direct and shall be conducted by secret ballot. A similar provision concerns the election of the President. (Article 127). These are the only provisions concerning the secrecy of the vote.

B. In Parliament the elections (provided by Constitution) take place of:

- 4 members (from among the deputies) to the National Council of the Judiciary (Article 187 p. 1. 3),
- judges to the Constitutional Tribunal (Article 194 p.1),
- members to the Tribunal of State (Article 199 p. 1),
- President of the Supreme Chamber of Control (Article 205 p. 1),
- The Commissioner for Citizens' Rights (Article 209 p. 1),
- 1/3 of the members of the National Council of Radio Broadcasting and Television (Article 214 p. 1),
- President of the National Bank of Poland (Article 227 p. 3) and 1/3 of the members of the Council for Monetary Policy (Article 227 p. 5).

In Parliament the elections also take place, (provided by the ordinary Law) of:

- The General Inspector of the Protection of Personal Dates, (Law on the Protection of personal Dates, 29 August 1997, *Dz. U. 1997, N. 133*),
- President of the Institute of National Remembrance as well as members of the College of this Institute. (Law on the Institute of National Remembrance, 18 December 1998, *Dz.U.1998, N.155*),
- The Commissioner for the Children's Rights, (Law on Commissioner for the Children's Rights, 20. January 2000, *Dz. U. 2000, N.6*).

In all cases there are no constitutional nor legislative provisions concerning the secrecy of the vote. Article 120 of the Constitution states that "the Sejm shall pass bills by a simple majority, in the presence of at least half of the statutory number of deputies, unless the Constitution provides for another majority. The same procedure shall be applied by the Sejm in adoption of resolutions, unless a statute or a resolution of the Sejm provide otherwise".

All elections are conducted by open ballot.

The Sejm' rules of procedure, in all cases concerning the procedure of election by Parliaments, provide only one condition for validity of election, i.e. the absolute majority of the votes and in the case of the President of the Institute of National Remembrance, majority of votes qualify. (Article 31 of the rules of procedure of Sejm).

Article 113 of the rules of procedure states only that in the interest of the State, the Sejm may resolve to hold a debate in secret. That provision however, does not concern the secrecy of the vote in the context of elections which take place in Parliament.

PORTUGAL

A. Sur l'existence d'une disposition constitutionnelle (et/ou) législative de caractère général concernant le secret du vote

L'article 113, n.1, de la Constitution établit que le «suffrage direct, secret et périodique» est la règle générale pour la désignation des titulaires des pouvoirs de l'État, des régions autonomes et des communautés locales. Mais la teneur du précepte suffit à elle seule (sans que le besoin s'impose d'ajouter d'autre raison) pour montrer qu'on n'envisage ici que le suffrage «direct».

En ce qui concerne les élections qui se déroulent au Parlement (Assemblée de la République), la seule disposition applicable reste le Règlement de la chambre, lequel impose (article 105) qu'elles aient lieu par «scrutin secret».

B. Elections effectuées par le Parlement

Elles sont nombreuses, la plus importante étant celle qui concerne dix des treize juges de la Cour constitutionnelle. Hors ce cas (auquel la composition d'un des pouvoirs de l'État – d'un organe de souveraineté – est en cause), les autres se rapportent à la désignation des titulaires, ou d'un certain nombre d'entre eux, d'organes qui complètent la structure centrale de l'État (tels que le Médiateur [Provedor de Justiça] ou le Président du Conseil Économique et Social, ou le Conseil d'État – au Portugal, un organe consultatif du Président de la République – et les Conseils supérieurs la magistrature judiciaire, administrative ou du ministère public), ou d'autres organes publics, ayant notamment la nature d'entités «indépendantes» (tels l'autorité régulatrice pour les médias, la Commission pour la protection des données informatiques, etc.). (cf. article 163, al. g-h), de la Constitution).

1. Dans ces élections ne votent que les membres du Parlement. La procédure électorale est réglée, soit (au moins en partie) par la loi concernant l'organe extérieur au Parlement dont les membres doivent être élus (tel est le cas pour les juges de la Cour constitutionnelle), soit (où la loi ne dispose différemment) par le Règlement de l'Assemblée (articles 280ss): dans un cas comme dans l'autre, il est requis que les candidatures, souscrites par un nombre minimum et maximum de députés et accompagnées de la déclaration d'acceptation des candidats, soient présentées préalablement (et avec une antériorité minimale) devant le président du Parlement.

2. Ainsi qu'il a été dit déjà (*supra*, A) le secret du vote est formellement requis par le Règlement de l'Assemblée (article 105).

3. Le Règlement de l'Assemblée ne contient aucune autre disposition concernant la matière, notamment aucune disposition visant «garantir» le secret du vote.

C. Violation du secret du vote

1/2. La situation ne s'est jamais posée au Portugal.

3. La Constitution, dès la révision de 1997, et la Loi organique de la Cour constitutionnelle, par la suite, prévoient la possibilité d'un recours, auprès de cette Cour, portant sur la régularité des élections qui se déroulent au Parlement (article 223, n. 2, al. g), de la Constitution; article

102-D de la Loi). Un tel recours peut être présenté par quelconque député et la Cour peut évidemment invalider l'élection, au cas de «violation de la loi ou du règlement de l'assemblée».

Il est clair, donc, que l'observance de la règle du scrutin secret dans les élections par le Parlement tombe aussi sous ce contrôle. La question sera de savoir quand il y aurait une violation de la règle qui pourrait et devrait porter à l'invalidation de l'élection. Ce serait le cas, certes, si, au lieu d'un scrutin secret, il y a eu un scrutin à bras levés, p.ex.; mais, par contre, il est déjà extrêmement douteux (pour ne dire plus) que le seul fait, p.ex., d'un député avoir révélé son vote soit suffisant pour arriver à un tel résultat. (Pour une situation comme cette dernière on pourrait envisager plutôt de sanctionner le député: on ne trouve pourtant rien de semblable dans le règlement de l'Assemblée).

4. On vient d'envisager des exemples théoriques extrêmes. Aucun précédent et, moins encore, aucune jurisprudence n'existent au Portugal dans la matière: la question de la régularité d'une élection par le Parlement ne fût jamais, jusqu'à présent, présentée à la Cour constitutionnelle.

ROMANIA / ROUMANIE

A. Is there a general constitutional (and/or) legislative provision providing the secrecy of voting in your country? Does it equally refer to all the types of election or just those implying the secret vote?

According to Article 62 of the Romanian Constitution, republished, the members of the Deputies Chamber and Senate are elected by universal, equal, direct, secret and freely expressed vote.

Article 1, para. (2) of Law 373/2004 for the election of the Deputies Chamber and Senate members sanctions: the Chamber of Deputies and the Senate are elected by universal, equal, direct, secret and freely expressed vote.

Article 1, para. (2) of Law 370/2004 on presidential elections repeats the constitutional provision in art. 81, para. (1).

Also, Article 1, para. (2) of Law 67/2004 on the election of local public authorities, the local and county councils as well as mayors are elected by universal, equal, direct, secret and freely expressed vote.

B. Which are the elections taking place within the Parliament?

According to Article 64 para.(2) of the Romanian Constitution, each Chamber shall elect a permanent bureau. The President of the Chamber of Deputies and the President of the Senate are elected for the period of the mandate of the Parliament. The other members of the permanent bureau are elected at the beginning of each session.

Also, according to Article 20 para.(1) of the Rules of the Chamber of Deputies, after the legal constitution of the Chamber of Deputies, the President of the Chamber and the other members of the permanent bureau are elected.

According to Article 21 para.(1) of the Rules of the Chamber of Deputies, the President of the Chamber of Deputies is elected for the period of the mandate of the Parliament, by secret ballot, with vote bulletins on which the last and first name of all candidates in alphabetical order are included. Each parliamentary group may forward only one proposal.

According to Article 23 para.(1) of the Rules of the Chamber of Deputies, the election of vice-presidents, secretaries, and questors who compose the permanent bureau is undertaken upon proposal of parliamentary groups, in accordance with their weight in conformity with the initial political configuration of the Chamber and the result of negotiations among the leaders of the parliamentary groups.

According to Article 24 of the Rules of the Chamber of Deputies, the election of vice-presidents, secretaries, and questors takes place at the beginning of each ordinary session, upon proposal of parliamentary groups to which those posts were allocated, in conformity with Article 23.

According to Article 59 of the Rules of the Chamber of Deputies, the permanent commissions are elected for the whole period of the mandate of the Parliament.

According to Article 14 para.(1) of the Rules of the Chamber of Deputies, each parliamentary group elects, after its convening, the leader and, if necessary, one or more vice-leaders and a secretary.

A similar procedure is provided for by the Rules of the Senate.

For each of them:

1. Who is authorized to vote and how is the electoral procedure organized?

- the Senators and Deputies, according to Article 123 of the Standing Orders of the Deputies Chamber, and Articles 131 and 132 of the Senate's Standing Orders.

2. Is the secret vote required formally during the process of voting? If yes, by what provisions (assemblies regulations, etc.)?

According to the Standing Orders of the Deputies Chamber and Senate, the Senators' and Deputies' votes are personal. The vote may be open or **secret**. The voting procedure is regulated in detail by the Standing orders of the Senate. Usually, the vote is open. The secret vote may be expressed by ballot papers, for the election or appointment to certain positions or by balls or electronically, in the case of laws, decisions or motions voting. The procedure of secret vote on ballot papers is performed in voting booths, fitted up through the Senate Secretary's General good offices. In the case of **secret** ballot, expressed by ballot papers or balls, a validation and numbering commission is established, made up of one representative for each parliamentary group. The Orders also contain a provision according to which, if the orders do not establish a certain compulsory voting procedure, it will be decided by the Senate, proposed by the President or any senator.

3. Which are the material provisions guaranteeing their effective achievement?

- the provisions guaranteeing the achievement of the voting procedure are sanctioned by the provisions in Article 123 of the Chamber of Deputies' Standing Orders, and Articles 131 – 135 of the Senate's Standing Orders.

C. When the secret of vote is violated, within the parliamentary elections:

1. Which are the forms of this violation?

The forms of violation depend on the concrete modality by which the secret voting is performed (on ballot papers, by balls or electronically).

2. At what moment can violation be established? Is it limited to divulging the content of the vote while voting?

- According to the provisions of art. 138 of the Senate's Orders, the vote can only be contested by the leader of a parliamentary group, immediately after the announcement of the

results; the Senate will declare the contestation by the vote of the present majority of Senators. Passing the contestation consequently leads to repeating the vote.

3. Are there ways of appeal and to whom (the election judge, the assembly bureau)?

The Senate's Standing Orders does not contain specific provisions regarding the ways of appeal on vote violation. However, practically, the Senate's Standing Bureau can form an appeal forum on the matter, given its general competence on parliamentary procedure issues.

4. At what extent can the violation be penalized and how?

The general provisions on infringements by Senators can be applied. Depending on the seriousness of the infringements, the punishments can be:

- a. cautioning ;
- b. summoning;
- c. floor withdrawal;
- d. turning out from the hall for the whole session;
- e. public warning – in writing.

5. In this respect, are there precedent cases or definite jurisprudence?

No.

RUSSIAN FEDERATION / FEDERATION DE RUSSIE

1. The Constitution of the Russian Federation doesn't contain any provisions, directly concerning the issue of secrecy of voting in the Federal Assembly – Parliament of the Russian Federation.

2. The Constitution of the Russian Federation establishes that:

2.1 **the Council of Federation** – the higher chamber of the Federal Assembly:
elects from among its members the Chairman of the Council of Federation and his (her) deputies (Article 101 p. 1);
appoints judges of the Constitutional Court of the Russian Federation, of the Supreme Court of the Russian Federation, of the Supreme Arbitration Court of the Russian Federation (clause 'g' p. 1 Article 102);
appoints and dismisses the Prosecutor General of the Russian Federation (clause 'h' p. 1 Article 102);
appoints and dismisses the deputy Chairman and half of the auditors of the Accounts Chamber (clause 'i' p. 1 Article 102);

2.2 **the State Duma** – the lower chamber of the Federal Assembly:
elects from among its members the Chairman of the State Duma and his (her) deputies (p. 1 Article 101);
appoints and dismisses the Chairman of the Central Bank of the Russian Federation (clause 'c' p. 1 Article 103);
appoints and dismisses the Chairman and half of the auditors of the Accounts Chamber (clause 'd' p. 1 Article 102);
appoints and dismisses the Commissioner for Human Rights (clause 'e' p. 1 Article 102).

3. Each of the chambers adopts its procedural regulations and resolves issues relating to the routine procedures for its activities (p. 4 Article 101 of the Constitution of the Russian Federation).

3.1 **The procedural regulations of the Council of Federation** (adopted by its decree of January 30, 2002) provide the secret voting of the members of this chamber when:
electing of the Chairman of the Council of Federation and his (her) deputies by ballot or, by the decision of the chamber, by electronic voting (p. 1 Article 14);
making a decision about impeaching of the President of the Russian Federation by ballot (p. 2 Article 171);
appointing judges of the Constitutional Court of the Russian Federation, of the Supreme Court of the Russian Federation, of the Supreme Arbitration Court of the Russian Federation, of the Economic Court of the Commonwealth of Independent States by ballot or, by the decision of the chamber, by electronic voting (p. 2 Article 175);
appointing and dismissing the Prosecutor General of the Russian Federation (p. 3 Article 182, p. 5 Article 186);
appointing and dismissing the deputy Chairman of the Accounts Chamber of the Russian Federation (p. 3 Article 192, p. 4 Article 193.2);
appointing the auditor of the Accounts Chamber of the Russian Federation (p. 3 Article 193.5);
appointing members of the Central Election Committee of the Russian Federation (by ballot) and dismissing one of the members of this Committee (p. 1 Article 197, p. 2 Article 199);

appointing members of the Higher Qualifications Collegium of Judges of the Russian Federation – community leaders (p. 3 Article 199.4).

Procedural regulations of the Council of Federation establish the **procedure of the secret voting**. In particular, Article 60 of the Procedural regulations reads that:

the secret voting is taken in cases, established by these Procedural regulations, by the decision of the Council of Federation, adopted by the majority of votes of the total number of deputies of the Council of Federation, and also may be taken on other issues. The secret voting is taken by electronic voting or by ballot;

before and during each meeting each member of the Council of Federation, according to the list of members of the Council of Federation upon presentation of a certificate of the member of the Council of Federation, is given one card for the secret vote, logged in the electronic system;

the ballots for secret voting are made under control of the Counting commission in form, proposed by it and adopted by the decision of the Council of Federation in amount, equal to the total number of members of the Council of Federation, and contain necessary information. The ballots, unclaimed from the Counting commission, upon the completion of their distribution, are destroyed by the chairman of the Counting commission in the presence of its members. The time and place of secret voting and its procedure are established by the Counting commission according to these procedural regulations and are announced by the chairman of the Counting commission;

each member of the Council of Federation is given one ballot for secret vote;

ballots for secret voting are given to the members the Council of Federation by the Counting commission according to the list of members of the Council of Federation upon presentation of a certificate of the member of the Council of Federation. Receiving the ballot, member of the Council of Federation signs on the specified list opposite his name;

the ballot for secret voting is put into a special box, which is sealed by the Counting commission;

the Counting commission is obligated to create the conditions for the secret expression of intention by the members of the Council of Federation;

the ballots not in the adopted form and ballots by which it is impossible to establish the intention of the members of the Council of Federation are considered invalid. Any additions to the ballot aren't taken into consideration during the counting of votes;

the Counting commission makes a protocol on the results of secret vote, which is signed by all members of the Counting commission. The results of secret voting are announced by the Counting commission at the meeting of the Council of Federation;

the results of the secret voting are formalized by the decree of the Council of Federation.

Also, Procedural regulations of this chamber establish, that:

if at the meeting of the Council of Federation were adopted both the decision about the taking the individual voting and the decision about taking the secret voting, there will be conducted the secret voting (p. 3 Article 65);

during the conduct of the secret electronic voting the possibility of registration of the individual voting of the members of the Council of Federation is excluded (p. 3 Article 72);

the commission for control on the electronic voting system is obligated before the beginning of the secret voting to check the validity of operation of the electronic voting system and ensure that the number of electronic cards for secret voting is equal to the total number of the members of the Council of Federation. The validity of operation of the electronic system for the purpose of the secret voting is formalized with a protocol (Article 74).

The procedural regulations of the Council of Federation don't contain any possible types of violation of the secrecy of voting and don't establish any sanctions for violation such a type of voting. If such violation occurs, the issue can become a subject of examination of the chamber and its Commission for procedural regulations and the organization of the parliamentary activity (according to the scope of powers of this Commission, provided in p. 16 Article 30 of the Procedural regulations).

The decree of the Council of Federation, adopted to formalize the results of the secret voting, may be appealed in ordinary procedure to the Supreme Court of the Russian Federation (clause 1 p. 1 Article 27 or the Civil Procedure Code of the Russian Federation).

3.2 The procedural regulations of the State Duma (adopted by its decree of January 22, 1998) provide the secret voting of the deputies of this chamber when appointing the Commissioner for Human Rights in the Russian Federation (Article 155).

The procedural regulations directly allowing to take secret or open voting, at the discretion of this chamber, when:

electing the Chairman of the State Duma and his (her) deputies (p. 1 Article 8);

adopting the decision of the State Duma about giving consent to the appointment of the Chairman of the Government of the Russian Federation. In this case the open voting is taken if this decision is adopted by the majority of votes of the total number of deputies of the chamber (p. 1 Article 146);

adopting a decree about charging the President of the Russian Federation with high treason or with commission of other grave offence. The decision about the manner of voting (secret with ballots or open with personal ballots) is adopted in the chamber by the majority of votes of the total number of deputies of the State Duma of the Russian Federation (p. 1 Article 180);

adopting decisions concerning the removal of immunity of the deputy of the State Duma. The decision about the manner of voting (secret with ballots or with electronic system of counting the votes, or open) is adopted by the chamber (p. 1 Article 185.5).

The procedural regulations of the State Duma establish the **procedure of conducting a secret voting**. Particularly, it states (Articles 83, 88, 89, 91, 99), that:

the decisions of the State Duma are adopted at its meetings by open or secret voting;

the secret voting is conducted upon the decision of the State Duma, adopted by the majority of votes of the total number of deputies of the State Duma who were voting. The secret voting is conducted using the electronic system of counting the votes or by ballot;

the conduct of secret voting by ballots and assessment of its results are made by the Counting commission of the State Duma;

the ballots for secret voting are made under control of the Counting commission in form, proposed by it and adopted by the decision of the State Duma in amount, equal to the total number of deputies of the State Duma, and contain necessary information. The ballots which are left after the completion of their distribution, are destroyed by the chairman of the Counting commission in the presence of its members. The time and place of secret voting and its procedure are established by the State Duma by the recommendation of the Counting commission according to these procedural regulations and are announced by the chairman of the Counting commission;

the distribution of the ballots for secret voting begins not later than one hour before the beginning of the voting; secret voting takes place during 30 minutes after its beginning, if not established otherwise by the State Duma;

each deputy of the State Duma is given one ballot for the election of a body or a person being elected or for the draft of the decision considered at the meeting of the State Duma;

ballots for secret voting are given to the deputies of the State Duma by the Counting commission according to the list of the deputies of the State Duma upon presentation of a certificate of the deputy of the State Duma. Receiving the ballot, deputy of the State Duma signs on the specified list opposite his name;

the ballot for secret voting is put into a special box, which is sealed by the Counting commission;

the Counting commission is obligated to create the conditions for the secret expression of intention by the deputies;

the ballots not in the adopted form and ballots by which it is impossible to establish the intention of the deputies are considered invalid. Any additions to the ballot aren't taken into consideration during the counting of votes;

the Counting commission makes a protocol on the results of secret voting, which is signed by all members of the Counting commission. A report of the Counting commission on the results of secret voting is acknowledged by the chamber;

basing on the report of the Counting commission on the results of secret voting, acknowledged by the chamber, the presiding person announces which decision is adopted ('for', positive, or 'against', negative) and names the elected candidates during the elections. The results of the secret voting by ballots for secret voting are formalized by the decree of the chamber;

if at the meeting of the State Duma were adopted both the decision about the taking the individual voting and the decision about taking the secret voting, there will be conducted the secret voting;

the group for control on the electronic voting system is obligated before the beginning of the secret voting to check the validity of operation of the electronic voting system;

the validity of operation of the electronic system for the purpose of the secret voting is formalized with a protocol, made by the group for control on the electronic voting system;

during the conduct of the secret electronic voting the information about the results of the individual voting of the deputies are not logged in the memory of the electronic system.

The procedural regulations of the Council of Federation don't contain any possible types of violation of the secrecy of voting and don't establish any sanctions for violation such a type of voting. If such violation occurs, the issue can become a subject of examination of the chamber or the Committee of the State Duma for procedural regulations and the organization of the work of the State Duma (according to its scope of, provided in Article 219 of the Procedural regulations).

The decree of the State Duma may be appealed in ordinary procedure to the Supreme Court of the Russian Federation (clause 1 p. 1 Article 27 or the Civil Procedure Code of the Russian Federation).

4. The Constitutional Court of the Russian Federation didn't touch the issue of the secret voting in Parliament in its decisions.

It was mentioned in the Ruling of the Constitutional Court of July 20, 1999, on the case concerning the examination of constitutionality of the Federal Law of April 15, 1998 'On cultural treasures...', that the provision of the Constitution of the Russian Federation about the adopting of the procedural regulations by each chamber of the parliament causes necessity of the legal regulation by the Procedural regulations of the State Duma of appropriate procedures of adopting the decisions, including the establishing of the voting procedure when passing laws, which would provide for the deputy's personal attending of the meetings and participating in the voting during the process of legislation. The existence of such rules and their observances acts as

the substantial procedural element of the due course of legislation, based upon the requirements of the Constitution of the Russian Federation, and guarantees that the adopted decision would correspond to the actual will of the deputies. Although, it doesn't prohibit making amendments to the Procedural regulations of the State Duma, which would regulate the procedure of transferring the vote by a deputy because of his absence at the meeting due to exceptional circumstances.

SAN MARINO / SAINT-MARIN

A. Article 7, paragraph 1, of the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order stipulates that "Suffrage shall be universal, secret and direct", and guarantees secrecy of vote during elections by **direct suffrage**. The second paragraph of the same Article sets forth that "Each citizen, at the age and under the requirements laid down by the law, shall have the right to vote and be voted".

Such constitutional provision refers to the electoral law (this subject is presently regulated by Law no. 6 of 31 January 1996), which disciplines in detail all aspects and stages of the electoral procedure. In particular, Section VI of the Law in force, "Electoral procedure", establishes the rules with which electoral sections must scrupulously comply. All these rules are inspired by and based on respect for the constitutional principle.

Secrecy of vote is safeguarded by the Criminal Code. Article 395 of the Criminal Code Section on crimes against political rights provides for and punishes any violation of secrecy of vote: "Anyone who, through illicit means, comes to know a secret vote cast during a State election or voting shall be punished by second degree arrest (from 15 days to 2 months)". As results from the report to the Code, in force since January 1975, the expression *State voting* has been included to clearly specify that not only political elections but all elections or voting to public offices are safeguarded. Therefore, such regulations also apply to referenda and elections of the Township Councils (administrative bodies, San Marino local powers), which have been disciplined after the entry into force of the Code.

Secrecy of vote during elections by **indirect suffrage** is provided for and disciplined by the Regulation of the Great and General Council, San Marino unicameral Parliament (Law no. 21 of 11 March 1981, as amended by Laws no. 128 of 31 October 1986, no. 47 of 19 May 1994 and no. 42 of 21 March 1995). Under Article 40 on voting procedures, all voting related to appointments by the Great and General Council shall be by ballot paper. Parliamentarians receive ad-hoc papers on which they must write the name voted in a clear and understandable way.

With regard to secrecy of vote for appointments by parliamentarians, an important exception is the election of Government members, which takes place by roll call. This rule has recently been confirmed by qualified Law no. 184 of 15 December 2005 on the Congress of State (San Marino Government). Article 1, paragraph 3 of this Law, reads: "The Great and General Council, after having approved the Government programme by absolute majority, shall appoint by non-secret ballot, through nominal call and with a single absolute majority voting, and with a voting by a two-thirds majority of the Council's members for the appointments referred to in paragraph 2 above [elections of San Marino citizens not members of the Parliament], the Secretaries of State [Ministers], by specifying the Secretariat of State for which they shall be responsible".

B. As specified above, elections by indirect suffrage, disciplined by law and by the Parliamentary Regulation, refer to the voting by the Great and General Council. The relevant electoral procedure is governed by the Parliamentary Regulation.

Apart from the above mentioned exception (appointment of the Congress of State), all bodies appointed by the Great and General Council and composed of parliamentarians or non-parliamentarians are elected by secret ballot. The elections of the Captains Regent and of the Guarantors' Panel on the Constitutionality of Rules are among the most important ones.

Under Article 1 of qualified Law no. 186 of 16 December 2005, which has reviewed a procedure dating back to the Middle Ages, the Great and General Council elects the Captains Regent through secret ballot, by a majority of the voting parliamentarians.⁴⁶

The Great and General Council appoints, by two-thirds majority, the three effective members and the three substitute members of the Guarantors' Panel on the Constitutionality of Rules. In this case, the Captains Regent submit the names of the candidates designated by the Bureau to be voted by the Parliament.⁴⁷

C. While any violation of secrecy of vote during elections by direct suffrage is criminally prosecuted and punished, as already specified above, there is no similar provision punishing violations of secrecy of vote during elections by the Great and General Council.

In the absence of precedents, should a parliamentarian believe that a violation of the secrecy of vote and therefore a violation of the Regulation has occurred during a voting procedure, he/she might request the Captains Regent, who preside over the assembly, to interrupt the voting, if still underway, and to take the necessary measures.

All acts of the Captains Regent, including those carried out in their capacity as Presidents of the Great and General Council, are subject to the "Regency Syndicate"⁴⁸ which, in line with the

⁴⁶ The two **Captains Regent**, a collegial body, hold the Office of Head of State, are the supreme guarantors of the constitutional order and supervise the functioning of public powers and institutions. Among others, they convene and preside over the Great and General Council, without the right to vote.

Their mandate lasts six months and is not renewable until three years have passed.

In the framework of the institutional reform recently approved by San Marino Parliament, the Office of the Captains Regent is regulated by constitutional Law no. 185 of 16 December 2005 and qualified Law n. 186 of 16 December 2005, which have repealed any conflicting provision previously in force.

⁴⁷ The **Guarantors' Panel on the Constitutionality of Rules**, responsible for verifying compliance of laws, other rules and customs having the force of law with the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order, is provided for by Article 16 of the Declaration and regulated by two ad hoc laws:

- qualified Law no. 55 of 25 April 2003 on organisation, incompatibility, functioning, appeals and proceedings forms and effects of the decisions of the Guarantors' Panel on the Constitutionality of Rules;
- constitutional Law no. 67 of 27 May 2003 on the responsibilities of the Guarantors' Panel's members.

The Guarantors' Panel is also competent to decide on the admissibility of referenda, on disputes among constitutional bodies and on the "Regency Syndicate".

⁴⁸ For a historical and legal description of the **Regency Syndicate** see: Francesco Balsimelli, *Elementi di Diritto Pubblico Sammarinese*, San Marino, Gruppo Poligrafico Editoriale, 1966. pages 98 and 99.

"At the end of their mandate, the Captains Regent are subject to a Syndicate, which judges what they have or have not done, i.e. what they might have done beyond their powers in violation of statutory rules or what they might not have done against their duty.

The Syndicate is a sort of high court, once composed of a foreign consultant elected by the new Captains Regent [.....]. Subsequently, the Syndicate was composed of two San Marino citizens assisted by the *Procuratore del Fisco* [prosecuting magistrate] [.....]. Today, in line with a Decree of 3 July 1906, this body is composed of two parliamentarians appointed within the Great and General Council [.....]".

The 1906 Decree was repealed by the laws now in force on the competences of the Guarantors' Panel on the Constitutionality of Rules.

provisions in force, is performed today by the Guarantors' Panel on the Constitutionality of Rules. The "Regency Syndicate", of ancient origin, is a remedy granted to all San Marino citizens and can be resorted to *ex post*, also in case of presumed violations of the rules safeguarding secrecy of parliamentary vote.

SPAIN / ESPAGNE

A. Is there a constitutional and/or legislative provision of a general nature which guarantees secrecy of the vote in your country? If so, does this provision concern equally all types of election or only those which take place by direct vote?

The general rule on this topic is the Section **79.3 of the Spanish Constitution** which establishes that the vote of Senators and Members of the Congress shall be personal and may not be delegated.

On the other hand Section **80 of the Spanish Constitution** establishes that plenary meeting of the Houses shall be public, except when otherwise decided by each House by overall majority, or in accordance with the Standing Orders.

The **Congress of Deputies** Standing Orders states on Section 85:

“1. Voting shall be public by roll call or secret when so required by these Standing Orders, or when requested by two parliamentary groups or one-fifth of Members of the House or the committee’s members. In the event that more than one request is made, to opposite effects, the request for a secret ballot shall prevail. In no case shall voting be secret on legislative procedure or in those cases in which resolutions must be passed according to the principle of weighted voting. 2. Voting on investiture of the Prime Minister, motions of censure and questions of confidence shall in all cases be public by roll call.”

And Section 87 sets up:

“1. A secret ballot shall be held: i) By an electronic process recording the total outcome of the voting, but omitting the identity of voters. ii) By ballot papers when the election of persons is involved, when so decided by the Speaker and when this form of voting has been specified in the request for a secret ballot. 2. To carry out the voting referred to in subparagraph 2 of preceding subsection, members shall be called by name to the table at which the Bureau sits to put their ballot paper into the appropriate box.”

Section 87 of Congress of Deputies Standing Orders defines the ways to hold the secret ballot: 1) by an electronic process recording the total outcome of the voting, but omitting the identity of voters; 2) ***by ballot papers when the election of persons is involved***, when so decided by the Speaker and when this form of voting has been specified in the request for a secret ballot. To carry out the voting referred to in subparagraph 2nd of preceding subsection, the Members shall be called by name to the table at which the Bureau sits to put their ballot paper into the appropriate box.

The **Senate** Standing Orders establishes on its Section 92 that voting could be:

“1. Voting shall be: a) By assent, at the Speaker's proposal. b) Ordinary. c) By roll call. 2. Voting by roll call may be public or secret. Secret voting by roll call may, in turn, be conducted by means of ballot papers or black and white balls.” And Section 97 establishes that: *“1. Voting by roll call shall be secret if so requested by fifty Senators at a Plenary Sitting or by one-third of the members of a Committee. 2. Secret voting by roll call shall take place by means of ballot papers when the present Standing Orders do not foresee an automatic appointment for the post to be filled, and by black and white balls when qualifications are made on the basis of personal conducts or behaviours. White balls are a sign for approval and black balls of rejection. 3. When voting is secret, the Senators shall be*

called out by alphabetical order by a Secretary so that they can place their ballot papers or the ball in the appropriate place. The name of the Senator who first votes shall be determined by drawing lots and the Bureau shall be the last to vote.”

Section 98 sets up that “*when opposite voices raise calling some for a public some for a secret voting in circumstances different from those considered in paragraph two of the foregoing section, the Speaker, as an incidental issue, shall first put to voting the procedure to be followed.*”

B. Which elections take place by indirect vote?

B1. Internal bodies

First of all it is necessary to say that according to Section 79.3 of the Spanish Constitution the vote of members of Parliament shall be personal and may not be delegated; but there is some provisions on “*indirect vote*”, if we understand by “*indirect vote*” the principle of weighted voting. There are different examples of that kind of vote on the Standing Orders of the Parliamentary Houses. For instance: in the cases of Ties in committee votes, or in the reporting bodies (Section 88.2 Congress of Deputies Standing Orders; or 100.4 of the Senate Standing Orders); or in case of the Nomination Committee (Section 185.2 of Senate Standing Orders; or Section 3.2 Speaker’s Resolution of May 25th 2000 of Competence of the Congress of Deputies in appointing candidates to different Bodies of the State). Even more, the decisions of the Board of Spokesperson of the Congress of Deputies shall always be adopted by applying the principle of weighted vote according to Section 39.4 of the Congress of Deputies Standing Orders.

B2. External elections (Articles 204-206) Standing Orders

The *Congreso* elects:

1. 4 (out of 12) members of the Constitutional Court (Article 122.3 Spanish Constitution)
2. 4 of the members of the General Council of the Judicial Power (Article 159.1 Spanish Constitution)
3. 6 (out of 12) members of the Court of Auditors
4. Jointly with the Senate, it elects the Ombudsman
5. 6 (out of 12) members of the Administration Council of Spanish public TV
6. Article 206. For any other election, the general system (Article 204) applies. Secret ballot, voting as many names as post to be filled and 3/5 majority. If no qualified (i.e. 3/5) majority is required, the Bureau may agree the modalities for voting.

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

B1 (internal bodies) The Members who participates in the correspondent Body are authorised.

B2 (external elections) The plenary is authorised

1. Constitutional Court. Secret ballot. Every deputy must choose four names. Every candidate must obtain 3/5 of votes.
2. General Council of the Judicial Power. The same as above (every deputy must choose 4 names)
3. Court of Auditors. The same as 1 (every deputy chooses 6 names)
4. Ombudsman. Simple majority

5. Administration Council RTVE. The same as 1 (every deputy chooses 6 names).

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

Yes. The general rules of Standing Orders (see above mentioned Sections on answer to A).

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

Parliamentary Groups try to ensure the attendance of its Members.

C. Should there be a violation of secrecy of vote, in the framework of an indirect vote

1. What are the different types?

Secrecy vote can affect all kinds of votes, including the weighted vote –for instance: the case of a tie during the Committee debate of a formal petition by a Court requesting leave of the House according to Sections 13 and 11 of the Congress of Deputies Standing Orders.

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

It depends on the Presidency or the Bureau of the Body. Section 16 of the Congress of Deputies Standing Orders establishes that Members shall refrain from disclosing any proceedings which, as provided herein, may, in exceptional circumstances, be of a secret nature.

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

Not specifically, apart from the rules of courtesy and discipline.

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

Section 99.3 of the Congress of Deputies Standing Orders establishes that, by resolution of the Bureau, Members may be deprived temporary of some of the rights granted to them under Sections 6 to 9 of the Standing Orders in case that they fail to keep the duty of secrecy established in Section 16 of the Standing Orders, and if they persist in their attitude, after that penalty, they may be temporary suspended of the Status of member (101.1 of the Standing Orders) on proposal to the Bureau of the Home.

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

As far as we know there is no record of it.

TURKEY / TURQUIE

A.-B. There is no constitutional provision of a general nature on the secrecy of vote in parliamentary procedure. However, the Constitution makes secret vote obligatory in five cases: (1) parliamentary resolutions involving the loss of seat for a deputy on account of parliamentary incompatibility, i.e., if he/she accepts a job considered incompatible (Article 82) with parliamentary membership (Article 84, paragraph 3); (2) the election of the Speaker of Parliament (Article 94); (3) parliamentary resolutions involving the initiation of a parliamentary investigation concerning the Prime Minister or a minister, and those involving to refer the case to the High Court (Constitutional Court) for trial (Article 100); (4) the election of the President of the Republic (Article 102); (5) Constitutional amendments (Article 175).

Types of voting in parliament are regulated by the Standing Orders (Article 139) according to which there are three types of voting: (1) by raising hands or standing up; (2) open voting (roll-calls) where deputies put their ballots (with their names and surnames on it) in the box, or utter the words “accept”, “reject”, or “abstain”; (3) secret voting where deputies put one of the three unmarked balls in the box; white means yes, red means no, and green means abstention.

In cases where the Constitution, laws, or the standing Orders makes hand-raising or open voting obligatory, secret voting cannot be held. In other cases, a secret vote can be requested by twenty deputies, and has to be accepted by the plenary session (Article 147 of the Standing Orders).

C. The Constitution or the Standing Orders contain no rules concerning possible violations of the secrecy of vote. In practice, this rule is very rarely violated, and only in cases where some deputies voluntarily choose to divulge their votes for political reasons of their own. No appeal is provided before a judge or the Speaker of Parliament, and there are no relevant case-law.

“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”

A. Is there a constitutional and/or legislative provision of a general nature which guarantees secrecy of the vote in your country? If so, does this provision concern equally all types of election or only those which take place by direct vote?

- A constitutional provision which guarantees secrecy of the vote is found in Article 22 paragraph 2 of the Constitution of the Republic of Macedonia. This Article guarantees the right to vote, as one of the civil and political rights. Article 22 reads as follows:

“Every citizen who has attained the age of 18 years acquires the right to vote.

The right to vote is equal, universal and direct, and is exercised at free elections by secret ballot.

Persons deprived of the legal capacity do not have the right to vote”.

Similar provision is contained in Article 62 (regarding the members of the Parliament of the Republic of Macedonia) paragraph 2 of the Constitution which says that: “The Members of the Parliament are elected at general, direct and free elections by secret ballot”, as well as in Article 80 paragraph 1 of the Constitution (regarding the election of the President of the Republic of Macedonia, who is elected in general and direct elections, by secret ballot, for a term of five years.

On legislative level, provisions regarding the secrecy of the vote are to be found in the Electoral Code (Official Gazette of the Republic of Macedonia No.40/2006). According to Article 3 paragraph 1 of the Code, the President of the Republic, members of the Parliament, members of the municipal councils and the mayors of the municipalities are elected at general, direct and free elections by secret ballot. According to paragraph 2 of the same Article, a citizen elector may not be held responsible for the vote cast, and no one is allowed to ask the citizen – elector for whom he/she voted or for the reasons for not voting.

According to Article 173 paragraph 1 of the Electoral Code, the act of voting is conducted in a closed place (room) which fulfils the conditions for the exercise of personal, free and secret voting of voters.

Violation of the secrecy of voting (during elections for the President, MPs or municipal elections) is among others, one of the reasons for annulment of voting.

B. Which elections take place in Parliament ?

a) According to the Constitution of the Republic of Macedonia, the Parliament of the Republic of Macedonia, elects:

- the Government of the Republic of Macedonia;
- the judges of the Constitutional Court of the Republic of Macedonia;
- other holders of public and other offices determined by the Constitution and law;
- President and one or more Vice-Presidents of the Parliament;
- The Ombudsman;
- the members of the Committee for Inter-Community Relations;

- 5 members of the Judicial Council of the Republic of Macedonia;
- appoints and dismisses the Public Prosecutor of the Republic of Macedonia.

b) According to the Rules of Procedure of the Parliament (“Official Gazette of the Republic of Macedonia” No. 60/2002) the Parliament elects:

- the presidents and the members of the working bodies of the Parliament (various Committees);
- members and deputy members of the permanent Parliamentary delegation in the international parliamentary assemblies;
- the Secretary General of the Parliament.

c) In accordance with the Constitution, the Parliament of the Republic of Macedonia elects, appoints and dismisses other holders of public and other offices determined by special laws. (for example, the president and the members of the State Electoral Commission, the members of the State Commission for the Prevention of Corruption, the president and the members of the Commission on Securities, and many others holders of offices determined by other laws).

For each one :

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

- All members of the Parliament are authorised to vote.
- According to the Rules of Procedure of the Parliament, voting can be public or secret. Public voting is conducted by use of electronic voting system, by hand rising, or by roll call.
- Secret voting is conducted by voting ballots (lists). The colour and the size of the voting lists must be identical. Secret voting is governed by the President of the Parliament who is assisted by the Secretary General of the Parliament and by three MPs elected by the Parliament on the proposal of the President of the Parliament. On each voting list the Seal of the Parliament is affixed. Before the voting, the President of the Parliament gives the necessary explanations regarding the manner of voting. The voting lists contain names of candidates for the public office for which the voting takes place, sorted by alphabetical order. Parliamentarians vote by circling the order number in front of the name and surname of the candidate. When the voting is completed, the President of the Parliament announces the results.

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

- According to Article 4 of the Rules of Procedure of the Parliament, the Parliament decides on all issues within its competence by public voting. Secret voting is provided as an exception, only for election, appointment or dismissal of holders of public offices, on proposal by the president of the Parliament or one MP whose proposal is supported by 10 MPs.

However, since 1991 when the first Parliament of the Republic of Macedonia (after its independence) has been constituted until now this provision (on secret voting) has never been invoked.

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

- See the answer under point 1.

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

1. what are the different types?

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

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

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

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

Since secret voting in the context of elections by the Parliament has never been applied, there are no precedents on this issue.

However, the Constitutional Court of the Republic of Macedonia in 2003 (case U. br. 77/2003 from 9 July 2003) has reviewed a case of a deputy public prosecutor who was not elected by the Parliament (with public voting) and who therefore claimed that he was discriminated on the ground of his nationality. The Constitutional Court did not find violation and the complaint was rejected. In this particular case the allegations concerned more the voting result itself, and not the procedure of voting which was not secret, but public.

UNITED KINGDOM / ROYAUME-UNI

A. Is there a constitutional and/or legislative provision of a general nature which guarantees secrecy of the vote in your country? If so, does this provision concern equally all types of election or only those which take place by direct vote?

1. In the United Kingdom, the secrecy of the ballot in parliamentary elections was established by law in the Ballot Act 1872. Before this important reform, elections were conducted openly and the voters were vulnerable to innumerable forms of improper influence, including bribery, corruption and coercion from landlords and employers. The present requirement of secrecy for parliamentary elections is found in the Representation of the People Act 1983, section 66, the text of which is annexed to this report. This is applied by other legislation to all public elections that take place in the United Kingdom, namely local and regional government elections, elections to the European Parliament, and elections to the devolved assemblies in Scotland, Wales and Northern Ireland. The rule of secrecy for citizens who vote in these elections is backed up by criminal sanctions and by the detailed statutory rules on the conduct of elections. Once a vote has been cast, the anonymity of the vote is absolute, except that an election court may order an inquiry to be made into claims that an election has not been properly conducted; in this event the court may order the ballot-papers to be matched against the original counterfoils, on which an election officer will have written the voter's number from the electoral register. While therefore the secrecy of the ballot rests on legislation by Parliament, it has become a fundamental principle of the working of democracy in the United Kingdom.

2. The present questionnaire does not relate to the general law that guarantees the secret ballot in parliamentary, local government and European elections, but only to the votes cast in Parliament when a parliamentary chamber has the function of conducting an election. The legislation mentioned above has no application to voting in Parliament, where *prima facie* constitutional principle in the United Kingdom requires that the elected representatives of the people are accountable to the people for what they do. The principle of democratic accountability requires there to be openness in the conduct of elected representatives, and runs counter to any rule of secrecy in voting in Parliament, local government and the devolved assemblies.

3. Three other general points are relevant. First, there is no practice in the United Kingdom of filling constitutional offices by election in Parliament. Second, to the very limited extent that elections do now take place in Parliament (as will be explained below), the elections all relate to the personnel of Parliament itself. Third, it has not been the general practice in the United Kingdom for the procedures of Parliament to be regulated by legislation, nor are they subject to intervention by decision of the courts, since these matters are regarded as being within the authority of each House of Parliament. Each House adopts the rules that it wishes to be followed in its internal proceedings; and each House is 'self-regulating' in that the enforcement of the rules is a matter for each House (which means that the House may change the rules or may order that they be not applied in a particular instance).

B. Which elections take place in Parliament

A. *In the House of Commons*

4. The sole election carried out in the House of Commons is the election of the Speaker of the House, either immediately following a general election or when the existing Speaker retires during the life of Parliament. The persons authorised to vote are the 646 members of the House. The voting procedure is not by secret ballot but by the ordinary procedure for voting in the House on legislative questions and other motions. The vote is at all times conducted publicly: the MPs vote by passing through the appropriate division lobby, where their names are recorded by the tellers for or against the motion, as the case may be. At the close of the time for voting, the total numbers are reported to the person presiding in the Chamber; and the presiding officer declares whether the motion has been carried or defeated. The names of those members voting are almost immediately published in the two division-lists, and not later than the following day the lists are published in Hansard, the record of parliamentary debates. There is therefore no secrecy in this method of voting. The media are of course free to publish and to comment on the votes cast by individual MPs.

5. The same method of voting is used when the House is asked to vote on an issue of confidence in the Government, or indeed in any motion that arises in the course of parliamentary business. The same would also apply to any motion for the appointment of a named person as an officer of Parliament (for example, the Parliamentary Commissioner for Standards). It would be more correct to describe this as a procedure for appointment, not a process of election.

6. It would be utterly contrary to the long-established practice of the House of Commons for any attempt to be made to cast a veil of secrecy over the way in which MPs have voted or have abstained from voting. In exceptional circumstances, the House has the power to go into private session at any time. This power was exercised on several occasions during both World Wars. Regulations made for the duration of the war made it a criminal offence to publish proceedings of the House in secret session, and this prohibition would have applied to the division-lists, unless the House ruled otherwise. As well as being a criminal offence during the world wars, breach of the requirement of secrecy in relation to a private session would almost certainly constitute a breach of privilege of the House (or contempt of the House) and would be punishable by the House.⁴⁹ No secret sessions have been held since the Second World War.

7. It must be remembered that the Ministers who form the Government of the United Kingdom are not elected by the House of Commons (still less are they elected by the House of Lords), but are recommended by the Prime Minister to the Queen for the formalities of appointment. Nor are the leaders of the political parties elected by proceedings in Parliament. Each party has its own rules for the election of its leader. These rules are outside the scope of the present questions, but information about them could be supplied if necessary.

⁴⁹ See details given in Erskine May, *Parliamentary Practice*, 20th edn., 1983, pp 321-322. The details include the note of an occasion when the House authorised the publication of the results of voting following a debate in secret session.

B. *In the House of Lords*

8. The foregoing answers concerning the House of Commons apply for the most part also to the House of Lords. However, one exceptional and rather curious form of 'election' in the correct sense of that word occurs occasionally in the House of Lords. Under the House of Lords Reform Act 1999, which removed from membership of the House the great majority of hereditary peers (about 600 of them), an exception was made granting membership to 92 hereditary peers. The 92 places are divided into several groups, according to party allegiance. Thus, the Conservative hereditary peers are the electors for the limited number of Conservative hereditary peers who may take up membership of the House; and the same principle applies to the other main parties and the cross-bench (non-party) hereditary peers. When one of the elected hereditary peers dies or vacates his or her membership of the House, the relevant group of hereditary peers vote for another hereditary peer to fill that place. The election is conducted in accordance with rules laid down by the House. Voting is by the method known as the Alternative Vote, so that counting continues in successive stages as votes are transferred, until one candidate has an absolute majority of votes cast. By the rules of the House, the election is by secret ballot. However, the results of the counting at each stage are made known after the close of the counting. It is therefore possible to find out how many votes were given to each candidate at the various stages of counting that enable the transfer of votes to take place. But the details of how individual votes have been cast are not made public.

9. If the details of votes cast by individual electors were to be made known, this would not be a breach of the criminal law, since the arrangements for these elections are authorised by the House and are not contained in legislation. However, it would be a breach of the rules of the House, which could if it wished to do so treat the disclosure as a breach of privilege or a contempt of the House. Given the limited extent of the provisions for electing hereditary peers to sit as members of the House, this seems a sufficient sanction.

10. At present, the Lord Chancellor (a member of the Cabinet) also performs the functions that are appropriate to that of Speaker of the House of Lords. Following recent changes in the law to end the constitutional anomaly that the Lord Chancellor was both a Cabinet minister and president of the Supreme Court with judicial functions,⁵⁰ as well as being Speaker of the House, the House (by proceedings on 12 July 2005 and 31 January 2006) resolved to create a new office of Speaker, to which one of its members will be elected. The House decided not to adopt the manner in which the House of Commons elects its Speaker. Instead, the Speaker of the House of Lords will be elected by secret ballot, by means of the same method of election as has been described for the hereditary peers, but with the difference that the electorate will be the entire active membership of the House of Lords. The first election to the office of Speaker is to take place in June and July 2006.

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

- 1. What are the different types?**
- 2. At what moment can it be proved? Is it limited to divulging the contents of the vote during voting?**
- 3. Are there any means of appeal and before whom (election judge, presidency of the Chamber, etc)?**

⁵⁰ The Constitutional Reform Act 2005 removes his surviving judicial functions from the Lord Chancellor.

4. To what extent and how can it be sanctioned?**5. Are there any precedents or precise case-law?**

11. The question of a violation of the secrecy of the vote can arise only in the very limited situations, described above, in which the House of Lords conducts a secret ballot for the purpose of electing a hereditary peer to membership of the House or of electing a Speaker. No special procedures exist for enabling sanctions to be imposed on anyone who may disclose how individual peers have voted. However, there is for these elections a Code of Conduct adopted by the House. This Code states that, if the Clerk of Parliaments (the senior official in the House), “suspects on reasonable grounds that some material irregularity or improper conduct may have occurred in the electoral process, he may refer the matter to the Committee for Privileges. The Committee may, if it thinks fit, recommend the disqualification of a successful candidate if their election appears to have been influenced by material irregularity or improper conduct.”

12. It may seem doubtful whether a disclosure after the completion of an election of how an elector had voted would be a ‘material irregularity ...in the electoral process’. This could however depend on the course of events and on the reasons for the disclosure (clearly it would be a material irregularity if the disclosure arose in a situation of attempted corruption or ‘purchase’ of a vote). However, in any event the Committee for Privileges (a committee of senior members of the House, including several Law Lords or retired judges) would have authority to consider the misconduct as an alleged contempt or breach of privilege. And the Clerk of Parliaments would in any event be able to bring the allegations to the Committee’s notice.

13. The ordinary civil and criminal courts would have no jurisdiction in the matter, since the events in question would be regarded as matters within the internal procedure of the House of Lords.⁵¹ Any recommendation by the Committee for Privileges would require to be adopted by the whole House before it could take effect. There are no relevant precedents since no disclosure of voting is known to have occurred, and the prospect is indeed an unlikely one.

14. Finally, it must be emphasised that these very limited functions exercised by the House of Lords scarcely qualify for description as ‘elections’, if only because the context in which they are conducted is at present wholly undemocratic. While constitutional issues are involved in questions relating to the composition of the House of Lords and in the choice of its new Speaker, it must be very doubtful whether the United Kingdom has any relevant experience in the conduct of elections by Parliament where such elections are required by a country’s constitution for the purpose of electing persons holding high office under the constitution.

⁵¹ And see Article 9, Bill of Rights 1689, protecting parliamentary proceedings from being questioned in any court.

ANNEX

Representation of the People Act 1983

66.--(1) The following persons--

- (a) every returning officer and every presiding officer or clerk attending at a polling station,
- (b) every candidate or election agent or polling agent so attending,

shall maintain and aid in maintaining the secrecy of voting and shall not, except for some purpose authorised by law, communicate to any person before the poll is closed any information as to--

- (i) the name of any elector or proxy for an elector who has or has not applied for a ballot paper or voted at a polling station;
- (ii) the number on the register of electors of any elector who, or whose proxy, has or has not applied for a ballot paper or voted at a polling station; or
- (iii) the official mark.

(2) Every person attending at the counting of the votes shall maintain and aid in maintaining the secrecy of voting and shall not -

- (a) ascertain or attempt to ascertain at the counting of the votes the number on the back of any ballot paper;
- (b) communicate any information obtained at the counting of the votes as to the candidate for whom any vote is given on any particular ballot paper.

(3) No person shall--

- (a) interfere with or attempt to interfere with a voter when recording his vote;
- (b) otherwise obtain or attempt to obtain in a polling station information as to the candidate for whom a voter in that station is about to vote or has voted;
- (c) communicate at any time to any person any information obtained in a polling station as to the candidate for whom a voter in that station is about to vote or has voted, or as to the number on the back of the ballot paper given to a voter at that station;
- (d) directly or indirectly induce a voter to display his ballot paper after he has marked it so as to make known to any person the name of the candidate for whom he has or has not voted.

(4) Every person attending the proceedings in connection with the issue or the receipt of ballot papers for persons voting by post shall maintain and aid in maintaining the

secrecy of the voting and shall not--

- (a) except for some purpose authorised by law, communicate, before the poll is closed, to any person any information obtained at those proceedings as to the official mark; or
- (b) except for some purpose authorised by law, communicate to any person at any time any information obtained at those proceedings as to the number on the back of the ballot paper sent to any person; or
- (c) except for some purpose authorised by law, attempt to ascertain at the proceedings in connection with the receipt of ballot papers the number on the back of any ballot paper; or
- (d) attempt to ascertain at the proceedings in connection with the receipt of the ballot papers the candidate for whom any vote is given in any particular ballot paper or communicate any information with respect thereto obtained at those proceedings.

(5) No person having undertaken to assist a blind voter to vote shall communicate at any time to any person any information as to the candidate for whom that voter intends to vote or has voted, or as to the number on the back of the ballot paper given for the use of that voter.

(6) If a person acts in contravention of this section he shall be liable on summary conviction to imprisonment for a term not exceeding 6 months.