

For debate in the Standing Committee — see Rule 15 of the Rules of Procedure

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Secret ballot – European code of conduct on secret balloting, including guidelines for politicians, observers and voters

Report
Political Affairs Committee
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Summary

Holding free and fair elections is one of the fundamental principles of democracy and the rule of law and the secrecy of voting remains a key aspect of free and fair elections.

The Assembly calls on member states to take a number of measures which would guarantee secret voting for all citizens including the most vulnerable groups such as the elderly, disabled and illiterate and to make sure that appropriate facilities are provided to enable all citizens to vote in secrecy.

A. Draft resolution

1. In all member states, the secret ballot is taken for granted as a basic principle. There is no longer any question of challenging it today and it is a vital part of all democratic processes.
2. The Parliamentary Assembly has always seen defending democracy, the rule of law and human rights as its main tasks. Holding free and fair elections is one of the fundamental principles of democracy and the rule of law. The right to vote is therefore a vital fundamental freedom in all democratic systems. The Assembly also regards universal suffrage as one of the key aspects of the democratic system. It is a right set out in several Council of Europe legal instruments, in particular Protocol 1 to the Convention for the Protection of Human Rights and the Code of Good Conduct in Electoral Matters drawn up by the Venice Commission and approved by the Assembly in 2003.
3. Ensuring the secrecy of voting therefore remains a key aspect of free and fair elections. It protects voters against any threats likely to impinge on their choices and safeguards their freedom of thought and their political and other beliefs. The secret ballot plays an integral part in legitimising the democratic process. It ensures that the public are able to express themselves freely, that elected representatives are truly representative and that legislative and executive bodies are legitimate, thereby contributing to public trust in institutions.
4. During the electoral process and inside the polling station, secrecy of the ballot means that voters are not only entitled but also obliged not to mention their votes. Nobody is entitled to have any access to the ballot to learn how any voters vote.
5. The Assembly draws attention to its own role in free and fair elections. The many election observation exercises it has conducted in Council of Europe member states have all enabled it to reassert its commitment to the process of democratic consultation and its desire to promote full compliance with the principles and rules governing democratic elections, including respect for secret voting.
6. It also points out that all citizens, regardless of their gender, race, colour, language, religion, political or other opinions, national or social origin, membership of national minorities, wealth, birth or any other status, must enjoy the same rights and, in particular, the right to take part in elections with secret ballots. It therefore believes that member states must make sure that this right can be exercised in full and must adapt the bodies responsible for organising and overseeing elections accordingly.
7. In addition, the Assembly is aware that electoral practices in member states are still affected by the various national traditions. While the latter must be taken into account, they must not be used as pretexts for certain practices which undermine the basic principles governing the conduct of free and fair elections, including secret ballots.
8. In this context, the Assembly condemns the practice of family voting. It urges member states where family voting still takes place to impose penalties on those involved and take action against election officials who tolerate it.
9. Moreover, the Assembly strongly condemns all other infringements of secret voting such as vote buying, voter harassment, multiple voting, the stamping of ballot papers and a shortage of polling stations and polling booths and urges member states to take action against such infringements.
10. The greatest possible attention must be paid to actual voting, as it is very often a key moment in any political process. The Assembly therefore believes that supervision of the secrecy of voting must be as strict as possible. It accordingly believes that the Council of Europe should promote a code of good conduct on secret ballots, including guidelines for politicians, observers and voters. It refers to the Declaration of Principles for International Election Observation and the Code of Conduct for International Election Observers (New York, 27 October 2005) and the work done on the subject in recent months by the Venice Commission.
11. The Assembly also refers to its longstanding experience of election observation and the many recommendations based on election observation exercises which constitute that many guidelines for the conduct of free and fair elections.

12. The Assembly therefore:

12.1. calls on member states to guarantee secret voting for all citizens, including the most vulnerable groups such as the elderly, people with disabilities and the illiterate, and to make sure that appropriate facilities are provided to enable these groups to vote in secrecy and, in particular, to take the following measures if they have not already done so :

- 12.1.1. preserve voter anonymity so that votes cannot be linked to voters;
- 12.1.2. respect individuality of voting and enable all voters to make their choices freely;
- 12.1.3. ensure maximum security in electronic voting by providing for secure data transfer and preserving voter anonymity;
- 12.1.4. make sure that election officials do not interfere with secret voting, ie that they do not read the ballot papers before the counting process;
- 12.1.5. provide and expand facilities and equipment that guarantee secret voting (polling stations, polling booths, mobile ballot boxes, etc), thereby ensuring confidentiality;
- 12.1.6. permanently end the use of ballot papers attached to counterfoils and bearing serial numbers;
- 12.1.7. annul the election results in the constituencies concerned when electoral fraud is proven to have occurred and rerun voting in the event of such fraud in case of having an influence on the results;
- 12.1.8. put an end to all forms of family voting and punish and prosecute those involved;
- 12.1.9. impose severe penalties for violations of the secrecy of voting such as vote buying, voter harassment, multiple voting and stamping of ballot papers and take robust action against any shortage of polling stations or polling booths;
- 12.1.10. make sure that ballot papers are transported securely so as to preserve the secrecy of the ballot;

12.2. also calls on member states:

- 12.2.1. to undertake legislative reforms, in particular of electoral codes, to ensure secrecy of voting;
- 12.2.2. to promote education and information programmes and policies on democratic principles, in particular on respect for the secret ballot;
- 12.2.3. to allow international observers to observe the various elections held and clarify the status of such observers;
- 12.2.4. to train officials responsible for organising and overseeing elections;
- 12.2.5. to follow and implement the recommendations based on the Parliamentary Assembly's election observation exercises;
- 12.2.6. to make sure that the membership of electoral committees is fair;
- 12.2.7. to step up co-operation with civil society and NGOs involved in promoting greater respect for democracy and secret voting.

B. Explanatory memorandum presented by Mr Aligrudić, Rapporteur

I. Introduction

i. Background

1. A secret ballot is a voting method in which a voter's choice is confidential. The aim is to ensure that the voter records a choice without any kind of intimidation or bribery.

2. Citizens in democracies take secret ballots for granted, but they have not always existed. The Victorian parliament in Australia was the first to abandon the "show of hands" method of electing members of parliament (MPs) in the 19th century.¹ Tasmania's Electoral Act (1856) was the first legislation incorporating the secret ballot. Australia was also the first country to introduce voting booths, in 1857, a system making it possible to conceal the voter's choice. This system was rapidly adopted in Europe, notably by the United Kingdom (1872), Belgium (1873), Germany (1903) and France (1913). As elections became increasingly democratic (universal suffrage), the secret ballot spread as the main voting method. However, secrecy of the ballot is not synonymous with universal, democratic suffrage, for many sections of the population, and women in particular, were long denied the right to vote.

3. This new practice of secret ballots became known as the "Australian ballot", which is defined as having four parts: a) an official ballot paper printed at public expense; b) on which the names of all candidates standing for election and all proposals appear; c) distributed at the polling station and d) marked by the voter in secret.

ii. Secrecy with different types of voting methods

4. The traditional ballot box remains the most widespread means of guaranteeing secrecy of voting. Where voters make their choice in a voting booth and themselves place the ballot paper in the box full secrecy is ensured.

5. Family voting is one of the most blatant breaches of the secrecy of the ballot, since the head of household's choice is imposed on other members of the family. There can be no secrecy of the ballot since certain voters have no choice.

6. Postal voting concerns persons who are unable to visit a polling station, often for reasons of distance. Secrecy can be guaranteed only where the voter's identification card and the ballot paper are not submitted in the same envelope. However, secrecy may be breached at the time of the act of voting, possibly in the voter's home.

7. Proxy voting enables people who are unable to vote themselves to designate someone else to do so on their behalf. This practice nonetheless poses a problem of secrecy. In principle, only the voter should know how he/she has voted, but that is not the case with proxy voting.

8. E-voting or electronic voting is the most recent voting method to have been experimented. In this case voters express their voting preference using equipment derived from advanced technologies, whether an electronic voting machine or voting by Internet. The vote is not materialised on paper. Voting may take place in a supervised environment or in unsupervised surroundings, for instance the voter's home. Here too, the secrecy of the ballot is not fully guaranteed. The Political Affairs Committee is moreover currently preparing a report on e-voting and remote voting.

iii. The secret ballot in Council of Europe member states

9. It should be said that Council of Europe member states apply both secret and open ballot practices in their parliamentary and public electoral systems. In addition, during its election observation missions the Parliamentary Assembly has noted very different standards and practices concerning secret ballots. In some cases secrecy is not always completely ensured, usually owing to national traditions.

10. Some countries' constitutions or national legislation guarantee secrecy of voting as a consequence of universal suffrage.

¹ Ernest Scott, "History of the Victorian Ballot", 1920

II. Legislation guaranteeing secrecy of the ballot

11. Voting procedures play a vital role in the electoral process because it is during voting that election fraud is most likely to occur. It should nonetheless first be pointed out that there is no uniform approach to secret voting.

i. Council of Europe instruments

12. From a legal point of view, there are several Council of Europe instruments which clearly mention the requirement of secrecy of the ballot:

13. Article 3 of Protocol 1² to the **Convention for the Protection of Human Rights and Fundamental Freedoms** establishes the "right to free elections". It states in particular "the High Contracting Parties undertake 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."

14. The **Code of Good Practice in Electoral Matters of the Venice Commission**³ has also codified the rules on secret suffrage. On 8 November 2001 the Standing Committee of the PACE adopted Resolution 1264 (2001) inviting the Venice Commission to devise a code of practice in electoral matters on the understanding, inter alia, that this code should include rules both on the run-up to the election, the elections themselves and the period immediately following the vote.

15. In 2005,⁴ intergovernmental and international non-governmental organisations endorsed a **Declaration of Principles for International Election Observation** as well as a **Code of Conduct for International Election Observers**, whereby they agreed, inter alia, that "The will of the people of a country is the basis for the authority of government, and that will must be determined through genuine periodic elections, which guarantee the right and opportunity to vote freely and to be elected fairly through universal and equal suffrage by secret balloting or equivalent free voting procedures, the results of which are accurately counted, announced and respected. A significant number of rights and freedoms, processes, laws and institutions are therefore involved in achieving genuine democratic elections." This document has been approved by the Parliamentary Assembly of the Council of Europe.

16. Lastly, the Parliamentary Assembly has on many occasions reiterated the importance it attaches to guaranteeing secret voting, as reflected in its various reports on elections in the member states.

ii. Other international instruments

17. The secrecy of the ballot is also enshrined in other international legal instruments.

18. Article 21 (3) of the **Universal Declaration of Human Rights**⁵ provides "The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."

19. Article 25 of the **International Covenant on Civil and Political Rights**⁶ stipulates "Every citizen shall have the right and the opportunity ... (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 free expression of the will of the electors".

20. Some documents are not legally binding, but set out general guidelines. For instance, at the second OSCE Conference on the Human Dimension⁷ it was established that "among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings are ... free elections that will be held at reasonable intervals by secret ballot or by equivalent free

² Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11 (ETS No. 155) as of its entry into force on 1 November 1998.

³ European Commission on Democracy through Law (Venice Commission), Code of Good Practice in Electoral Matters, CDL-AD(2002)23.

⁴ Signed on 27 October 2005 at the United Nations, New York.

⁵ Adopted and proclaimed by UN General Assembly Resolution 217 A (III) of 10 December 1948.

⁶ Adopted and opened for signature, ratification and accession by General Assembly Resolution 2200 A (XXI) of 16 December 1966.

⁷ Held from 5 to 29 June 1990.

voting procedure, under conditions which ensure in practice the free expression of the opinion of the electors about the choice of their representatives".⁸

21. Article 7 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (29 June 1990) provides "To ensure that the will of the people serves as the basis of the authority of government, the participating States will ... (7.4) ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public."

22. Finally, the first principle of the **Declaration on criteria for free and fair elections of the Inter-Parliamentary Union, adopted in 1994**, states "In any State, the authority of the government can only derive from the will of the people as expressed in genuine, free and fair elections held at regular intervals on the basis of universal, equal and secret suffrage."

III. Minimum standards for secrecy of the ballot

23. For states, secrecy of the ballot entails rights to be respected and also obligations with regard to personal freedoms and compliance with the democratic standards of which they are the stewards. The authorities are therefore responsible for ensuring the fair conduct of elections and, from the standpoint of this report, respect for the secrecy of voting. The Venice Commission has laid down what it regards as minimum standards for secret voting: the vote must be individual, confidential and anonymous and cases of fraud must be prosecuted.⁹

i. Individuality

24. It seems self-evident that individuality is a basic principle of secret voting. Each voter makes an individual choice. Every person registered on the electoral roll must be able to express his/her choice in person, and this personal choice must be counted as such.

25. In Sweden, for example, remote voting procedure requires the voter and any witnesses to the secrecy of the vote to sign either the outer envelope in which a postal vote is mailed or a statement attesting that the vote was both individual and secret.¹⁰

26. Family voting is not consistent with this individuality principle and, in particular, constitutes a violation of gender equality and freedom of opinion. As Kare Vollan points out "Voting will not place any focus on the family because the family head always takes care of it. As a consequence political consciousness may be reduced and a wish to cast a secret vote may never be expressed, even when a family head would have no objection."¹¹

27. Family voting may take three specific forms: first, a male member of the family accompanies a woman relative into a polling booth; second, the family group vote together in public; third, proxy voting, where a male family member votes on behalf of female relatives, but according to his own choice. This reprehensible practice is reminiscent of days gone by but nonetheless has a firm foothold in certain national traditions and is tolerated on cultural grounds. Traces of certain forms of family voting were identified in some elections in Albania, Azerbaijan, Bosnia and Herzegovina, Georgia, Latvia, Montenegro, Serbia, "the former Yugoslav Republic of Macedonia", etc.

28. Family voting is a complex and delicate issue in many cultures, because it is included in the broad family tradition. Obviously in modern societies many persons can resist that kind of habit and cast their own vote in secret. However, there being no way to verify this resistance, no states should in any way encourage this infringement of voters own choice.

ii. Confidentiality

29. The term "secret ballot" contains the word "secret". Confidentiality requires that only the voter should know how he/she has voted and that the voter should be able to make his/her choice in private. Hence the

⁸ Article 5.1 of the Copenhagen Document.

⁹ 51st plenary session, 5-6 July 2002.

¹⁰ Report on the compatibility of remote voting and electronic voting with the standards of the Council of Europe, Venice Commission, 58th plenary session, 12-13 March 2004

¹¹ Kare Vollan, Voting in Uncontrolled Environment and the Secrecy of the Vote, Electronic Voting 2006, 2nd International Workshop, Bregenz, 2-4 August 2006

importance of the polling booth, a private place where the voter's choice cannot be dictated or seen by anyone else. During the election, polling station officials supervise the secrecy of the vote. This confidentiality must apply from the start of the casting of votes until the announcement of the results, or even longer if there is a recount. In addition, polling booths are screened off to avoid ballot papers being seen by others.

30. In principle, no member of a polling station committee or any other person should be allowed to see a voter's marked ballot paper. Clearly, this prohibition does not apply to a person legally authorised to assist a blind voter or a voter requiring assistance due to a physical incapacity or illiteracy. It is nevertheless possible to classify the degrees of secrecy, according to the type of vote and the environment in which it takes place. It goes without saying that a conventional paper ballot at a polling station offering complete secrecy (closed polling booths, no interference by poll officials, in particular) occupies the top position in this classification.

31. It was with such voters in mind that the practice of proxy voting was introduced in many Council of Europe member states, with the exception of Albania, Azerbaijan, Bulgaria, Croatia, Cyprus, the Czech Republic, Latvia, Moldova, Poland, San Marino and Turkey, which do not permit remote voting whether within their national territory or from abroad.

32. This is because, despite its practical advantages, proxy voting violates the secrecy of the ballot and is founded solely on the trust vested in the person voting on behalf of the registered voter. There is nothing to prevent that person from "hijacking" the vote. Legislation should make it clear that every voter's ballot paper must be marked, and their vote cast, individually and secretly. This should apply to everyone, including people with literacy problems. The Parliamentary Assembly has come out in favour of measures "enabling sub-literate voters to make an individual decision by designing ballot papers sensitive to voters' needs (including for example dual-language ballot papers, using party symbols and/or photographs)."¹²

iii. Anonymity

33. Anonymity of the vote is another minimum standard to be imposed in all elections. There must be no link between the vote cast and the voter's identity. Anonymity of the vote guarantees freedom of choice, an essential element of the rule of law. Where it does not exist, freedom of opinion is endangered since the voter may be influenced by threats of sanctions or reprisals. Before the election takes place, ballot boxes must be sealed at the polling stations. Members of polling station committees should not inspect voters' marked ballot papers before they are placed in the ballot box.

34. The principle of secrecy of the ballot requires that election legislation ensure that secret voting is not only a right for voters but also an absolute obligation. The tear-off part of the ballot paper should not bear any serial number, while the counterfoil may carry a number for control purposes.

35. Some legislations stipulate that ballot papers can be linked to individual voters after an election where there is an allegation of fraud. Ballot papers are printed in books and both the ballot papers and the counterfoils are numbered. This means that any allegation can be checked by matching a suspicious ballot paper with the counterfoil, on which the polling station official will have written the voter number as recorded in the electoral register. In spite of the clear intention to prevent a possibility of fraud, and thus prove it easier, the dilemma remains whether the voter's right to the secrecy of his/her vote might be endangered in this way.

36. In Spain, all ballot papers are immediately destroyed by the polling stations officials after the counting process. This practice doesn't permit a second counting and no fraud can be proved.

IV. Violations of the secrecy of the ballot

37. Based on the Parliamentary Assembly's election observation experience, the following clear examples of violations of the secrecy of the ballot can be cited: inadequate polling booths or a lack of polling booths, stamping the vote, harassment of voters, disclosing the vote, intruding into the voting booth and vote buying.

38. In describing these violations, it is necessary to say that some of them stem from legislations themselves. Inevitably, deficits in legislations produce some deficits in practice.

¹² Recommendation 1676 (2004) Women's participation in elections.

i. A shortage of polling stations and polling booths

39. Where there are few polling stations certain citizens who are unable to travel to a polling station distant from their home cannot avail themselves of their right to vote. In this case either they do not vote or they entrust their vote to another person, who may use it as he/she sees fit. Overcrowding in polling stations and a shortage of polling stations and of space may cause members of polling station committees to allow voters to cast their ballot in public, which infringes the secrecy of the vote. The Ad Hoc Committee to Observe the General Elections held in Bosnia and Herzegovina on 1 March 2006 reported problems of this kind.

40. In addition, violations may result from deficient installations that fail to guarantee the secrecy of the vote, such as open voting booths.

ii. Stamping of ballot papers

41. This procedure, which is often provided for in the electoral laws of the countries concerned, may take different forms, but always breaches the secrecy of the vote. The practice consists in stamping of the ballot paper by a polling station committee member after the voter has made his/her choice but before the ballot paper is placed in the ballot box. This violates the secrecy of the vote since the ballot paper should in fact be stamped before the voter records his/her choice.

42. Moreover, stamping of ballot papers or inking of voters' fingers (to show they have voted) are not generally applicable practices. They can lead to multiple voting, since people who have already voted for a favoured candidate may be asked to revote for him or her and those who have voted for another candidate to transfer their vote. At all events the secrecy of the ballot is breached. According to the report by the Parliamentary Assembly's election observation committee, this kind of problem was encountered with the parliamentary elections held in Georgia on 28 March 2004. This type of procedure nevertheless gives rise to a dilemma. The making of a mark on the ballot paper does conflict with anonymity. This procedure should therefore be implemented with the greatest possible care.

iii. Harassment of voters

43. Voters may be harassed or be subjected to various forms of intimidation by government officials or members of the police in order to influence their choice. This form of abuse very often occurs during the run-up to an election and involves pressure on certain population groups (teachers, students, civil servants) to attend meetings held by the ruling parties, the aim being to make them understand that it is in their interest to vote for these parties if they do not wish to jeopardise their career prospects. This type of problem was noted by the Parliamentary Assembly's Ad Hoc Committees to observe the parliamentary elections in Moldova (6 March 2005) and Azerbaijan (6 November 2005).

44. There are also other ways of harassing voters, which are less direct than making threats or exerting pressure. They involve canvassing voters in their homes, but differ considerably from election campaigning where party activists walk from door to door to persuade people to vote for their candidate. They entail clear bullying of vulnerable electors who are either confused by the complexity of the voting process or do not master the language. This type of problem was noted in the United Kingdom during the general elections of 2001 and the local elections of 2003.¹³

45. During the elections of 2005 and 2006 in the United Kingdom, many cases of fraud of postal voting were recorded, especially in some districts of Birmingham and London. On 26 April 2005, the UK's Electoral Commission issued a statement stating that the postal voting process needs to be strengthened and that voter registration needs to be reformed (as the British Government had not acted on its 2003 and 2004 recommendations). This example shows that deficits in provisions are generally at the source of voting frauds.

iv. Vote buying

46. Vote buying is the most regular form of violation according to the Assembly's reports. All countries regard it as illegal and unethical, although different legal systems deal with it in different ways. Vote buying includes providing a financial or material incentive to a voter in exchange for a vote, buying abstentions or paying voters to stay at home. Some instances involve the promise of jobs, loans, promotions, etc.

¹³ Death of the secret ballot, The Guardian, 29 April 2003.

47. If votes are cast in secret there is no way for candidates and party organisers to be certain that the vote was cast according to the agreement between the voter and the briber. Negative vote buying occurs when a candidate is certain that a voter will not vote for him/her and pays that voter not to vote.

v. Penalties

48. Naturally, none of these abuses should go unpunished, and one of the Venice Commission's recommendations clearly states that violations of the secrecy of the ballot must be penalised. In agreement with the Venice Commission, most Council of Europe member states have made provision in their Electoral Codes for observance of the secrecy of the vote and for the imposition of sanctions in the event of failure to do so, which may constitute penalties under criminal law. In Azerbaijan, for example, the law sanctions violations of the secrecy of the ballot with cancellation of the results recorded by the electoral commissions concerned and holding of a repeat ballot in the district(s) affected.¹⁴

49. In several member states, penalties could be applied if the number of ballot papers in the ballot box is higher than the ballot papers distributed. In this case, all the results of the polling station are cancelled. This happened in Croatia during the legislative elections in 2003 because of one single ballot paper in excess.

50. Penalties must also be imposed on election staff guilty of fraud. As they are the guarantors of the proper conduct of free, fair and secret ballots, such staff must maintain the secrecy of the vote both during the casting of votes and during their counting, a particularly important stage of any ballot. Any who commit fraud must therefore be treated with the utmost severity.

V. Abstention, a special case

51. Abstentions may warrant special attention. These occur where a voter does not go to vote or, in parliamentary procedure, is present during the vote but does not cast a ballot. It is not the same thing as simply casting a "blank vote". A voter who casts a "blank (or white) vote" has voted, although his/her vote may be considered spoilt depending on the legislation in force, whereas an abstainer does not vote.

52. Abstention is therefore a fairly complex matter. Going well beyond violations of the secrecy of the ballot where people are forced or paid to vote in a certain way, it may sometimes be an entirely deliberate choice in order to express an opinion (not wanting to choose), protest against the established political system or mark a degree of weariness with regard to political representatives. This is reflected in certain countries' legislation, which invalidates the result of an election when abstentions are too high.

53. A number of Council of Europe member states have decided to combat abstentions by making it compulsory to vote. This applies, for instance, to Belgium, Luxembourg, Greece and Turkey.

VI. New voting challenges

i. Electronic voting

54. The internet boom and the development of the world wide web in the late 1990s led to speculation about the possibility of using this new public resource to improve the efficiency, effectiveness, and legitimacy of democratic elections. Following on from this discussion, several studies and experiments were carried out. The great consensus which emerged from these studies is that internet voting entails numerous risks, which need to be properly addressed before widespread deployment can take place.

55. Use of electronic voting has many advantages in comparison with the traditional system. In a globalised society electronic voting is cheaper and quicker to implement, the process is simplified, counting is accelerated, and democracy may even become more participatory insofar as electronic voting could allow a rapid plebiscite on the most important topics.

56. However, it must be pointed out that voter turnout does not depend solely on ease and convenience or the modernisation of voting methods, but is primarily influenced by the candidates' arguments and proposed programmes.

57. Electronic voting may also be a deterrent for people attached to the traditional system or less at ease with recent technology. Lastly, with an electronic voting system, there is no technological solution that can

¹⁴ Articles 113 and 114 of the Election Code of the Azerbaijani Republic.

guarantee the secrecy of the ballot since there can be no certainty that the vote was cast in secret. Allowing people to vote over a period of several days before election day and to change their vote up to the close of the ballot could make it possible to safeguard the secrecy of the ballot.

ii. Postal voting

58. This voting method benefits people who are unable to attend a polling station in person, either for physical reasons or because they are absent. It should be recalled that in many Council of Europe member states this method is only available to voters upon request (sometimes with restrictions).

59. An election where ballot papers are distributed and/or returned by post, in contrast to electors voting in person at a polling station, also raises a number of questions regarding compliance with the requirements of a secret ballot. On this issue, some people argue that voting at home provides equal or greater privacy than voting at designated polling places. However, concerns have been raised about the possibility of fraud in vote-by-mail elections, ranging from a risk of multiple voting to the destruction of mailed voting slips. In addition, in some countries it is felt that postal voting fails to revitalise interest in elections, but does encourage electoral fraud. This is why the state must ensure the greatest possible security of its postal service so as to avoid fraud on a huge scale.

60. Insofar as this method of voting is strictly regulated by the laws of the countries where it is allowed, incidents are rare in practice.

iii. Voting by people with disabilities

61. It goes without saying that voting in all types of elections should be accessible to everybody. In addition, the right to vote in secret is a cornerstone of democracy. However, in nearly all countries electoral practice results in a blind citizen being dependent on someone else to cast his/her ballot.

62. The Assembly's election observation experience shows that in some Council of Europe member states people who are blind or visually impaired vote with another person's help, which could jeopardise the secrecy of the vote. Not only do these people lose their right to a secret ballot, but they can never be sure that the person voting for them is actually putting down their voting choice. The rapporteur considers that, if they cannot take part in a traditional vote, they must be given other means of voting. In order to avoid such situations, the electoral commission should provide voting equipment that permits people with disabilities to vote independently.

63. In some countries service providers are legally obliged to make any 'reasonable' physical adjustments to their premises to make them accessible to people with disabilities. For example, in polling stations where voters having declared a visual impairment are registered ballot papers in Braille could be made available, in order to allow them to vote in secret. But the voting material should be in Braille and not only the ballot paper itself to preserve the secrecy during the ballot counting. The aim is therefore to adapt voting methods to people with disabilities, rather than the opposite, since everyone is entitled to the same electoral rights. For example, Albania made many efforts to adapt the vote to blind people and to preserve the secrecy of their vote during the national elections in 2005.

64. Some countries have made arrangements for voters whose mobility is impaired to be transported to the polling station, so they can vote in secret. In Sweden and Finland, for example, voting is possible in hospitals and retirement homes. These efforts to adapt voting methods and to comply with the requirements of a secret ballot should also apply to detainees, who must be able to fully exercise their right to vote.

iv. Mobile ballot boxes

65. In some Council of Europe member states, to allow people with impaired mobility to vote, members of the competent committee can, upon request, visit voters in their place of residence with a mobile ballot box. The secrecy of the ballot must also be ensured in this case. The Venice Commission has nonetheless noted that the cumbersome administrative formalities involved constitute an obstacle to the use of mobile ballot boxes in certain member states.

v. *Voter opinion polls*

66. Opinion polls have far too much influence on how people decide to cast their vote. However, it is common practice in our societies to publish opinion polls via the internet, SMS,¹⁵ television channels and in newspapers. Exit polls are also sometimes conducted to find out how people have voted.

67. We should ask ourselves what exactly these opinion polls claim to do. They claim to reflect the voting preferences of the general public. On a more general note, as to whether such polls should be banned, it must be remembered that they serve several important functions. While forming an integral part of our constitutionally guaranteed rights of freedom of speech and expression and the right to information, they often serve the purpose of informing us about trends within the population. Consideration must therefore be given to the extent and manner in which information is processed in our information societies, as it is often a vehicle for opinions and for political, economic and social ideologies which exist in our societies and which influence our votes.

68. Opinion polls are linked to media freedom. However, in a world where information is constantly crossing borders, opinion polls, especially those concerning elections, must be regulated. In some cases these polls indirectly jeopardise voting secrecy. Regular announcements of the foreseeable outcome of an election, which are sometimes even made up to election day itself, indirectly influence voters in favour of the idea of a "useful" vote, backing the "favourites" in an election. It is for this reason that a number of countries, in particular France, prohibit opinion polls shortly before an election.

69. Several Belgian newspapers announced the results of the two rounds of the French presidential elections, held on 22 April and 6 May 2007, at 7 pm based on the first results recorded in polling stations that closed at 6 pm. However, many polling stations in the large cities closed at 8 pm. For an hour the right to secrecy of numbers of those who had already voted was breached through this disclosure before the official announcement of the results, and those who, having not yet voted, were perhaps still wavering were indirectly influenced as to their choice of candidate. A single European legal instrument on this subject would remedy this sort of problem.

VII. Conclusion

70. It can be seen from Assembly reports that, during election observation missions, much attention is paid to the different standards and practices regarding secrecy of the ballot. In some cases, secrecy is not completely guaranteed, normally owing to national traditions. There is therefore a case for issuing further standards and guidelines to ensure that the ballot is secret.

71. The Venice Commission should encourage member states to modify their legal provisions to fully respect the secret ballot. It also should accordingly be invited to participate in the preparation of a set of guidelines on this important issue. Instead of creating a new code of good practice on secret balloting, these guidelines might update the existing Code of Good Practice in Electoral Matters¹⁶ by supplementing it with more detailed recommendations on secret ballots, including some guidelines for politicians, observers and voters.

72. It is also for all member states of the Council of Europe to implement appropriate legislation and to launch information and education policies targeting schools, electoral authorities and NGOs, with a view to safeguarding the secret ballot, a fundamental component of democracy.

¹⁵ Short Message Service by telephone.

¹⁶ Cf. footnote 3 above.

Reporting Committee: Political Affairs Committee.

Reference to Committee: Reference no. 3313 of 16.03.07

Draft resolution adopted by the Committee on 02.10.07

Members of the Committee : Mr Abdülkadir **Ateş** (Chairman), Mr Konstantin Kosachev (Vice-Chairman) (alternate: Victor **Kolesnikov**), Mr Zsolt **Németh** (Vice-Chairman), Mr Giorgi Bokeria (Vice-Chairman), Mr Miloš **Aligrudić**, Mr Claudio **Azzolini**, Mr Denis **Badré**, Mr Radu Mircea Berceanu, Mr Andris **Bērziņš**, Mr Alexandër **Biberaj**, Mrs Gudfinna **Bjarnadottir**, Ms Raisa Bohatyryova, Mr Pedrag Boškovic, Mr Luc Van den Brande, Mr Lorenzo Cesa, M. Muro Chiaruzzi, Ms Elvira **Cortajarena**, Ms Anna **Čurdová**, Mr Noel Davern, Mr Dumitru Diacov, Mr Michel **Dreyfus-Schmidt**, Ms Josette Durrieu (alternate: Mr Laurent **Béteille**), Mr Joan Albert **Farré Santuró**, Mr Pietro Fassino, Mr Per-Kristian **Foss**, Ms Doris **Frommelt**, Mr Jean-Charles Gardetto, Mr Charles Goerens, Mr Andreas Gross, Mr Davit Harutiunyan, Mr Jean-Pol Henry, Mr Serhiy Holovaty, Mr Joachim **Hörster**, Mrs Sinikka **Hurskainen**, Mr Tadeusz Iwiński, Mr Bakir Izetbegović, Mrs Corien W.A. Jonker, Ms Darja Lavtižar-Bebler (alternate: Mrs Barbara **Zgajner-Tavs**), Mr Göran **Lindblad**, Mr Younal Loutfi, Mr Mikhail Margelov, Mr Tomasz Markowski, Mr Dick Marty, Mr Frano Matušić, Mr Murat **Mercan**, Mr Mircea Mereuță, Mr Dragoljub Mićunović (alternate: Mr Zeljko **Ivanji**), Mr Jean-Claude **Mignon**, Ms Nadezhda Mikhailova, Mr Aydin Mirzazada, Mr João Bosco Mota Amaral, Ms Natalia Narochnitskaya, Mrs Miroslava Nemcova, Mr Grygoriy Nemyrya, Mr Fritz Neugebauer, Mrs Kristina Ojulang, Mr Theodoros Pangalos, Ms Elsa Papadimitriou, Mr Christos **Pourgourides**, Mr John **Prescott**, Mr Gabino Puche (alternate: Mr Pedro **Agramunt**), Mr Lluís Maria de Puig, Mr Jeffrey Pullicino Orlando, Mr Andrea Rigoni, Lord Russell-Johnston (alternate: Mr John **Austin**), Mr Oliver Sambevski, Mr Ingo **Schmitt**, Ms Hanne Severinsen, Mr Samad Seyidov, Mr Leonid Slutsky, Mr Rainer Steenblock, Mr Zoltán **Szabó**, Baroness Taylor of Bolton (alternate: Lord **Tomlinson**), Mr Mehmet **Tekelioğlu**, Mr Mihai Tudose, Mr José **Vera Jardim**, Ms Biruté Vesaitė, Mr Björn **Von Sydow**, Mr Harm Evert Waalkens, Mr David **Wilshire**, Mr Wolfgang Wodarg, Ms Gisela **Wurm**, Mr Boris Zala, Mr Krzysztof Zaremba.

Ex-officio: MM. Mátyás Eörsi, Tiny Kox

N.B. : The names of the members who took part in the meeting are printed in **bold**

Head of the Secretariat : Mr Perin

Secretaries to the Committee: Mrs Nachilo, Mr Chevtchenko, Mrs Sirtori-Milner, Mr Pfaadt