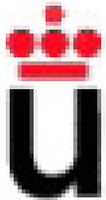
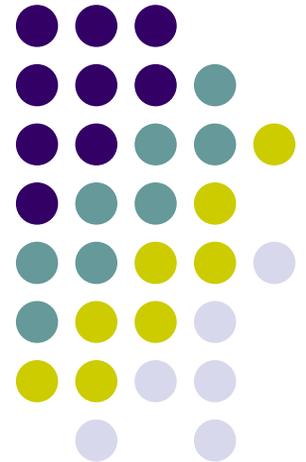


The electoral legislation of the Basque Autonomous Community regarding electronic vote



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Overview

- 1. Introduction
- 2. The case of legal regulation of electronic vote in the Basque autonomous community
 - 2.1. The law 15/1998, June 19 (now in force)
 - 2.2. The new government bill of 2004 (not in force)
- 3. Some desirable recommendations



1. Introduction

- **Norberto Bobbio:** *“...the consolidation and the reinforcement of the democracy is an unsubstitutable and indispensable budget for the transformation of society. For this reason, the consolidation of all institutions, that allow maximum participation to the organs that are attributed with the collective powers to take decisions in the different levels, for the maximum control on the correct execution of the decisions taken is indispensable...”*



2.1. The law 15/1998, June 19 (Basque Autonomous Region) (I)



- Preliminary Account of Motives
- Elements of the electronic vote:
 - Magnetic card voting with magnetic strip
 - Electronic ballot box
 - Vote screen
 - Voting booth
 - Software or electoral data processing programs

2.1. The law 15/1998, June 19 (Basque Autonomous Region) (II)



- Organs and distribution of competencies regarding electronic vote material:
 - **Central Electoral Committee (CAPV):**
 - Approving the correct operative validity of the electoral software and the magnetic support
 - Guaranteeing the availability and delivery of the software to the electoral Committee of the Zone and to the polling station
 - Receiving, once the election has ended, the magnetic backups of the software and assure their subsequent destruction
 - Devising the personalization of polling station's software
 - **Electoral board of the Historic Territory (CAPV):**
 - **Electoral board of the Zone (CAPV)**

2.1. The law 15/1998, June 19 (Basque Autonomous Region) (III)



- The **Data Processing Service** of the Basque Parliament:
 - What means this Service?
 - Problems and changes: *What legal body is legitimized by the law and Who is truly qualified for it...?*



2.1. The law 15/1998, June 19 (Basque Autonomous Region) (IV)



- Some important aspects in the exercising of the vote:
 - Secrecy
 - The secrecy in the Spanish Constitution CE, **article 68.1**
 - Three different manners to understand the secrecy:
 - The secrecy in the Spanish general electoral system: LOREG, **article 86.2**, 5/1985, June 19
 - The secrecy in the Basque law, 5/1990, June 15, **article 104.2**
 - The secrecy in the Basque law, 15/1998, June 19, **article 132 ter** (this law adds the electronic vote to the previous one, 5/1990)
 - Anomalies
 - Counting time and following operations
 - Infractions and fines

2.2. The new government bill of 2004 (until now not in force) (I)



- **Preliminary account of motives:**
 1. The need of a certain prudence or distrust regarding the use and application of New Technologies
 2. The perceiving of two languages and two different frameworks
 3. The need of a gradual application of a New Technologies to the operation and development of democracy
 4. The conviction that New Technologies are an instrument
 5. The convenience of maintaining the traditional or classic system of envelops and ballots with the system of the electronic vote
- **Description of the new electronic vote system**
- **The counting**

2.2. The new government bill of 2004 (until now not in force) (II)



- Elements of the new e-voting bill 2004 (Chapter X):
 - The voting ballot
 - The electronic ballot box
 - The control cards that open and shut down the ballot box
 - The voting ballots verifying machine
 - The “window of recognition”

2.2. The new government bill of 2004 (until now not in force) (III)



- Voting exercise:
 1. Selection by the voter, inside the cabin, of the chosen voting ballot
 2. Verification of the ballot in the “verifying machine” that will read the window of recognition
 3. The final closing and folding of the ballot and its transfer to the electoral polling station
 4. Delivery of the closed ballot to the President of the polling station
 5. Reading by the electronic ballot box of the polling station:
 - The electronic ballot box, after the reading of the ballot, accepts it
 - The electronic ballot box rejects the ballot, after having performed its reading

2.2. The new government bill of 2004 (until now not in force) (IV)



- Article 132, quinqués:
 - a) 132, quinqués I (**null vote**):
 - 1. There is not a ballot with the option of a null vote
 - 2. The electoral boards of the Historic Territory must resolve the validity and nullity
 - When the vote is emitted in a different ballot from the official model
 - When the ballots contain insults, expressions alien to the vote, signs of recognition or any other type of substantial alteration
 - When the absentee ballot contains more than one ballot paper for different candidacy
 - b) 132, quinqués II (**blank vote**):
 - 1. Are emitted in electronic ballot with the option of blank vote
 - 2. Are emitted in electronic ballot of a candidacy legally retired from the electoral district

2.2. The new government bill of 2004 (until now not in force) (V)



- The Counting:
 - Or the **electronic counting**, that is carried out if there were **no problems** and is done through the **opportune manipulations of the electronic ballot box**
 - Or what is called **electronic-manual counting**



3. Some desirable recommendations (only with legal glasses) (I)



- New Technologies mean that we are talking about different frameworks (social, legal, political, and, of course, technical)
- The Right of the citizen to participate through the direct, equal, free, universal and secret vote should remain fully guaranteed by the law. Only this way it will be possible to establish an electronic voting system



3. Some desirable recommendations (only with legal glasses) (II)



- “Electronic voting” must be always an *instrument* to serve and protect the Right of Universal Suffrage
- Advantages and benefits that the new proposed type of voting system should contribute and be adequately design to fit into and not contravene the present legal system in force.

3. Some desirable recommendations (only with legal glasses) (III)



- Any change in the law must take into account the identification and faithful analysis of our present reality. The instrument should be designed to resolve and better any existing errors and deficiencies in the present system
- Any instrument should be received and made under the full knowledge of its intent: nature, characteristics, effects, etc.
- It is necessary to take the steps in an orderly fashion to implement a new law

3. Some desirable recommendations (only with legal glasses) (IV)



- **Aguiar de Luque:** “...Which is the future of the democracy in a time in which the information and communication technologies redesign the places where politics unfold, borders are broken down, limits of space and time overflow and old type of discourse is annulled creating a new subjectivity?...”



Thank you for your attention

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