

# The electoral legislation of the Basque autonomous community regarding electronic vote\*

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**Abstract:** The Basque Autonomous Community constitutes the only Spanish experience of legal electronic vote regulation. The Basque Government decided, by means of a government bill that was voted in its legislative Chamber on June of 1998, to reform its electoral law and insert, as possible option, an electronic vote by means of a magnetic strip card. This Law, which has not been applied yet, presents a series of important changes and of potential modifications in the Basque electoral system and, perhaps, in the Spanish system. At the same time, in the year 2004, a new government Bill of the Basque autonomous Community is presented in which an electronic vote legal regulation is once again presented. The news regarding the previous project are important. Its processing is interrupted by the dissolution of the Chamber and the new Government formation that, still today, has not retaken up this initiative. The electronic vote in “Euskadi” is a regulated normative topic but that has not yet been utilized in an electoral procedure with binding character.

## 1 Introduction

Norberto Bobbio indicated that the consolidation and the reinforcement of the democracy are indispensable budget for the transformation of society. For this, the consolidation of all institutions that allow maximum participation to the organs that are attributed with the collective power to make decisions in different levels and the maximum control on the correct execution of the decisions taken is indispensable.

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Deciding is somewhat indispensable for history process, for the development of public powers, for the concreteness of ideas, whatever their type and nature are. The Basque's Parliament decided, in 1998, to incorporate in its electoral law of 1990, a Chapter destined to the electronic vote. This legal regulation was produced like a first and only one, in the Spanish electoral system. The general context in which it was devised, so much in a cultural, economic, social, and political perspective, as a legal perspective (Spanish Constitution, constitutional law of General electoral State, etc.) means the object of analysis of this work. The burst of what are called New Technologies has supposed, among others many things, the availability of technological instruments at the service of citizens and of the parliament for exercise of their respective rights to vote.

## **2 Legal regulation of electronic vote in the Basque autonomous region.**

### **2.1 Basque electoral law 15/1998, of 19<sup>th</sup> of June**

On 9<sup>th</sup> July, 1998 the Law 15/1998 of 19<sup>th</sup> of June is published in the Basque Country Official Bulletin which reforms the Law 5/1990 of 15<sup>th</sup> of June regarding the Basque Parliament elections.

Its EXPOSITION OF MOTIVES expresses, in its second section, that any democratic society should guarantee the participation of its citizens in elections, by which it proceeds to the election of its representatives by means of secret, direct, equal, free, and universal vote. The full exercise of the right to vote requires that, next to traditional manners, new procedures be articulated that allow voters to emit the vote on the electoral polling station, of simple and personal form. The objective that the electronic vote pursues is to allow the articulation of a new form of participation of the citizens in the *res publica*.

#### **1. Elements of the electronic vote.**

The article with which Chapter X begins enumerates the elements that are included in the electronic vote system: magnetic card voting with magnetic strip; electronic ballot box; vote screen; voting booth and software or electoral data processing programs.

#### **2. Organs and distribution of competencies regarding electronic vote material.**

In first place, reference is made to the central electoral Committee of Basque Autonomous Community has following competences:

1. Approving the operation validity of the electoral software in magnetic support. This supposes that the data processing program should be validly prepared for the opening and closing of the voting, for the reading of the voting cards with its respective magnetic strips, for the control of the number of cards placed in the ballot box, for the final scrutiny of respective polling station and for the final broadcast of electoral results. Also the software validated in each polling station should be approved, this is, that it collects the necessary information relating to the concrete identification of the polling station, just as is indicated in the following number.
2. Devising the personalization of polling station's software.
3. Guaranteeing the availability and delivery of the software to the electoral Committee of Zone and to the polling station.
4. Receiving, once the elections have been finalized, the magnetic backups of the software and to assure their subsequent destruction.
5. Other functions that the law, or the relative dispositions to the software, entrust it. In second place, the law awards the electoral boards of Historic Territory, the competence to approve the validity of the software "specifications" that will be determined by the Basque Government by means of the Royal Decree. The Royal Decree that, at the same time, will set the characteristics of the booths, models, printing conditions, and making and delivery of the electoral documentation (art. 132 bis IV, 1, second paragraph).

In third place, and for the making and distribution of the cards with magnetic strip, of the electoral documentation and of any other necessary element to the electoral boards of Zone, the Government will be exclusively competent through their home office (art. 132 bis IV, 1). It will also be their competence to assure the availability and delivery of the electronic ballot box, the screen to vote and the voting booth, in each one of the respective electoral polling station.

Finally, the law clarifies that for the development of the functions described the aid of the data processing Service of the Basque Parliament will be included, as a support and advice organ, that it will even be able to participate with voice, but without vote, in the meetings of the electoral boards of Historic Territory or of the electoral board of the CAPV (Basque Autonomous County)

With the new electronic vote, the aid that the data processing Service should lend to the electoral organs in the fulfilment and development of its tasks is indispensable.

Therefore, important technical know-how is required. It is enough to remember that the first task attributed to the electoral board of the CAPV is “to approve the validity of the operation of the software (...)”; or the possibility that the art. 132 twice III, 4, establishes “(...) the general representative of each proclaimed candidacy, by itself or by means of an expert representative in data processing named by it, will be able to obtain, with prior character to its final approval, information on the correct operation of the software from the electoral board of the autonomous region (...)”; articles which doubt who now really passes control over the development of the electoral process. The question that arises regarding this would not be what organ is legitimized by the law to do it, but who is truly qualified for it’.

### **3. Regarding the right to vote.**

The article 132 ter refers to the “material means and operations prior to voting”.

The law sets the need that in each polling station there are two ballot boxes: an electronic one and a traditional one to be able to place, in this one, the absentee ballot, that will be carried out by means of envelopes and ballots. Besides a voting booth will be necessary, or in its absence, a space reserved that allows the voter to be isolated. Both, cabin or space should be equipped with a screen for voting.

#### **3.1 Secrecy in the exercise of the right to vote.**

The obligatory character offered by law to the material means that the cabin or space reserved for the voter represents is important. The article 132 quater, I, 2 thus confirms it: “(...) the voter should enter the voting booth and introduce the card with voting magnetic strip in the screen (...)”. From this it can be deduced that the electronic vote is “obligatorily secret”, in its exercise.

On the contrary, the LOREG (Electoral, General and Organic Bil) article 86.2 determines “(...) the voters will approach the polling station one by one, after to have passed, if thus they desired it, by the cabin that will be placed in the same room, in an intermediate place between the entrance and the polling station (...)” and the article 104.2 of the Law of 1990 of Basque Parliament elections expresses in the following words: “The voter will be able to pass, if desired, by the cabin, collect the ballot of the chosen candidacy, introduce it in an envelope and proceed to voting”. Both norms also consider the existence of voting booths obligatory, but these will be able to be or not be utilized by the voters in the exercise of their vote. What evidently strikes an important qualitative difference.

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<sup>1</sup> “Now, it is certain that the establishment of the electronic vote, be it for periodic elections, be it for referendum consultations, strikes an essential problem of control of the process, that passes from the hands of the electoral boards (legal guarantee), of the citizens and of the representatives of the parties (political guarantee), to be protected by the data processing technicians, with serious the risk that the control be transferred, from the democratic environment to the technocratic stronghold. ...”, Pau i Vall, *Democràcia e Internet*, Yearbook of Parliamentary and Constitutional Right, Regional Assembly of Murcia, Nº 10, 1998

The different regulation of the secret character of the vote in the three legal norms stirs up the debate around its obligatory character or, on the contrary, its optional disposition to the will of the voter.

The Basque law introduces, with the electronic vote, a vote that is obligatorily secret<sup>2</sup> by demand of the procedure (the screen could have been placed out of the cabin or reserved space), what does not seem to be the same thing than out of courtesy of the constitutional mandate (art. 68.1 CE) the one that describes a secret vote without entering subsequent procedures relating to its execution or its put in practice.

The Constituent consecrated a secret vote, a characteristic not available for the legislator, and no too for the voter. Any legal regulation, or instrument contained in it regarding this characteristic of secrecy, (that embodies the nature of the vote in the Spanish State, along with others cited in the art. 68.1 CE), allow or enable its “availability”, will be a clear constitutional breach. Can the universal character of the vote be arranged, deciding to restrict this to certain social collectives? Could it be decided perhaps as more convenient, that only an individual of each household voted for all of its members? Could we be able to accept, for example and for determined people, (businessmen, intellectuals, institutional heads ...) the concession of more than one vote? Evidently, for these cases the respective answers should be equally forceful. The universal character of the Vote is not available, its personal character is not available (existing only exceptional suppositions and valued by a legislator, in which the motive of the exception has had to be fully justified), and the constitutional recognition of the equality of the Vote is not available. The German doctrine is pronounced very clearly. Thus Karl-Heinz Seifers indicates in a comment to the federal electoral Law that “condition sine qua non of a free vote, is a secret vote”. In turn, Reinhold Zippelius declares that the basic substrate of the secret vote is to guarantee the free vote. Each citizen has to be able to vote, with the safety that nobody is going to see or interfere in what has been voted. He should always voted without pressures nor alien influences, and Martin Morlok explains that the protection of the secret vote neutralizes social potential power and permits decisions or votes independent from forces or social achievements<sup>3</sup>.

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<sup>2</sup> We also can verify this pretension of the legislator to guarantee a secret exercise in the exercise of the electronic vote in the final Annex of definitions. In it is the definition of what is a voting booth: “A reserved precinct in which the voting screen is placed, in order to preserve the privacy of the vote by the voter”.

<sup>3</sup> H. Buchstein, *Präsenzwahl, Briefwahl, Onlinewahl und der Grundsatz der geheimen Stimmabgabe*, page 898-899, *Zeitschrift für Parlamentsfragen*, Zparl. 4, Dezember 2000. The principle of secret vote, just as recognized in the constitutional law art. 38 GG, is not somewhat optional, but a legal obligation for all those who desire to take part in an electoral process. Any harm to this principle will be punishable with liberty deprivation of to two years, or with the equivalent pecuniary sanction (*Paragraph 107c*, Which title is: “*Verletzung des Wahlheimnisses*”, *Strafgesetzbuch 23<sup>rd</sup> January, 1974*, modified *BGBI 58/200*); Zittel, T., *Elektronische Demokratie: ein Demokratietypus der Zukunft*, *Seitschrift für Parlamentsfragen*, Zparl. 4, Dezember 2000.

### 3.2 Anomalies in the exercise of voting.

Continuing with the development of the procedure, it is also possible that anomalies in its course be produced (art. 132 quater, III, 1 and 2). In that case, the law indicates that “(...) it will require the presence of the responsible person for the maintenance of the electronic vote material appointed to such effect so that, once the situation is analysed, and the opinion of the referred technician is heard, the President decides if the voting can continue, while the problem is rectified or, on the contrary, to interrupt the voting. ..”

Once more, the importance of the necessary technical presence that conditions, if not replaces, the decision of the polling station’s President is thus manifested<sup>4</sup>.

It can also occur that the voting be interrupted and, in that case, the electronic ballot box must be “resumed”, later, operations of emptying and extracting the cards with magnetic strip that have been placed in until to that moment should be carried out and that should be registered again in the hands, logically, of the members of the Polling station.

If the failure is not general, but affects only a voter that cannot register their vote in the magnetic card by means of an adequate use of the screen to vote, the law resolves this supposition with two requirements. In first place, the destruction of the voting magnetic card and, in second place, the delivery of another new validated card, to repeat the operation.

### 4. Counting time and following operations.

When the electronic process enters the counting phase, article 132 quinquies, I and II, in first place, it defines what should be understood as a null vote and a blank vote. And, once the voting time has concluded, the President of the polling station reads the results aloud.

The section III, 5 of the article above mentioned categorically prohibits the possibility to communicate the results obtained, on the part of the electoral Polling stations, to the mainframe computer, before having finalized the counting.

The law also obliges, when the counting has finished, the recovery (for their subsequent erasing and possible reuse) of all the cards with magnetic strips, the ones that are found inside the electronic ballot box, as well as the ones that, by diverse motives, are found out of it (132 quinquies, V, 2).

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<sup>4</sup> GRAY BUESO, J.B., “Democracy and Technocracy: regarding the electronic vote”, Parliamentary Magazine of the Assembly of Madrid, no. 3<sup>rd</sup> June 2000, pp. 64 and ss: “Now well, without denying the functional potentialities that new technologies suppose for the speculative and productive processes and for the dimension of the human knowledge, the movement of these sophisticated technologies to the political process of decision making, should be critically received and established with due cautions, with the shame of converting what could be valid instrumental elements, in any case helpful, in the media and conditioning that end up subverting capital principles of the constitutional system of government and the order of values *insito* to every political democracy”.

## 5. Infractions and Sanctions.

Basic aims of the law are: security, transparency, credibility of this new procedure, simplicity, rapidity, modernity and privacy. In this way, the article 132 sexies enumerates diverse infractions regarding the vote, behaviours that, in some way, undermine those objectives:

- a) Voluntary physical or mechanical manipulation of technical elements or of the electronic instruments (vgr. of the screen, of the magnetic cards...).
- b) Alteration of the software which is used to count at the polling station.
- c) Production, distribution, commercialization and unlawful use of magnetic cards.
- d) Destruction of cards during the voting or the counting, with the exception of the cases that thus demand it.
- e) Replacement of the magnetic card delivered by the President of the polling station, with a different one, that alters the correct operation.
- f) To leave the electoral localities with a magnetic card without authorization.
- g) The execution of the counting of the polling station in the case of having suspended the voting.

Chapter X concludes with article 132 septies, titled “Last dispositions”. Continued an Annex is enclosed where a series of definitions regarding electronic vote are enumerated.

*What deficiencies do the current Right of vote of the Spanish citizen present?*

- a) The “voting booth” model as a means to guarantee the secrecy of the vote.
- b) The complexity and high price of a ballot per each candidacy

Currently, the printing price of the “infinite” candidacies is very high. The possibility of a unique ballot would suppose an important reduction of the expense<sup>5</sup>. It is true that the ballot would be able to contain only the name and symbol of the different political parties whose candidacies have been proclaimed and, at most, the first candidate of the list, what without doubt would imply certain changes for the voter that could not know now, by means of the ballot, is who forms part and in what order is each candidacy presented.

- c) The problems derived from the elaboration and updating of the Electoral Census, especially of the CERA, Electoral Census of Absent Residents; furthermore, the numerous problems that the vote through correspondence implies.
- d) The present availability regarding the secret character of the Right of vote bears an important interference of this right.

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<sup>5</sup> For example, the ballots manufactured for the Elections of June (municipal and European) of 1999 cost 5,776,309 Euros, to what the figure of 2,029,583 Euros was added in concept of printing and envelopes. All of this keeping in mind that the mailing of the parties is credited to them as “electoral expenses”, <http://www.mir.es/derecho/procelec/lore/6.htm>.

## 2.2 The new government Bill of 2004

*a.1) Exposition of motives and general justification of the new government Bill*  
Several ideas are explaining in the Exposition of motives of this new normative Text. In all a certain change on behalf of the legislator in his general reflections on the so called New Technologies is appreciated, probably derived from the multiple experiences that this Community has carried out in this matter<sup>6</sup>.

1. The apparition of certain prudence or distrust regarding the utilization and application of New Technologies.
2. The perception of two languages and different frameworks, with norms of different operation: the technological framework and the framework of values and democratic principles.
3. The need of a “gradual application” of the New Technologies to the operation and development of democracy. The procedure of electronic vote tries a “sweet” application of the new technologies to the electoral processes. The Basque citizens are going to find a form of exercising the right to vote that, maintaining its characteristic elements, allows, nevertheless, the operation and application of the technologies, and at the same time is perceived without effort by the voter.
4. The conviction that New Technologies are an instrument, not a panacea, and as such should be at the service of “democratic principles”.
5. The convenience of maintaining the traditional or classic system of envelops and ballots with the system of the electronic vote.

### *a.2) Description of the new electronic vote system*

The new Chapter X of the government Bill of 2004 begins referring to the elements of the new system of electronic vote that are: a) the voting ballot, b) the electronic ballot box, c) the opening control cards and closing of the ballot box and d) the voting ballots verifying machine (art. 132 bis I).

The ballots, that will have certain resemblance to the classical ballots, will be able to be folded and to be closed. In the internal face of the ballot, the denomination, acronyms and symbols of the corresponding candidacy will be printed.

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<sup>6</sup>The professor E. Arnaldo Alcubilla indicates that absentee ballots are a voting modality that exempts the presenting of the voter to the polling station the day of the elections, whose recognition, which still presents doubts, very poignantly from a point of view of the personality and secrecy of the vote principles, is based on the enlargement and facilitation of the participation of the electorate and, consequently, of the right of the voters with physical or professional impediments that cannot attend on the day of the elections to vote personally, Arnaldo Alcubilla, E., “Considerations on the Reform of the electoral Law regarding absentee ballot”, in *Reflexiones sobre el Régimen Electoral General*, IV Conference of Parliamentary Right, Congress of the Representatives, Madrid 1993, pp. 711 and ss. The Royal Mint, National Factory of Currency and Stamp, carried out in the year 2002 an electronic vote study for the Absent Residents, VERA system (Electronic Vote for Absent Residents) that has never been applied.

<sup>6</sup> Demotek, (2004) The electronic vote in the Basque Region, electoral processes and documentation direction / Home Office Department [www.euskadi.net/botoelek/euskadi/antecedentes-c.htm](http://www.euskadi.net/botoelek/euskadi/antecedentes-c.htm) [12th January 2004].



Likewise, the important novelty that such ballots introduce will be the so called “window of recognition” that appears in the external face of the ballot and that permits: “(...) the identification of the candidacy and other electoral options of electronic form and that can be verified by the voter” (art. 132 bis II. 1).

The function that the window of recognition performs is key in the development of the vote. The counting is carried out, in strict sense, through the window of recognition. In it, the individual electoral information of each voter is contained. “The information contained in the window of recognition will be able to be read with total reliability and security by the reader of the electronic ballot box machine. The electronic vote system fully guarantees the liberty of emission of the vote and the secrecy and counting of the vote” (art. 132 bis. IV).

The electoral Committee, that of the autonomous region as well as those of the Historic Territory, continue being responsible for guaranteeing the transparency and objectivity of the voting procedures and counting in the electoral polling station. For this they can include the support and contribution of the data processing Service of the Basque Parliament.

It also takes into consideration, to a certain extent, the voters that vote by mail and thus the law indicates (article 132 bis VII, 7): “The Government will adopt the opportune measures to guarantee that all the voters, included the absentee ballots, have an egalitarian deal that allows them to verify the chosen option in the window of recognition of the ballot”.

In turn, regarding the voting exercise, we can identify the following steps to observe for the voter. 1.- Selection by the voter, inside the cabin, of the chosen voting ballot. With relation to this way of proceeding we should underline that, same as text of 1998, the secrecy of the vote is guaranteed, since thus is arranged to stop being an option. 2.- Verification of the ballot in the “verifying machine” that will read the window of recognition. 3.- The final close and fold of the ballot and its transfer to the electoral polling station. 4.- Delivery of the closed ballot to President of the polling station. 5.- Reading by the electronic ballot box of the ballot.

The procedure can continue from two alternative options: a) that the electronic ballot box, after the reading of the ballot, accepts it or b) that the electronic ballot box rejects the ballot, for different motives, after having performed its reading. In the first case, the shutter of the ballot box will be opened automatically and the President will place the ballot in it, increasing automatically the number of votes that figure on the screen. In the second supposition, the President will return the ballot to the voter inviting him to repeat the observed procedure.

If the vote has been registered correctly the Law establishes that the directors and, in its case the Administrators that desire it, will make a numbered list of the name and the surnames of the voters by order in which they have emitted their vote expressing the number with which they figure on the list of the electoral census. Every voter will have the right to examine if their name and surnames have been written correctly on the numbered list of voters that forms the polling station” (art. 132 quáter I. 4. and 5).

The wording that this new text offers is curious for what should be understood as “supposed accreditation” of the voter; this is done after the reading by the ballot box of the ballot, if this procedure can be identified as such<sup>7</sup>, and all this in spite of the great flexibility with which has always been acted in relation to accreditation of the voter. The Jurisprudence thus confirms it in sentences as that of the Supreme Court of Justice of Navarra of Dec. 4<sup>th</sup>, 1989, relating to the acceptance of a university card as valid id document or the of the Justice Supreme Court of Catalonia of December 4, 1989 decision that accepted, in similar terms, the copy of the National Document of Identity.

Many are questions that stir up regarding this since in no case is it the prior accreditation required before the polling station of the voter with the opportune documents to the effect. The voter votes before its data is verified (articles 85 and 86.3 of the LOREG), what occurs if after having voter voted and having his/her vote been registered by the electronic ballot box as valid, he/she is not found in the list of the electoral census that the members of the polling station have? We can find ourselves with a voter that may decide to cast their right to vote more than once.

Thus, unless the diligence that is presumed of the members of the polling station, has been truly such, and even then, (article 132 quarter II. 4: “If during the procedure of voting, the members of the polling station observe ill faith on the part of the voter at the moment of voting again with new ballots, the President will take the measures that it reckon convenient to impede actions that hinder the normal development of the voting”) we can assure a correct development of the process.

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<sup>7</sup> The Basque Parliament elections Law 5/1990, of 15<sup>th</sup> of June, article 105, reformed by Law 15/1998, of 19<sup>th</sup> June, by Law 6/200, of 4<sup>th</sup> October and by Law 1/2003, of 28 of March, establishes: “1. The right to vote will be accredited through the inscription in the certified copies of the Census lists or by the specific census certification and, in both cases, by the demonstration of the identity of the voter, that National Document of Identity will be carried out by means of Passport or driving Permit in which the photography of the holder appears. 2. The voters will only be able to vote once. The voting will be carried out in the Section and within the polling station that corresponds, with exception of the Administrators that only they will be able to vote on the polling station in which they exercise their functions. **3. The certified copies of the electoral census lists to which section 1 of this article refers to, will exclusively contain the voters of legal age on the date of voting.** 4. Furthermore, those who accredit their right to be recorded in the Census of the Section by means of the exhibition of the corresponding judicial sentence will be able to vote.” Likewise, article 86.3 of the LOREG indicates: “Each voter will declare his/her name and surnames to the President. The Directors and Administrators will verify, by examining the electoral census lists or of the contributed certifications, the right to vote of the voter, as well as his/her identity which will be justified according to what is established in the previous article. Immediately, the voter will deliver the closed voting envelope or envelopes from his/her own hand to the President. Subsequently, the president, without hiding them at any moment from the public, will say the name of the voter aloud, and adding “Votes” will place the corresponding envelopes in the ballot box or ballot boxes.

Also curious is the Agreement of the Central electoral board of March 7<sup>th</sup>, 2000, regarding “the flexibility regarding the identification of the voters of Las Palmas and Tenerife, given that on Saturday 11 of March is the last festive day of the carnival in the Canaries and it is possible that the voters attend the ballot boxes with attires that be not habitual”: “Without damage of the application of the legal precepts and interpretive criteria of this Council as for the identification of the voters and of the necessary seriousness of the electoral act, the polling stations should act with the flexibility advised by the circumstance to be March 12<sup>th</sup>, piñata Sunday, which refers to the attires with which the voters could attend with”.

The problem would be produced, in any case, as a consequence that it be prior to the introduction of the ballot, properly manipulated<sup>8</sup>, in the electronic ballot box without having to verify the census data on behalf of the members of the polling station, at least thus is how it is read as articulated. Subsequently, the President returns the “faulty” ballot to the voter and he invites the voter to elect a new one and to repeat the process of voting.

Finally, the 2004 text, object of our study, strike in its surprising article 132 quinquies I: “1. There is not a ballot with the option of a null vote. 2. The electoral boards of Historic Territory will resolve the validity of the ballots reserved by the polling station in the cases predicted in the articles 132 quáter VII and 132 quinquies VI. 3 of the present Law, being able to declare the nullity of the vote in the following supposition: a) When the vote is emitted in different a ballot from the official model. b) When the ballots contain, in its exterior, insults, expressions alien to the vote, signs of recognition or any another type of substantial alteration. c) When the absentee ballot contains more than one ballot per different candidacy. If there it was an envelope of vote by correspondence with more than one ballot of the same candidacy will be computed as a single vote”.

Lastly, the article 132 quinquies II regarding the blank vote indicates: “1. Blank votes will be those that: a) Are emitted in electronic ballot with the option of blank vote. b) are emitted in electronic ballot of a candidacy legally retreated of the electoral district. 2.- In spite of what is indicated in section 1.b), in the electronic counting of the polling station, the votes casting in favour of a candidacy legally retreated will be computed to such retreated candidacy and of the same form will figure in the Minutes of Session of the polling station. Subsequently, in the general counting, the electoral board of Historic Territory will consider such votes as blank votes.

#### *a.3) The counting*

Once the voting is concluded, the text of 2004, strikes two counting possibilities. Or the electronic counting, that is carries out provided that there were no problems and is done through the opportune manipulations of the electronic ballot box (art. 132 quinquies IV, V), or what is called electronic-manual counting.

1.- In what circumstances can this type of electronic-manual scrutiny be performed?

This type of counting is only feasible when the polling station decides, by the majority, to accept the protests or claims presented against the result of the electronic counting that has been carried out.

Thus, the President will take note of the turn out and re-count the contained ballots in the ballot box the electronic-manual way. We would be before a closer recount mechanism species to a classical recount, what causes greater doses of civic confidence. The greater simplicity and comprehension on behalf of the voter of any of the operations and of their development, the greater confidence and sensation of security they have.

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<sup>8</sup> Article 132 quáter II. 2 and 3: “If for any reason the voter’s ballot is rejected by the electronic machine of the ballot box, the President of the Polling station at that moment will return the faulty ballot to the voter and he will invite him/her to elect a new voting ballot. The President of the Polling station should verify that the closed voting ballot that he receives from the voter does not contain, in its exterior, expressions alien to the vote or signs of recognition, or any other type of substantial alteration. In this case, the President will not admit this ballot and he will invite the voter to vote again”.

2.- What does this type of counting consist of?

The article 132 quinquies VI, describes it in detail. The recount only will be performed by the verifying machine located in the voting booth and that should be transferred at the polling station. In no case will it be permitted to open the ballots of electronic voting to avoid their possible deterioration and the consequent annulment of votes that have been emitted as valid. The process begins with the opening of the ballot box by the President of the polling station who will carry this out in the presence of the remainder of members. He will extract all the ballots of the electronic ballot box and he will pass them out one by one by the tester apparatus for the sake of a new reading on the screen.

### **3 Some desirable recommendations<sup>9</sup>.**

When we speak of new Technologies applied to the right of vote we mix two very different frameworks, with very different languages and characteristics. Now, the electronic vote, a formula that results from exercising the right of vote by means of instruments from such New Technologies or electronic Technologies should arise under a possible sole plan that is the one that our Legal Code designs and permits.

Our right of public participation through the direct, equal, free, universal and secret vote should remain fully guaranteed and only thus will we be able to try to implement an electronic vote destined, at every moment, to improve or to perfect the regulation of our present electoral vote.

1. Any regulation on electronic vote should part from its nature as “instrument” to the service of our Right to Vote.
2. To undertake a replacement of the present system of voting with envelopes and ballots, the advantages and benefits that the new proposed type of voting would contribute should be sufficiently accredited, and be possible in our legal system.
3. Any reform should part from the identification and faithful diagnosis of the present reality. The instrument should be designed from existing deficiencies and needs to try to alleviate them or rectify them.
4. Any reception of a new instrument should be done under the full knowledge<sup>10</sup> of the intended and not intended nature, characteristics and effects from it that could be derived.

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<sup>9</sup> We furthermore refer to the Recommendations that the Council of Europe has elaborated regarding electronic vote, *Council of Europe (2004) Recommendation of the Committee of Ministers to member states on legal, operational and technical standards for e-voting, Multidisciplinary Ad Hoc Group of Specialists on Legal, Operational and Technical standards for e-enabled voting (IP1-S-EE), Integrated Project 1 –Making Democratic Institutions Work, IP1 (2004).*

<sup>10</sup> The full knowledge, inescapably, carries out experimental tests that are capable of offering data for the reflection and analysis. Thus, for example, we know that recently the present Government has approved a new pilot experience, this time of a national scope, of electronic vote, without legal efficacy, for 52 different municipalities, one for each one of the Spanish provinces during the referendum for the voting of the European Constitution on 20<sup>th</sup> of February. The Home Office will select the localities in function of its representatives and the sample of citizens that are able to emit their vote electronically will revolve around the two million voters, this is, 6% of the census approximately. Observatory-eDemocracia, 10/2005, ([www.edemocracia.es](http://www.edemocracia.es))

5. Finally, we should mention that the potential that the New Technologies contain does not turn out to be at all contemptible. Any democracy should be benefited of these new tools, but we do not want to build a giant with clay feet. It is necessary to take the steps in an orderly fashion, with a parallel analysis of price-benefit that at times will advise us not to adopt a determined position or a determined mechanism.

We finish with a reference that professor Aguiar de Luque offers us, which is the future of democracy in an 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 a subjectivity? If this it is the effect of change, it is not only a private model that is in effect, it is the society in its entirety that day by day is being transformed by these named new technologies<sup>11</sup>.

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<sup>11</sup> Aguiar de Luque, L. "El impacto de las Nuevas Tecnologías sobre el principio representativo", in II Madrid's Assembly Parliamentary Conference, Parliament and New Technologies, Madrid, October 2001, pp. 27 and ss.