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by

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on

“Remote voting in the Spanish Senate”

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Introduction.

Parliaments are the basic institutions in democratic States. In parliament, MPs first debate and afterwards vote. Debate and vote take place in person. So it is the symbol of the essence of parliament for the citizens: this is how parliament works.

Voting is a central element of democratic parliamentary activity. While debate is the parliamentary instrument that allows MPs to express their various political opinions, voting is the mechanism used to express the will of the parliament, through the adoption of agreements.

Article 79 of the Spanish Constitution establishes the general rules for voting in the Chambers. Section 3 – the relevant section for the purposes of this communication – provides that “*the vote of Senators and Deputies is personal and may not be delegated.*” This precept is repeated verbatim in Section 92.5 of the Senate Standing Orders.

The requirement for the vote to be personal implies that it is the MP that decides how he/she votes. And he/she can do so freely. In parliaments where political groups have a rigid structure, parliamentary discipline is the instrument used to help maintain a homogenous political approach within them. Various measures are used to ensure that voting instructions are followed, such as indicating the intended vote or internal political group fines for MPs who vote differently. However, each MP ultimately decides what he/she votes for.

In addition, personal voting means that it cannot be cast by another person.

That is why votes cannot be delegated, to prevent the MP from transferring his/her ability to cast the vote to another MP, even with a mandate specifying how he/she wants to vote. It follows the logic that voting takes place after deliberation, which allows for judgment to be formed, one that is formed personally by the MP. If the vote could be delegated and the voting right were to be transferred to the delegate, it would no longer be personal, and if they were given a mandate specifying how to vote, it would have to be done before the deliberation, breaking the logic of parliamentarism.

Obviously, this description corresponds more to an ideal scenario than the practical reality of our assemblies. An ideal scenario that is found in the roots of the idea that each MP represents the people and that the decisions taken in parliament are made after deliberation, in which the rational of the discussions could convince the other MPs of one's own views. Maybe a parliament like this has never existed.

In most cases, voting intentions are decided before the start of debates. Changes of opinion following the debates are rare, and if they do occur, they most often

affect the vote of all MPs of the political group. It is very rare for MPs to break party line with their vote.

But we should not lose sight of these theoretical pillars which are inherent to the essence of parliamentarism and are relevant to what follows.

Right and duty of voting.

The Senate Standing Orders make voting a right and duty of senators. In addition, the Spanish Constitutional Court declared that the fundamental right of holding parliamentary office (as established by Article 23.2 of the Spanish Constitution) includes, among other rights, the right to vote.

However, the exercise of this right to vote (and fulfilment of the duty to do so) may be hindered or prevented for different reasons.

Clearly, there may be factual circumstances that prevent an MP from exercising the right to vote, due to the impossibility of physically attending a session (attendance at the session is also a right and a duty of senators under Article 20.1 of the Senate Standing Orders).

Such circumstances include:

- Certain illnesses, accidents, pregnancy and childbirth.
- Events that make it impossible to reach parliament, sometimes due to natural phenomena (such as volcano ash preventing planes from flying, earthquakes that affect the transport infrastructure or the parliament building, a pandemic, etc.) and other situations due to disturbances of public order (such as demonstrations that block access to parliament buildings, transport strikes that bring transport to a halt, etc.).

In other cases, there may be a critical fault in the electronic voting system, when MPs are physically present in the chamber. In such cases, traditional systems such as a show of hands or alike could be used, however, these are not very practical when there are large numbers of votings (particularly complex when there is significant fragmentation in political representation, making it difficult to visually recount the votes).

A third type of scenario that may prevent the exercise of the right to vote in person and justify the authorisation of remote voting are those that take into account other purposes that are considered relevant resulting in the MP not being physically present at parliament. This could be due to:

- Facilitating the dual role of MPs as members of international or regional parliamentary assemblies or their roles as members of local corporations. In this

same line, if MPs are also members of government, remote voting may be considered.

- Maternity or paternity leave, to ensure better balance between political and family life.

Certainly, there is an interest, both for parliament and for the political groups, to allow all MPs to cast their votes, so the agreement adopted fully reflects the people's representation. To this aim, different mechanisms are set up to avoid distorted results by the absence of MPs.

Remote voting in the Spanish Senate.

In the Spanish Senate system, the rules governing remote voting include - as we shall see - some of these modalities in which different circumstances make it difficult or impossible to vote in person.

As we have seen, it is based on the constitutional prohibition of delegation and also the difficulty of using other techniques, typically used in some parliaments - such as temporary substitution or pairing -, but alien to the Spanish parliamentary tradition and difficult to apply, especially the latter, where political representation is highly fragmented, as is currently the case in Spain. The aim is therefore to address such circumstances through the regulation and use of remote voting.

It should be noted that remote voting is only used in plenary sessions in the Senate. It is not specified in the Committee as senators may substitute each other.

It assumes that the MP voting remotely is in a position to follow the session and the debates via streaming and mobile devices.

The first stage of remote voting: 2013.

By way of amendment to the Senate Standing Orders, remote voting was introduced for the first time in November 2013 (two years after the Spanish Congress of Deputies), with the following requirements:

- The senator must make the request which is then authorised by the Senate Bureau.

- The cases that may be used in the request (with supporting documentation) include pregnancy, maternity or paternity leave, or serious illness that make it impossible for the MP to attend the Senate.
- It can only be used for voting on matters that are not susceptible to fragmentation, which excludes - primarily but not only - voting on laws and their amendments.
- The vote must be cast before the issue is debated, to ensure it is received on time (due to the state of emerging technology in this area) and is added by the Speaker to the votes cast in person.

Without prejudice to the subsequent examination of other aspects, it should be noted that this possibility was very limited in its use, due to the few matters to which it was applicable and, above all, because it could not be used for voting on the most important items on the agenda. Nevertheless, it was a useful test bench for what was to come.

Second stage of remote voting: the pandemic (2020).

All kinds of solutions were required to ensure that the Senate, like all parliaments, could continue to function during the COVID-19 pandemic.

Among them was the political agreement to limit the physical presence of senators in the chamber to avoid the spread of the virus as much as possible. This was a political agreement and not legally binding so as to respect each senator's right of attendance. This limitation meant that it was not possible to use the in person electronic voting system.

The Senate agreed (by means of a Supplementary Rule to the Standing Orders of 9 June 2020, issued by madam Speaker) to establish remote voting for all senators on a mandatory basis, including those present in person. It was considered necessary to prioritise equal voting conditions for all senators. The system of voting in person was deactivated.

Remote voting was used for all voting, regardless of the item on the agenda. A sufficient period of time was allowed for voting to ensure (1) that the subject of the vote was known, (2) that the vote was cast, (3) that it was received, (4) that it was counted and (5) that any technical problems arising from the voting process could be resolved.

Voting always took place once the debate on the corresponding issue had been concluded.

The Supplementary Rule became obsolete in October 2021 when all senators returned in person. However, a new Supplementary Rule was passed on 30 November 2021 with the (Omicron) sixth wave of the pandemic (which was

also applied in plenary sessions where there were failures in the in-person voting system).

The system also allowed for ballot voting to elect members of bodies appointed by the Senate (such as the Board of Directors of the Public Radio and Television Corporation).

The third (and current) stage of remote voting: 2022.

In April 2022, and on the successful technical basis tested during the pandemic phase, Article 92 of the Senate Standing Orders was amended. Section 3 established the general rules for remote electronic voting:

- The senator makes the request with the supporting documentation and the Bureau gives its authorisation, if it fits in the Standing Orders requirements.
- The vote can be cast by this method for all items on the agenda (except those resolved by assent) and for any type of voting.
- Senators may submit a request for the following circumstances: “... *pregnancy, maternity and paternity leave, or exceptional or unpredictable circumstances that may be sufficiently proved to prevent the senators from attending those sessions, such as accidents, health issues or attendance at international meetings*”.
- Remote votes are always cast once the debate on the corresponding issue has been concluded, within the time period allocated by the Speaker. At the end of this period, votes will be cast in person, at the time announced by the speaker. The voting system adds up the remote votes and those cast in person.

In addition to the above, the new Article 92(4) of the Standing Orders provides as follows: “*In extraordinary events, such as catastrophes, disasters, health crises, suspension of essential public services for the community, as well as in those extraordinary events in which the normal parliamentary activity may not be held in the Senate Palace, or in which the in-person electronic vote procedure may not be used, the Speaker, in agreement with the Board of Spokespersons, may resolve that all senators cast their vote by the remote electronic procedure.*” Provision is made in the Standing Orders for cases such as those which gave rise to the above-mentioned Supplementary Rules.

Basic technical aspects of the system.

From a technical point of view, the application for remote electronic voting was developed by the Senate’s ICT services.

Senators authorised to vote remotely can access the voting application from any computer, tablet or mobile phone. They have to enter the username and password.

When remote voting opens, senators must select “yes”, “no” or “abstain” for each of the matters put to vote. They can review the options and when they want to cast their vote, they accept the selection and enter the OTR code received on their mobile phone. For now, this is how the system guarantees the “personal” nature of the vote. However, it is clearly not 100% guaranteed. The possibility of using facial recognition on mobile phones is being studied to give further assurance.

The votes are received by the Senate’s computer systems and the application prepares them to be added to the in-person votes. Once the vote takes place in person, the results shown on the screens in the plenary hall and those published on the website reflect the votes cast in-person and those cast remotely.

For the moment, it is not technically possible to have remote voting and in-person voting at the same time. In-person voting needs to be held after remote voting, which means that if there is a change of opinion in the way a political group votes, it is not possible for those who voted remotely to change their vote during this period of time.

In any case, the electronic system for in-person voting remains blocked for senators authorised to vote remotely. So the same MP cannot cast two votes.

Other considerations regarding remote voting.

Some remarks can be carried out on the circumstances allowing for remote voting:

- a) Pregnancy, maternity or paternity leave: those at the origin of the remote voting rule in 2013, to balance parliamentary and family life. As this is a well-justified aim, the question is whether the MP in such a situation really does achieve balance, or whether they only do so to a very limited extent when voting remotely. Because when this kind of measures are taken to balance work and family life, workers generally take their leave in full, without any workload. Yet, MPs are required to exercise their right to vote during paternity or maternity leave, which involves following the session, preparatory work, etc. Being so, they are expected to do their work, limiting this balance.
- b) In the cases of illness or accident: if the illness or accident is serious, is the MP in a position to follow the session and cast a vote? If not, does it prevent them from being in the chamber? And what if someone is going through surgery?

- c) Attendance at international meetings: IPU Assembly, for example. Can someone participate in a committee or plenary meeting and cast a vote in the Senate? Maybe. But can they follow the debates in both forums?
- d) The broadness of the formulation used in the Standing Orders (cases "... *such as*...") opens the door to interpretations that may be overly flexible and potentially create problems.

In addition, the usual and logical parliamentary practice of extending the political negotiation of some of the issues to be voted on to immediately before the vote (amendments to laws, for example), involves delays in remote voting that affect the running of the agenda and sometimes require the suspension of the session to allow senators voting remotely sufficient time to have a proper understanding of the text of the matter to be voted on.

The remote voting system also entails rigidity in the in-person voting process that prevents or makes it extremely difficult, for example, to change the voting order of the amendments.