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Eindhoven, 13 juni 1999

Uw kenmerk: KR98/123

Ministerie van Binnenlandse Zaken
Kiesraad
Postbus 20011
2500 EA Den Haag

der
CB 4/10

Onderwerp: Bezwaren tegen stembalies

Geachte leden van de Kiesraad,

Uw antwoord van 5 november 1998 op mijn brief van 28 juni heb ik ontvangen. Omdat onze standpunten ver uit elkaar liggen, was het voor mij niet zinvol om eerder te reageren. Ik wil u echter nu mede delen dat ik het toetsen van stembalies door de rechter aan artikel 25 van de Politieke Mensenrechten, waarvan ik in mijn brief van 28 juni melding maakte, uitstel. Ik wil hier mee wachten totdat u uw advies dat aan u door de toenmalige staatssecretaris Kohnstamm gevraagd is, voltooid heeft. Ik zal de kwestie dan opnieuw bezien. Ik verzoek u om op het moment dat het advies afgerond is, mij een kopie toe te sturen of deze via het internet beschikbaar te stellen via de site van het ministerie van Binnenlandse Zaken of van het parlement. Graag zou ik ook willen weten wanneer dit advies uiterlijk afgerond is. In elektronische documenten die ik op het internet gevonden heb, wordt verder melding gemaakt van een tussentijdse rapportage. Deze rapportage zelf heb ik echter niet kunnen vinden. Ik verzoek u een kopie van deze rapportage mij toe te sturen.

In de tussentijd is wel komen vast te staan dat het kiesrecht een individueel en subjectief recht is en dat bij een eventuele rechtszaak ik ontvankelijk ben. Van het Hoge Commissariaat van de Mensenrechten in Genève heb ik de toelichting van het Mensenrechten Comité (aangesteld onder artikel 28 van het Convenant) op artikel 25 van de Politieke Mensenrechten ontvangen. Een kopie daarvan heb ik bij deze brief ingesloten. Het Mensenrechten Comité heeft zich (nog) niet uitgesproken of elektronisch stemmen wel of niet compatibel is met artikel 25. Doch de toelichting geeft in paragraaf 20 wel een aantal interessante aanknopingspunten. Zo staat er "... votes should be counted in the presence of the candidates or their agents ...". Met elektronisch stemmen worden de stemmen tijdens het stemproces geteld en is er door de kandidaten geen mogelijkheid om de eerlijkheid te controleren, omdat de stembalies niet te controleren zijn. Bij de verkiezingen van het Europees parlement in combinatie met de stembalies is er in zijn geheel geen controle meer mogelijk, omdat de uitslag tot zondag geheim dient te worden gehouden.

Verder wil ik u er op wijzen dat stembalies volgens artikel J33 van de Kieswet op **eenvoudig** wijze dienen bediend te kunnen worden. Met verbazing las ik in de circulaire van 16 november 1998 (CW98/56956) van het Ministerie van Binnenlandse zaken aan de gemeenteraden over de provinciale-statenverkiezingen in combinatie met gemeenteraadsverkiezingen: "... Ook de wijze waarop de stembalies moet worden bediend, zal door veel kiezers als **ingewikkeld** worden ervaren...". Ik wil me verder niet inhoudelijk uitlaten of een stembalies die voor twee verkiezingen tegelijk gebruikt wordt, wel of niet acceptabel is, maar ik constateer wel dat er naar mijn weten geen perceptie- of bruikbaarheidsonderzoek naar is geweest en dat volgens bewoordingen van het Ministerie zelf het gebruik ingewikkeld is en daarmee niet overeenkomstig is met de wet. Ook al stelt de handeling niet veel voor, moet er gerealiseerd worden dat hier de mensen geen keus hebben, maar de techniek opgedrongen worden, het hier om een machines gaat die niet dagelijks gebruikt worden, dat voor stemcomputers met aanwijspen er in het dagelijks leven er geen vergelijkbare techniek is en dat ouderen nooit zullen klagen, omdat ze zich zullen schamen als ze er moeite mee hebben. Een onderzoek naar de bruikbaarheid is daarom gewenst en dat volgt naar mijn mening impliciet uit de wet. Omdat hier een techniek wordt opgedrongen, acht ik een strikte toepassing van de wet gewenst. Zonder strikte toepassing zal de kwaliteit van het stemmen met stembalies vervallen tot een minimaal niveau, een niveau waarbij de mensen net niet beginnen te klagen. Zo'n minimaal niveau is slecht voor het imago (en dus de opkomst) van de verkiezingen.

Tenslotte wil ik er nog eens op wijzen dat het mij niet gaat om de verkiezingen van de komende vijf jaar, maar dat mijn bezorgdheid uit gaat naar de komende vijftig jaar. De wet wordt slordig toegepast en er zijn te weinig garanties. Ik verwacht dat met het huidige beleid het in de komende vijftig jaar één keer flink fout zal gaan. Veel van de oorspronkelijk bepalingen in de Kieswet zijn in het huidige politieke stabiele klimaat misschien onzinnig, maar hebben een preventieve werking. Als ik met mijn auto rijd, dan kan de overheid mij controleren op mijn snelheid en of ik niet teveel gedronken heb (dit heeft niets met vertrouwen te maken). Alleen de mogelijkheid al tot zo'n controle heeft een preventieve werking. Als ik stem en daarmee samen met de andere kiezers de legitieme basis leg voor de overheid die over mij mag besturen en die wetten mag maken die mijn leven kunnen beïnvloeden, dan vind ik dat ik het recht heb om dat te controleren (ook dit heeft niets met vertrouwen te maken). Ik zal waarschijnlijk niet van dat recht gebruik maken, maar de mogelijkheid tot controle heeft een preventieve werking. Het wegvallen van deze preventieve werking heeft op korte termijn geen effect, maar de gevolgen voor de lange termijn zijn onduidelijk. Aangezien de democratie mij lief is, wil ik dit recht niet kwijt.

Met vriendelijke groet,

hoogachtend,

KIESRAAD

Aan

Bijlagen	Uw kenmerk	Ons kenmerk	Datum
1		KR99/73296	1 juli 1999
Inlichtingen bij		Doorkiesnummer	
mr. G.J. Boon		0703027508	
Onderwerp			

bezwaren tegen stemmachines

Geachte heer

Uw brief d.d. 13 juni 1999 is door mij in goede orde ontvangen. Uw verzoek om een kopie van de tussenrapportage over de stand van zaken met betrekking tot de automatisering van het verkiezingsproces kan ik op dit moment helaas niet inwilligen.

In verband met de te betrachten zorgvuldigheid is het aangewezen om voorafgaand aan de openbaarmaking van het rapport de betrokkenen te informeren. Vanwege de vakantieperiode is hiermee wat extra tijd gemoeid. In de maand augustus zal ik u nader informeren.

Wel zend ik u alvast een afschrift van het door de Kiesraad verspreide persbericht terzake, dat overigens ook op de internet-site van het Ministerie van Binnenlandse Zaken en Koninkrijksrelaties te vinden is.

Hoogachtend,

DEP

KIESRAAD

Aan

Bijlagen	Uw kenmerk	Ons kenmerk	Datum
Inlichtingen bij		KR99/U87281	4 oktober 1999
Mw. mr. C.A.R. de Beus		Doorkiesnummer	
Onderwerp		0703027110	
bezwaren tegen stemmachines			

Geachte heer

In reactie op uw verzoek van 13 juni 1999 zend ik u hierbij een copie van de rapportage over de stand van zaken met betrekking tot de automatisering van het verkiezingsproces. Het rapport is inmiddels ook via internet verkrijgbaar op www.minbzk.nl. Onderwerp: Grondwet internationale zaken; kiesrecht; notitie ontwikkelingen op het terrein van het Kiesrecht.

In de hoop u voldoende geïnformeerd te hebben.

Met vriendelijke groet,



(Adjunct-secretaris)



International covenant
on civil and
political rights

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HUMAN RIGHTS COMMITTEE

GENERAL COMMENT ADOPTED BY THE HUMAN RIGHTS COMMITTEE
UNDER ARTICLE 40, PARAGRAPH 4, OF THE INTERNATIONAL
COVENANT ON CIVIL AND POLITICAL RIGHTS

Addendum

General Comment No. 25 (57)

ANNEX V

General Comments under article 40, paragraph 4 of the International
Covenant on Civil and Political Rights

General Comment No. 25 (57) 1/

1. Article 25 of the Covenant recognizes and protects the rights of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Whatever form of constitution or government is in force, the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects. Article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant.
2. The rights under article 25 are related to, but distinct from, the right of peoples to self determination. By virtue of the rights covered by article 1 (1), peoples have the right to freely determine their political status and to enjoy the right to choose the form of their constitution or government. Article 25 deals with the right of individuals to participate in those processes which constitute the conduct of public affairs. Those rights, as individual rights, can give rise to claims under the first Optional Protocol.
3. In contrast with other rights and freedoms recognized by the Covenant (which are ensured to all individuals within the territory and subject to the jurisdiction of the State) article 25 protects the rights of "every citizen". State reports should outline the legal provisions which define citizenship in the context of the rights protected by article 25. No distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Distinctions between those who are entitled to citizenship by birth and those who acquire it by naturalization may raise questions of compatibility with article 25. State reports should indicate whether any groups, such as permanent residents, enjoy these rights on a limited basis, for example, by having the right to vote in local elections or to hold particular public service positions.
4. Any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria. For example, it may be reasonable to require a higher age for election or appointment to particular offices than for exercising the right to vote, which should be available to every adult citizen. The exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable. For example, established mental incapacity may be a ground for denying a person the right to vote or to hold office.

1/ Adopted by the Committee at its 1510th meeting (fifty-seventh session) on 12 July 1996.

5. The conduct of public affairs, referred to in paragraph (a), is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels. The allocation of powers and the means by which individual citizens exercise the right to participate in the conduct of public affairs protected by article 25 should be established by the constitution and other laws.

6. Citizens participate directly in the conduct of public affairs when they exercise power as members of legislative bodies or by holding executive office. This right of direct participation is supported by paragraph (b). Citizens also participate directly in the conduct of public affairs when they choose or change their constitution or decide public issues through a referendum or other electoral process conducted in accordance with paragraph (b). Citizens may participate directly by taking part in popular assemblies which have the power to make decisions about local issues or about the affairs of a particular community and in bodies established to represent citizens in consultation with government. Where a mode of direct participation by citizens is established, no distinction should be made between citizens as regards their participation on the grounds mentioned in article 2, paragraph 1, and no unreasonable restrictions should be imposed.

7. Where citizens participate in the conduct of public affairs through freely chosen representatives, it is implicit in article 25 that those representatives do in fact exercise governmental power and that they are accountable through the electoral process for their exercise of that power. It is also implicit that the representatives exercise only those powers which are allocated to them in accordance with constitutional provisions. Participation through freely chosen representatives is exercised through voting processes which must be established by laws which are in accordance with paragraph (b).

8. Citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association.

9. Paragraph (b) of article 25 sets out specific provisions dealing with the right of citizens to take part in the conduct of public affairs as voters or as candidates for election. Genuine periodic elections in accordance with paragraph (b) are essential to ensure the accountability of representatives for the exercise of the legislative or executive powers vested in them. Such elections must be held at intervals which are not unduly long and which ensure that the authority of government continues to be based on the free expression of the will of electors. The rights and obligations provided for in paragraph (b) should be guaranteed by law.

10. The right to vote at elections and referenda must be established by law and may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote. It is unreasonable to restrict the right to

vote on the ground of physical disability or to impose literacy, educational or property requirements. Party membership should not be a condition of eligibility to vote, nor a ground of disqualification.

11. States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed. If residence requirements apply to registration, they must be reasonable, and should not be imposed in such a way as to exclude the homeless from the right to vote. Any abusive interference with registration or voting as well as intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly enforced. Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community.

12. Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected. Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty or impediments to freedom of movements which prevent persons entitled to vote from exercising their rights effectively. Information and materials about voting should be available in minority languages. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice. States parties should indicate in their reports the manner in which the difficulties highlighted in this paragraph are dealt with.

13. State reports should describe the rules governing the right to vote, and the application of those rules in the period covered by the report. State reports should also describe factors which impede citizens from exercising the right to vote and the positive measures which have been adopted to overcome these factors.

14. In their reports, States parties should indicate and explain the legislative provisions which would deprive citizens of their right to vote. The grounds for such deprivation should be objective and reasonable. If conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence. Persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote.

15. The effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates. Any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation. No person should suffer discrimination or disadvantage of any kind because of that person's candidacy. States parties should indicate and explain the legislative provisions which exclude any group or category of persons from elective office.

16. Condition relating to nomination dates, fees or deposits should be reasonable and not discriminatory. If there are reasonable grounds for regarding certain elective offices as incompatible with tenure of specific positions, (e.g., the judiciary, high-ranking military office, public service), measures to avoid any conflicts of interest should not unduly limit the rights protected by paragraph (b). The grounds for the removal of elected office holders should be established by laws based on objective and reasonable criteria and incorporating fair procedures.

17. The right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties. If a candidate is required to have a minimum number of supporters for nomination this requirement should be reasonable and not act as a barrier to candidacy. Without prejudice to paragraph (1) of article 5 of the Covenant, political opinion may not be used as a ground to deprive any person of the right to stand for election.

18. State reports should describe the legal provisions which establish the conditions for holding elective public office, and any limitations and qualifications which apply to particular offices. Reports should describe conditions for nomination, e.g. age limits, and any other qualifications or restrictions. State reports should indicate whether there are restrictions which preclude persons in public-service positions (including positions in the police or armed services) from being elected to particular public offices. The legal grounds and procedures for the removal of elected office holders should be described.

19. In conformity with paragraph (b), elections must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights. Persons entitled to vote must be free to vote for any candidate for election and for or against any proposal submitted to referendum or plebiscite, and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind. Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party. The results of genuine elections should be respected and implemented.

20. An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant. States should take measures to guarantee the requirement of the secrecy of the vote during elections including absentee voting, where such a system exists. This implies that voters should be protected from any form of coercion or compulsion to disclose how they intend to vote or how they voted, and from any unlawful or arbitrary interference with the voting process. Waiver of these rights is incompatible with article 25 of the Covenant. The security of ballot boxes must be guaranteed and votes should be counted in the presence of the candidates or their agents. There should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent

process so that electors have confidence in the security of the ballot and the counting of the votes. Assistance provided to the disabled, blind or illiterate should be independent. Electors should be fully informed of these guarantees.

21. Although the Covenant does not impose any particular electoral system, any system operating in a State party must be compatible with the rights protected by article 25 and must guarantee and give effect to the free expression of the will of the electors. The principle of one person, one vote must apply, and within the framework of each State's electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.

22. State reports should indicate what measures they have adopted to guarantee genuine, free and periodic elections and how their electoral system or systems guarantee and give effect to the free expression of the will of the electors. Reports should describe the electoral system and explain how the different political views in the community are represented in elected bodies. Reports should also describe the laws and procedures which ensure that the right to vote can in fact be freely exercised by all citizens and indicate how the secrecy, security and validity of the voting process are guaranteed by law. The practical implementation of these guarantees in the period covered by the report should be explained.

23. Subparagraph (c) of article 25 deals with the right and the opportunity of citizens to have access on general terms of equality to public service positions. To ensure access on general terms of equality, the criteria and processes for appointment, promotion, suspension and dismissal must be objective and reasonable. Affirmative measures may be taken in appropriate cases to ensure that there is equal access to public service for all citizens. Basing access to public service on equal opportunity and general principles of merit, and providing secure tenure, ensure that persons holding public service positions are free from political interference or pressures. It is of particular importance to ensure that persons do not suffer discrimination in the exercise of their rights under article 25, subparagraph (c), on any of the grounds set out in article 2, paragraph 1.

24. States reports should describe the conditions for access to public service positions, any restrictions which apply and the processes for appointment, promotion, suspension and dismissal on removal from office as well as the judicial or other review mechanisms which apply to these processes. Reports should also indicate how the requirement for equal access is met, and whether affirmative measures have been introduced and, if so, to what extent.

25. In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. It requires the

full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.

26. The right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25. Political parties and membership in parties play a significant role in the conduct of public affairs and the election process. States should ensure that, in their internal management, political parties respect the applicable provisions of article 25 in order to enable citizens to exercise their rights thereunder.

27. Having regard to the provisions of article 5, paragraph 1, of the Covenant, any rights recognized and protected by article 25 may not be interpreted as implying a right to act or as validating any act aimed at the destruction or limitation of the rights and freedoms protected by the Covenant to a greater extent than what is provided for in the present Covenant.
