Abstract: The aim of the study is to present the achievements of the Council of Europe in the field of electronic voting. The author presents the circumstances that led to the formulation of recommendations regarding e-voting within the Council of Europe. In the main part of the study, however, the author analyzes the part of the recommendations that relate to legal aspects, namely the rules of suffrage. In summary, he points to the growing role of the recommendations under study which are more and more often cited by various authorities.

Keywords: electoral law, e-voting, Council of Europe

Introduction

On the one hand, electronic voting is used in a growing number of states throughout the world, but on the other hand numerous countries, for instance the Netherlands (Jacobs and Pieters, 2009) are deciding to withdraw from this alternative voting method after negative experiences or in connection with rulings of the highest judicial authorities - as was the case in Germany (more on e-voting in different countries of the world: Maurer and Barrat, 2015). The problem is the voters’ confidence in this manner of voting, but also the awareness on the part of the electoral administration of the lack of necessary safeguards which would prevent the possibility of electoral fraud. Although such irregularities also occur in the case of voting in person in the polling station using a ballot paper, as well as other alternative means of voting (postal voting, proxy voting), they are usually limited, whereas in the case of e-voting it is much easier to manipulate (alter) the contents of a substantial number of votes (Jones, 2004).

In the face of such problems, it was advisable and necessary for a group of independent experts to develop general standards which formed the basis for the introduction of an electronic voting system in individual states, while at the same time respecting their traditional electoral solutions. The Council of Europe (CoE) has taken on this task through its bodies. The first document in which the Venice Commission, an advisory body to the Council of Europe, has (albeit very modestly) set out the principles according to which electronic voting may be conducted, is the Code of Good Electoral Practice (Code, 2004). In that document it was stated that “electronic voting can only be introduced if it is secure and credible; in particular, voters should be able to obtain
confirmation of their vote and to correct it, while maintaining the secrecy of the vote; the system should also be transparent” (Code, 2004, I. 3.1.3.3.). This very modest regulation was only the basis for the adoption of comprehensive recommendations on e-voting. A Multidisciplinary Ad Hoc Group of Specialists on legal, operational and technical standards for e-enabled voting was set up to draft recommendations for e-voting. The final form of the recommendations was to be approved by the Committee of Ministers composed of foreign ministers of all member states or their deputies - who in practice are permanent representatives of states accredited to the Council of Europe. The document was entitled “Recommendations Rec(2004)11 of the Committee of Ministers to Member States on legal, operational and technical standards for e-voting”. It is important to clarify straight away how the authors of the recommendations perceive the concept of e-voting.

According to the document, e-voting means an electronic election or referendum in which electronic means are used at least during the voting stage (The Initiative & Referendum Institute Europe, 2010, p. 130). This means that the recommendations referred to above apply only to those elections or referendums in which electronic means are used at least for casting ballots (e.g. electronic voting machine, hereinafter referred to as EMB, but also via the Internet, i.e. i-voting). These are two basic forms of e-voting, although other types also exist (IDEA, 2011, pp. 9-11).

However, the Council of Europe’s recommendations have been criticised in the literature of the matter (McGaley and Gibson, 2006; Jones, 2004). In particular, they were considered to be too vague and terminologically deficient. At this point, it should be emphasised that according to the recommendations, in order to provide the Council of Europe with a basis for possible further action on electronic voting within two years of the adoption of the recommendations, the Committee of Ministers recommends that Member States carry out analyses of their electronic voting activities and experiences and report on the results of these analyses. Subsequent reporting periods (2006, 2008, 2010, 2012, 2014) showed very little progress in the implementation of e-voting and, above all, the impracticality of many of the recommendations (Wenda, Krimmer, 2014, p. 4-6). It was decided to set up a new committee of experts to review the recommendations (Council of Europe, 2015). Finally, new recommendations were adopted in 2017 and the 13-year duration of the existing Recommendations should be considered too long given the rapid development of e-voting.

The Committee of Ministers renamed the recommendations despite the fact that their contents changed relatively little. The new title of the document is: “Recommendation on standards for e-voting” which, noteworthy enough, no longer distinguishes between the three groups of standards (legal, operational and technical) although these groups are still distinguished in the text. It is accompanied by two related documents adopted by the Committee of Ministers on 14 June 2017: explanatory report (Memorandum, 2017) and guidelines (Guidelines, 2017). The definition of e-voting was broadened to include the use of electronic means during voting or counting of votes. Therefore, according to the recommendations of the Council of Europe, e-voting also includes an electoral procedure in which traditional voting is applied but the results of the vote are determined by electronic means, e.g. by scanning ballot cards.

This paper deals with the legal standards contained in five chapters of the new recommendations relating to: universal (clauses 1-4), equal (clauses 5-9), free (clauses 10-18) and secret suffrage (clauses 19-26). It is worth noting that in the 2004 recommendations there were fewer (only 19) points related to the suffrage. This catalogue lacks one of the basic principles of characterising the right to vote, which is the principle of directness of election. However, the explanatory report to the recommendations clarifies that e-voting does not create any additional requirements in terms of the directness of voting. It should also be noted that although the Committee of Ministers does not use the term “principle” here, for example the principle of equal elections, taking into account the doctrine of constitutional law, it seems clear that the solutions adopted in the recommendations concern the principles of the voting rights, but not the whole electoral procedure.
Universal suffrage

The essence of the universal suffrage is to ensure that the circle of persons entitled to vote is as broad as possible. Undemocratic election limitations (e.g. based on race, gender, religion or property) are unacceptable, although the requirements such as reaching the age of 18, having full civil rights or residing in a given territory are still considered admissible (Skotnicki, 2000, p. 12). The principle of universal suffrage must also be seen in the positive dimension whereby the State must ensure that every voter has real opportunities to cast his or her vote. This principle is particularly relevant for persons with disabilities, senior citizens and people living abroad. These people, too, must be given the opportunity to vote.

According to the first recommendation, the interface of the electronic voting device should be designed in such a way that every voter (although the guidelines, in clause 1a, quite rationally refer to an average voter rather than every single voter as it is clear that elderly people may have a problem understanding even the simplest interface) could understand it and use it without difficulty. This reservation could also be applied to the requirements for ballot cards, as the electronic interface is intended to be an equivalent of a traditional ballot. The aim is therefore to make the interface as similar as possible to a traditional ballot card and to make the rules for filling in this ‘electronic’ ballot similar as well. It should therefore be assumed that the names of candidates should appear on the machine’s panel in the same order as they do on the ballot papers (it should immediately be reserved that electronic voting is only an alternative to traditional voting - see Recommendation No 3). Names should be accompanied by boxes for voting, whereby checking a box electronically would be equivalent to expressing the voter’s decision on the ballot card by placing a mark (usually a cross) or filling up the given box. The only conceivable difference could potentially consist in the restriction of the freedom of the voter to invalidate their vote, which will be discussed in more detail in the further part of this study. The explanatory report (point 31) to the recommendation also indicated that limitations arising from the voters’ age, language and lifestyle should be taken into account. It is therefore necessary to adapt the interface to the needs of the elderly or those who do not speak the official language. It should be remembered that in order to gain the right to vote, it is usually sufficient to be a national of the given country, even if the voter’s family has lived abroad for many generations without any contact with the country of origin and its language. In addition, EU citizens have the right to vote in elections to the European Parliament in their country of residence even if they are not nationals of that country. It should also be possible to set the interface to a mode facilitating use by senior citizens (e.g. larger font) or to another language (at least some of the most commonly used languages in a given part of the world, which in Europe would include, for example English, French and German).

The second recommendation is that the electronic voting system should be designed to enable people with disabilities or special needs to vote, as far as possible, independently. This does not mean, however, that the voting system must ensure that absolutely all voters are able to cast their votes (clause 32 of the explanatory report). However, the provision requires that the machines used for electronic voting be constructed in such a way that they can also be used by people who are not fully capable physically. The above does not only relate to the height of the device, which should allow people in wheelchairs to vote freely. Rather, the machine’s functionality is expected to help people with other dysfunctions to participate in an electronic vote. This could be the case, for example, for blind people who could cast a vote using the braille alphabet or voice commands. However, the Committee of Ministers allows for third-party assistance in casting votes electronically in situations where it is not possible to ensure independent voting otherwise.

According to the third recommendation relating to universal suffrage, until such time as the electronic voting system is made available to the general public, it should be no more than an optional voting method. The important thing in this case is, of course, the need to preserve the traditional way of voting by using ballot cards until such time when all voters have an unrestricted opportunity to cast their votes electronically. It is in particular i-voting, i.e. the way of voting which requires access to the Internet (item 35 of the explanatory report),
that poses a particular difficulty, although it can be solved by ensuring Internet access at the polling station. It seems, however, that the issue here is not only the technical aspects, but also developing public confidence in this novel way of voting. It is only after exceeding a certain significant share of votes by electronic means out of the total number of ballots that were cast, assuming, of course, that electronic voting is fully available, that it will be possible to consider abandoning traditional forms of voting. However, it seems it is a long way to get there. Estonia is the closest to that goal with about one third of voters already voting by electronic means, i.e. online (Estonian National Electoral Committee, 2019).

Finally, the last recommendation on the universal suffrage is that, before an electronic vote is cast, the voter should be informed that he or she is taking part in an actual (not a pilot) election or referendum. This recommendation stems from the fact that usually, before e-voting is introduced as one of the official voting methods, a non-binding pilot vote is held which serves to verify the correct functioning of the system. This is why the binding nature of the vote in which the voter participates should be made clear to them. Ideally, before a vote is cast, information in this respect should appear on the screen along with a statement that the voter has read the information, the acceptance of which will allow him/her to proceed to the voting stage. Of course, also in the case of pilot votes, it should be made clear before the vote that it is not binding (point 36 of the explanatory report).

In principle, electronic voting does not directly affect the principle of universal suffrage. That is because its introduction bears no influence on the circle of people who will have the right to vote. It may, however, be a significant guarantee of the universal suffrage, i.e. an instrument that will make it easier for voters to participate in them (Szymanek, 2013).

There is no doubt that electronic voting, especially via the Internet, encourages citizens to decide to participate in the election, and subsequently to put that decision into practice. Even if the voter is away or in a situation where he or she is not able to vote due to work, illness or a limited amount of time, i-voting still enables them to participate in the elections. However, the introduction of e-voting with the simultaneous abandonment of traditional voting with paper ballot cards could be a limiting factor for participation. This is a significant restriction, especially in the case of i-voting, since not all the voters have access to the Internet.

For this reason, the greatest emphasis should be placed on the fourth recommendation, according to which as long as electronic voting channels are not available to all voters, they can only be used as an additional means of voting and not as an exclusive means of voting. Of course, public transport services could also be provided in such a situation and, as in the case of i-voting, the public authorities should also make it possible for all voters to cast their ballots via the Internet (e.g. at the polling station). That problem, however, does not seem to transpire in the case of voting with the use of EMB machines, which potentially all voters have access to provided that it is not required to present a document which narrows down this group (Rulka, 2017, pp. 75-76).

**Equal suffrage**

The principle of equality of elections states that everyone has the same number of votes (formal aspect) and the voting power of the all voters is similar (material aspect). Recently, the argument of equal opportunities has also arisen, which states that in the course of an election campaign, individual candidates should be treated equally (e.g. with regard to the distribution of airtime), however that does not relate strictly to voting but rather to candidacy. Therefore, from the perspective of e-voting, it is the first aspect that is truly significant.

In accordance with the first recommendation in the scope of this principle, all official voting information must be presented in the same way, within and between various election channels. It is further clarified that that the
above applies to different devices that could be used for voting, such as computers, EMBs and mobile phones (point 38 of the explanatory report).

A further recommendation states that, in the event traditional voting is possible alongside electronic voting in one election, a secure and reliable method of counting votes should be established with respect to all the votes cast by means of all the available voting forms, which also applies to the determination of election results. The explanations show that this applies primarily to creating a system of counting votes that guarantees secrecy in the event that a very small number of electronic or traditional votes is cast (item 40 of the explanations).

The third recommendation states that a system of unique identification of voters must be ensured in such a way that they can be clearly distinguished from each other. The legislator is trying to avoid the situation where two voters having the same personal data, or a voter and a candidate (or, for that matter, a system administrator) having the same personal data can knowingly or unknowingly ‘impersonate’ another individual.

According to the fourth recommendation, the electronic voting system should grant access only to authenticated users who have the right to vote. It is therefore acceptable for voting to take place on the basis of a personalised voting card (such as a credit or debit card) issued following proper authentication.

The last and most obvious recommendation from the point of view of the principle of equality is that the electronic voting system, as well as the traditional system, should make it possible to cast the same number of votes for each voter and each of them should be included in the computation of the results. The main point here is to ensure that no person is allowed to double vote, which is particularly dangerous in the case of e-voting. Even where it is permissible to change the content of an electronic vote (which sometimes takes the form of an early vote) by going to the polling station and casting a traditional vote, it is only the second ballot cast that may be taken into account (point 9b of the guidelines). In this context the judgment of the Estonian Supreme Court should be quoted which ruled on the question whether the fact that voters who vote electronically have a chance to change their vote (by casting another electronic vote or a traditional vote at a polling station) in a situation where traditional voters have no possibility to change their vote violates the principle of equality (Wiącek, 2008, p. 325-330). The Court found that the possibility of changing the content of the ballot several times does not mean that a voter using electronic channels is in a better position than other voters, since each of them has at their disposal one vote which has the same impact on the outcome of the election (at least from a formal perspective).

**Free suffrage**

It is difficult to clearly define the principle of free elections (Kryszeń, 2007, p. 88). It is easier to list the characteristics of elections which, when observed, render such elections free. This is primarily a consequence of weak constitutional grounds of this principle. It is stipulated in the catalogue of principles of electoral law primarily in countries that have relatively recently liberated themselves from such governance where voters do not have full freedom to express their political preferences during elections. Consequently, this principle is also rarely the subject of rulings, especially in constitutional courts. That, in turn, makes it difficult to develop a uniform definition of this principle. From the point of view of the issue in question, the most significant aspect is the full freedom of voters to express their will in an unrestricted voting act which is free from any signs of duress from the authorities (Rymarz, 2012). It may come as a surprise because the Committee of Ministers formulated the greatest number of recommendations, i.e. as many as nine recommendations, in relation to this particular principle.

According to the first of the above, the content of the vote should not be forced by the electoral system or any other factor. With regard to the first point, it is questionable to claim that electronic voting precludes the
possibility of casting and invalid vote. However, the guidelines provide an important guarantee of the freedom of electronic voting in the event it takes place in the privacy of one's own home, where undesirable influence on the content of the vote may be exerted. It should therefore be possible to cancel this vote by going to the polling station and casting the vote in the traditional way (point 10d of the guidelines).

The second recommendation is that the system should ensure that the voter is presented with an authentic "electronic" ballot card and accurate voting information in the system's interface. The electronic voting system should, therefore, be equipped with appropriate security measures which will exclude the possibility of changing the content of the messages displayed in its interface.

The third recommendation states that the system should be designed in such a way that it does not favour rushed, hasty voting. The voter should be able to change their mind at any time, as well as decline casting the vote, and before the final vote is ultimately cast, the system should inform the voter that acceptance of the chosen options rules out any further changes (at least electronically). This is referred to under clause 12a of the guidelines.

According to the fourth recommendation, the electronic voting system should provide the voter with the opportunity to participate in elections or a referendum even if the voter does not intend to use any of the voting modalities. This recommendation therefore concerns the possibility of casting a blank vote. According to the explanatory report (paragraph 52), such a possibility should be created if it also applies to traditional voting. However, it only concerns a separate 'none of the above' voting option which does not constitute a blank vote. A blank vote is a vote that does not indicate any of the options (and also against all candidates, if any). However, the Committee of Ministers does not require the electronic voting system to allow for casting blank votes. This results directly from another recommendation, according to which the electronic voting system should inform the voter that choosing a certain option (e.g. checking the names of candidates from two different electoral lists) will render the vote invalid. What is particularly important, however, is that paragraph 54 of the explanatory report does not prevent the electronic voting system from allowing people to cast invalid votes (Rulka, 2017, pp. 82-83).

The sixth recommendation indicates that the voter should be able to verify whether the electronically cast vote has been correctly applied, i.e. counted in favour of a specific list of candidates or candidate. The system should also be able to detect any coercion exerted on the voter as regards the content of their vote. As regards the first point, the issue in question is linked to the previous recommendation which is discussed above. Concerning the second point, while such verification is possible in the case of voting via EMBs, it does not seem to be entirely realistic in an uncontrolled environment of i-voting taking place in the confines of the voter’s home.

According to the seventh recommendation, the voter should be informed that their vote has been cast and that the entire voting procedure has been successfully completed. This is to ensure that voters, especially those less familiar with electronic means of communication, do not prematurely terminate the procedure without actually casting a vote. However, in order for that to be effective, the voter should also be informed before the voting procedure begins that a vote may only be deemed valid if the message referred to above is actually displayed.

According to the penultimate recommendation, the electronic voting system should provide solid evidence that every authentic vote was included in the election results. Such evidence should be verifiable by means that are independent from the electronic voting system. As an example of such evidence, the explanatory report indicates a comparison between the proportion of votes cast by electronic voting and the results of electronic voting with relevant data on other means of casting ballots, in particular traditional voting. In the opinion of the Committee of Ministers, if such a comparison yields similar results, this can render the results credible in terms of the correctness of electronic voting (point 61). However, this seems to be a questionable assumption, especially in a
situation where e-voting is not yet widespread and is currently used mainly by young people whose political views are somewhat different from those exhibited by the rest of society, to say the least.

In this context, it is also worth pointing to the findings of the German constitutional court in relation to this recommendation. The Federal Constitutional Court (FCC) of Germany declared unconstitutional the provisions of the federal ordinance on electronic election machines because those provisions failed to guarantee that only the machines that ensure the public character of the election would be admitted for use during the vote (Federal Constitutional Court, 2009, 2 BvC 3/07 and 2 BvC 4/07, hereinafter referred to as FCC). The court noted that the public nature of elections is determined by the democratic system itself and the rule of law and that it requires that all the relevant elements of the electoral process be subject to public scrutiny. The court explained that although the principle of public character of elections does not apply to voting, it does not mean that the voter should not be aware of the mechanisms by which the votes are counted. In the opinion of the FCC, the use of election machinery for casting ballots and counting votes complies with the constitution only if the essential elements of this procedure can be traced by a person without specialist knowledge in this area (Rulka, 2015b, p. 218-219). A similar statement was made by the Constitutional Court of Austria which considered it necessary for the procedure taking place after the vote is cast to be understandable not only for specialists in electronic media, but also for the average voter (Constitutional Court of Austria, 2011, V 85-96/11-15).

In accordance with the final recommendation relating to electronic voting, the system should ensure that voting results include only the votes cast by persons who are entitled to vote. Evidence should be verifiable regardless of the electronic nature of the voting system. An example of such a guarantee is provided by the guidelines (clause 15) which sometimes refer to the application of a solution consisting in printing a voter-verified paper audit trial at a polling place, which is then sent to the ballot box, however its compliance with the voter’s will as it was expressed electronically may be verified by the voter before that happens. In the event of doubts as to the correctness of voting results determined electronically, there is then a possibility to count aforementioned print confirmations. It is also possible to randomly check the conformity of electronic voting against the paper confirmations. This procedure is already used in some countries, for example in Venezuela and India. In the latter, the supreme court ordered EMBs to be equipped with a system for printing paper confirmations of the vote. This system is due to be implemented during the 2019 parliamentary elections (Supreme Court of India, 2013, complaint no. 13735).

**Secret suffrage**

The secrecy of the ballot ensures that voters can freely express their electoral preferences without fear of any consequences, whether positive or negative. The principle of secret suffrage imposes two obligations on public authorities.

The first of the above is to give the voter the opportunity to express their will in such a way that no one at the time of voting is aware of the content of their decision. Analysing this issue from the point of view of e-voting, it should be stated that, assuming that secrecy of the ballot is, in the sense of creating a guarantee of confidentiality, the responsibility of the voter, this excludes the use of i-voting while leaving the possibility to use EMB machines intact (Rulka, 2017, pp. 78-79). Naturally, these machines should not, however, disclose the will of the voters, including in relation to casting a vote or waiving the right to cast a vote, even by means of acoustic signals (see Rulka 2015a, pp. 223-229). However, assuming that the secrecy of the vote is a privilege of the voter, which they can but are not obliged to take advantage of, also i-voting does not violate the principle of secrecy of the vote. In terms of electronic voting, a consequence of the requirement of secrecy of voting is that it is impossible to compare output data with input data, which makes it difficult to detect electoral fraud in an ICT.
environment. The above also answers the question about the reasons for such low popularity of electronic voting at a time of widespread availability of electronic services, such as for example e-banking (Rulka, 2017, p. 80).

Another obligation imposed on public authorities by the principle of secrecy is the requirement of anonymity which transpires through guaranteeing that the contents of the vote will not be disclosed to third parties even on the further stages of the procedure, in particular when the votes are counted. The main premise here is the “separation” of the vote from the voter. Although this procedure is applied in practice (mostly in Estonia), its effectiveness is questionable and it seems that, in the context of e-voting, establishing the right guarantees of secrecy will not be possible in the near future (Rulka, 2017, p. 79-80).

The secrecy of voting should therefore be regarded as a key principle of electoral law from the point of view of the popularisation of electronic voting. The Committee of Ministers drafted eight recommendations concerning observance of the secrecy of electronic voting.

The first recommendation is very general in nature, as it states that electronic voting should be organised in such a way that it guarantees secrecy of voting at every stage of the process. However, the guidelines clarify that this primarily concerns verifying individuals using biometric techniques (e.g. fingerprint scan) in relation to electronic voting (clause 21a). It is necessary to separate these elements in order to make the vote anonymous, i.e. to separate the vote from the voter.

The second recommendation indicates that only those personal data which are necessary to successfully conduct the electronic voting procedure may be processed and stored.

The Committee of Ministers also recommends that the electronic voting system and each authorised party should protect authentication data in order to prevent unauthorised persons from misusing, intercepting, modifying or otherwise gaining knowledge of such data. The explanatory report indicates that such unauthorised third parties include, for example, printers preparing materials containing protected data (paragraph 67).

The fourth recommendation states that electoral registers stored in or transferred through the electronic voting system should be accessible only to authorised persons.

Another recommendation is that the system should not produce evidence of the content of the cast votes that could be accessible to third parties. This does not only concern keeping voting secret, but above all it relates to cases of buying votes (paragraph 70 of the explanatory report). The most important solution to prevent such practices is to ensure there are no printed confirmations of votes that voters could take out of the polling station (point 23a of the guidelines), assuming that the confirmations are sent directly to the ballot box. Of course, this does not exclude a situation in which the voter takes a photograph of the chosen voting option. None of the documents of the Council of Europe requires the creation of safeguards in this area, but it seems possible to construct a system in such a way that it will be at all times possible (i.e. also after the voter takes a picture of the interface for the person who buys their vote) to change the content of the vote, and also that the content of the vote will disappear from the screen immediately after its final approval. However, this does not solve the problem of printed confirmations that should be shown to the voter to make sure that the system has counted their vote correctly. In this situation it seems impossible to construct a procedure that will exclude the possibility of taking a photograph thereof.

The above recommendation seems to indicate that it is also unacceptable to mark paper confirmations of cast votes (with codes, numbers etc.) which would make it possible to assign a vote to a specific voter. For example, it is worth pointing out that in Brazil, the main reason for recognising paper receipts as unconstitutional was precisely the fact that the printouts contained numbers that could be assigned to specific voters (Brazilian Supreme Court, 2013).
According to the sixth recommendation, the electronic voting system should not allow disclosure of the number of votes cast for any option to any person before the closing of the electronic ballot box. Such information should not be made public before the end of the election. The prohibition of publishing the results of a vote before its conclusion is one of the basic electoral principles. This is associated with campaign silence applicable in numerous states (i.e. the ban on public campaigning) which is often extended even for days before the commencement of the vote. As far as traditional voting is concerned, this prohibition is observed through the fact that the counting of votes begins only after the end of the election. In the case of an electronic vote, there is no need to physically count the votes and, theoretically, information on the election results is available at any time.

Electronic voting should also ensure the secrecy of the previous choices which were recorded and deleted by the voter before the final vote is cast and confirmed (seventh recommendation). The Committee of Ministers has gone a long way in guaranteeing the secrecy of voters’ decisions. The information regarding the previous choices, which were later considered erroneous, is also protected. Although it is true that the above information does not reveal the actual will of the voter, it may still indicate for whom the given person did not vote which is also covered by the idea of secrecy of the vote.

Finally, the last recommendation of the Committee of Ministers on the secrecy of e-voting, which is something of a summary of the previous items, states that the electronic voting process, in particular the counting stage, will be organised in such a way that it will not be possible to restore the link between the vote and the voter. The procedure of separating a voter from their vote is called anonymisation. In the case of traditional elections, voting takes place by casting a ballot in the box. There is no doubt, not least for the voter, that anonymity has occurred here. In the case of e-voting it is a much more complicated process which the average voter is not able to comprehend. Even if anonymisation is effective, the problem is confidence in the effectiveness of the process, which is extremely important for building voter confidence in this form of election.

**Summary**

The spread of electronic voting is not taking place as fast as it seemed in 2004, when the original Council of Europe recommendations were adopted. This is mainly due to the difficulty in introducing an electronic voting system that will have built-in mechanisms to guarantee observance of the principles of electoral law referred to above, in particular the principles of secrecy and equality of voting which are crucial in the context of this type of voting method. It is also extremely important for voters to have confidence in this method because even an electronic voting system which protects the secrecy or equality of votes better than a traditional voting system can be assessed negatively not only by voters, but also by the highest judicial authorities. Estonia is currently closest to achieving a level of public confidence that will allow to completely abandon traditional forms of voting in a relatively short period of time. The last several elections in which this technique was used proved that around 30% of voters already use online voting.

Developing a credible electronic voting system is extremely difficult, and computer scientists argue that there is no such system that is completely immune to manipulation by changing the content of the votes (McGaley, McCarthy, 2004, pp. 153-154). It is possible that this task may surpass individual states. It is therefore important to develop an international standard in this area which all countries could draw from. Moreover, this standard, included in the soft law documents, including the recommendation under study, may gain importance over time. One example is the Code of Good Practice in Electoral Matters, which is increasingly often referred to by the European Court of Human Rights in its rulings. So far, the European Court of Human Rights has not ruled on the compliance of e-voting with the above mentioned principles of suffrage, although the doctrine assumes that electronic voting as such does not violate the European Convention on Human Rights, provided that an appropriate procedure is established (Garlicki, 2010, p. 576). The Council of Europe’s recommendations on e-
voting could also be given a similar status to the aforementioned Code in the future (Maurer 2016, p. 158). In this context, it is worth pointing out that the authorities in many countries are already using the recommendations under study when constructing their electronic voting systems. It is especially worth citing the judgment of the Estonian Supreme Court which indicated that the change in the content of an online vote (by later going to the polling station and voting in the traditional way) is in line with the 2004 Recommendation (Maurer, 2014, p. 113).

Irrespective of the above, the proposal in the doctrine to regulate Internet voting in a separate protocol to the International Covenant on Civil and Political Rights (Rulka, 2015b, pp. 226-227) should also be mentioned here. An important argument in favour of such regulation is the fact that manipulation and electoral fraud in the context of this voting method can be committed from anywhere in the world. The Protocol could, among other things, regulate electoral crime in cyberspace (Meager, 2007, p. 381-382).

References


