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## REMOTE ACTIVITIES OF THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE AND THE NATIONAL PARLIAMENTS IN TIME OF COVID-19

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The current world crisis raised serious debate about the role and place of the information and communication technologies (hereafter “ICT”) in the parliamentary activities. The new advanced technologies play a pivotal role in maintaining the efficiency and public service value of digitalisation by creating optimal conditions for the exercise of parliamentary functions. Before the current global health crisis, vast majority of the national parliaments had neither the possibility for remote plenary and/or committee meetings, nor a possibility for remote (distance) voting. Even the parliaments of the countries that have been struck by terrorist attacks in recent decades have not introduced a system of remote (distance) meetings or voting in case of any real direct risks for the parliamentary functioning.

Democracy is never accomplished or perfect in its nature; it is an ongoing process that is continuously faced with new challenges and needs to adapt itself to new contexts. The parliamentary system is one of the most impactful institutions in the modern world and is steeped in deep country's history. Consequently, all new steps must be taken with extreme caution. The article offers an analysis of the strengths and weaknesses aspects of the parliamentary functioning in a “virtual space”, as well as a description of new mechanisms and methods.

*Keywords:* e-democracy, e-parliament, remote (distance) activities, remote (distance) voting, crisis COVID-19.

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### **Introduction**

Today's pandemic has sharply raised debate about whether modern technologies could be successfully implemented in all spheres of democracy. In the current situation, we face new challenges for democracy: can we entirely replace democracy by electronic democracy (hereafter “e-democracy”)? Can three branches of government, legislature, executive, and judiciary function properly in the “virtual space”? What are the limits for the virtual existence of the State institutions? Are the new technologies the only instrument for the current pandemic crisis?

However, the question of using digital technologies in democracy and its digitalisation arose long before the current crisis swept the world. E-democracy has been interpreted by the Committee of Ministers to encompass, in particular, e-parliament, e-legislation, e-justice, e-mediation, e-environment, e-election, e-referendum, e-initiative, e-voting, e-consultation, e-petitioning, e-campaigning, e-polling, and e-surveying; it further makes use of e-participation, e-deliberation, and e-forums [20, p. 7].

The Inter-Parliamentary Union (hereafter “the IPU”) has published a comprehensive World e-Parliament Report 2018 (hereafter “the IPU's Report”) to help national parliaments ensure that their use of digital tools follows good practice [22]. The IPU's 2018 Report offers a definition of e-parliament, which is more consonant with the

expectations from parliaments operating during the current crisis. According to the IPU's Report, "[A]n e-parliament places technologies, knowledge, and standards at the heart of its business processes and embodies the values of cooperation, inclusiveness, participation, and openness to the people" [22, p. 5].

The IPU's Report concludes that digital technologies are now firmly embedded with clearly identified governance and technology practices in most parliaments. In parallel, while members remain politically committed to information and communication technologies (hereafter "ICT"), their managerial role is diminishing as ICT becomes more included in parliament's work. The legislative process and the processes of selecting, scrutinizing, and monitoring the representatives have all been transformed by digital tools. These tools range from sophisticated document management programs capable of tracking the progress of bills and amendments to online streaming of parliamentary proceedings, to the disclosure of open data to help the public hold their elected representatives to account. The Internet even transformed the voting process in plenary rooms: two parliaments, Paraguay and Spain, had systems enabling members to vote remotely during plenary sessions [22, p. 14–15].

Apart from the above examination of e-parliament, there remains overlooked such an important aspect as the ability to integrate artificial intelligence (hereafter "AI") into all parliamentary processes for modernisation, strengthening, and facilitating its activities. The Council of Europe actively promotes efforts to regulate digital technologies, including those based on artificial intelligence and its effects on society. In 2019, the Committee of Ministers adopted the Declaration, which founded the first international instrument to formalise the substantial dangers of the capacity to manipulate algorithmic processes [6].

Since the last decade, there have been numerous discussions on different political and scientific levels regarding the use of artificial intelligence injustice [13]. Estonia, one of the leaders in the field of e-government, has developed and piloted an Artificial Intelligence software to hear and decide on small administrative claims disputes less than 7,000 euros. The program is still just starting and could potentially be the very beginning of a global wave of AI in the judiciary. Another example is DoNotPay – "robot lawyer" downloadable mobile app in the UK that makes use of artificial intelligence to provide legal services to all users free of charge. Also, predictive justice tools used in the US and tested in France. In 2018, the Council of Europe adopted the European Ethical Charter on the use of artificial intelligence in judicial systems and Guidelines on Artificial Intelligence and Data Protection, which emphasise the danger of discrimination in the judicial decision-making process [9]. However, the integration of digital technologies, including those based on AI, in the legislative branch, is much less examined and even less implemented in practice.

In 2019, the European Centre for Parliamentary Research and Documentation (ECPRD) held its ICT2019 seminar at the Riigikogu of Estonia on Artificial Intelligence in parliaments [2]. Several ongoing projects have been presented there. For instance, the Brazilian Chamber of Deputies implements the "Ulysses" project. The system uses AI technologies that support parliamentary transparency by voice and face recognition, text classification, conversational or interactive bots, natural language processing, pattern recognition [21].

Any crisis as a phenomenon drives to crucial changes and extemporaneous improvements. Many international and national institutions have switched their activities to the "virtual space", they continue their activities using specific working methods and have taken extraordinary steps to address the pandemic challenges. Owing to the current

situation, on 1 April 2020 the new judge of the ECHR elected in respect of Portugal, Ms Guerra Martins, made the solemn declaration to President of the Court by videoconference [18]; the six-month time-limit for the lodging of applications, under Article 35 of the European Convention on Human Rights, has exceptionally been suspended for three months running from 16 March 2020 [5]; numerous States lodged derogations in accordance with Article 15 of the European Convention [10]; the European Parliament's Bureau has agreed to allow an alternative voting procedure for the plenary session on 26 March 2020 (the Parliament has put in place measures for members to vote remotely in the plenary session); [7] in Romania candidates for ministers of the new government were heard remotely via videoconference; [8] local and mayoral elections in the UK will be postponed for a year to May 2021 due to the coronavirus outbreak [11].

The national parliaments, where the lockdown measures have been introduced, are looking for ways to organise continuous work without the real presence of the MPs in their Agora by introducing remote (distance) parliamentary activities, such as remote (distance) plenaries and/or committee meetings, remote (distance) voting or a system of proxy voting. Consequently, a new strategy for the e-parliaments in the time of exceptional e-democracy is essential for all states, because, as noted by the European Parliament President, Mr David Sassoli, *“democracy cannot be suspended in the midst of such a dramatic crisis. Indeed, it is our duty, in these difficult times, to be at the service of our citizens. As legislators, we have the means, the possibility, and the duty to help”* [17].

**Remote activities of the Parliamentary Assembly: new mechanisms and methods.** On 30 April 2020 the Bureau of the Assembly approved the first memorandum modifying the working procedures of committees in response to the exceptional situation of COVID-19 and authorised remote committee meetings [3].

At its meeting on 7 May 2020, the Bureau approved the second memorandum on arrangements for the conduct of such remote committee meetings, introducing supplementary working methods on a temporary basis in response to the exceptional situation of COVID-19 [1].

The Bureau of the Assembly decided to introduce supplementary working methods of committees, on a temporary basis, by authorising committees to use a remote consultation procedure for specific actions and to organise remote meetings. To this end, the memorandum specifies in detail the list of actions that a committee may undertake by consulting its members through a remote consultation procedure, and, by contrast, the list of decisions that can only be taken by a committee during a meeting (whether a “classical” or “remote” one), according to the Rules of Procedure. This does not alter the Assembly's Rules of Procedure.

For instance, the decisions to be taken by the committees during remote meetings, which may not be subject to any derogation procedure, are: – approval of a report and adoption of the draft text(s) contained therein (Rules 50.2 and 50.5); – appointment of a rapporteur (Rule 50.1) or a general rapporteur (Rule 50.7); – consideration of amendments to a report of the committee (Rule 34.9); approval of amendments to a report by another committee (Rule 45.4); – setting up of a standing or ad hoc sub-committee (Rule 49.2); – election of the Chairperson or a vice-chairperson of the committee (Rules 46 and 47.3); – removal of the Chairperson or a vice-chairperson of the committee (Rules 55 and 47.3); – request for urgent procedure (Rules 51.1 and 52.1) or current affairs debate (Rules 53.2 and 53.6); – request for an opinion from the Venice Commission; - decisions on the implementation of measures taken in the framework of

the Code of Conduct for Members of the Assembly; – hearing of candidates for the post of judge to the European Court of Human Rights.

At the same time, the inclusive list of committees' acts, which may be taken after written consultation of members, are the following: - examination of any document of which the committee “takes note” (information memorandum, outline report, introductory memorandum, preliminary draft report, work programme, replies by the Committee of Ministers to a recommendation, various institutional communications); – examination of the rapporteur's proposals for action of which the committee “takes note” (decision on the organisation of a hearing; examination of the draft programme, where appropriate) or which it “authorises” (conduct of a fact-finding visit); – decision on the organisation of a seminar or a conference (or any other similar event) and consideration of the draft programme; – call for candidatures prior to the appointment of a rapporteur; – call for candidatures and appointment of committee representatives for the institutional representation of the Assembly; – committee authorisation for a member's participation in a meeting or outside event; – decision to instruct the Chairperson, one of the Vice-Chairpersons or, failing that, a member of the committee concerned, to present a report to the Assembly if the rapporteur is unavailable; - consultation of committees on the action to be taken on a motion for a resolution or recommendation (Rule 26.1); – consultation of relevant committees on the admissibility of petitions (Rule 67.3); – examination of candidatures for the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment.

Committee meetings are organised by videoconference via the multilingual conferencing platform KUDO with which the Council of Europe has signed a service contract. This platform allows to run the meeting using several languages (often five languages). The duration of each remote meeting is limited to 2.5 hours per half a day.

The KUDO platform integrates a remote voting functionality accessible to members who may express their position on a given question by voting in favour, against or abstain. The in-built KUDO remote voting system may be used for any type of vote: a secret ballot vote as well as a roll-call vote.

The only quasi derogation to the Rules of Procedure concerns the quorum: during remote meetings, a vote shall be valid only if at least one-third of the committee members took part in it, whereas during “classical” meetings any decision taken is valid regardless the number of members present. However, even this point is not a real derogation to the Rules of Procedure, as during “classical” meetings, if so requested by one-sixth of its members, the vote may be taken only if a majority of committee members are present [14, Rule 47].

**Substantial risks of parliamentary activities in “virtual space”.** The necessity of establishing temporary new working methods for parliamentary activities during the crisis like present lockdown is obvious. Each State has to determine the criteria for a “crisis” that will allow the mechanism of remote (distance) parliamentary activities to be launched and define which type of the decisions could be and could not be adopted by the national parliament. Nevertheless, it should be noted that at this stage there is a silent consensus that such a mechanism could be used only on a temporary and exceptional basis.

On 25 March 2020 the IPU published the first information checklist with a country compilation of parliamentary responses to the COVID-19. The IPU shared the parliamentary practice in time of the COVID-19 crisis [4]. The majority of the parliaments massively reduced their activity to treat only matters of absolute necessity; some parliaments reduced the number of their meetings and held them remotely; certain parliaments (for example, the Norwegian Parliament) have reduced the number of MPs at

plenary meetings and during vote; some parliaments offer remote voting and virtual participation as the only option under consideration even in the context of plenary sittings; almost in all the parliaments the MPs were asked to maintain appropriate distance following public health advice; and only rare parliaments held plenary and committee meetings mostly in a usual way (Sweden). In this context, some rules of procedure have been suspended – deadlines, physical presence in committee meetings, reduced committee workload (priority given to urgent cases and bills).

One of the most advanced solutions was proposed by the Brazilian Senate, as they started the project aiming to transfer almost all parliamentary activities to “virtual space” even before the pandemic crisis. The Senate introduced the Remote Deliberation System (SDR), which was defined in the Rule of the Steering Committee No. 7, 2020 1 as “*a technological solution that makes it possible to discuss and vote on matters, to be used exclusively in situations of war, social upheaval, public calamity, pandemic, epidemiological emergency, the collapse of the transport system or situations of force majeure that prevent or make it impossible for the Senators to meet in person in the National Congress building or in another physical location*” [19, p. 8]. In other words, it is a solution to be used in exceptional situations to make it possible to discuss and vote on matters. The system is divided into two parts: a videoconferencing solution and a remote voting solution. A technological solution was added and developed specifically for the Federal Senate. Procedures, processes, and regulations have brought all these technologies together.

The videoconferencing solution is essential to allow discussion of the matter. The members' images and speeches are streamed live. It is also possible to use the videoconferencing solution to hold voting. In this case, the members of parliament, one by one, state their votes, which are recorded separately. The electronic voting solution allows members to record their votes simultaneously through an application. It is possible to check the Voting Panel and change the vote, among other options. Electronic voting has its security improved by mechanisms such as confirmation by SMS message and the registration of a picture upon voting [19, p. 9–10].

**Conceptual considerations.** Certain constitutions require the members of the national parliament to act in person in the performance of their duties and exclude the possibility of remote (distance) voting. This means that virtual activities would require constitutional amendments rather than simple decisions. These requirements arose from the very understanding of the concept of “Agora”, the core value of which is to “bring together” for common discussions. Parliamentary activities are the multifaceted process, and parliamentarians' visible work during the plenary sessions is only a small part of their daily activities.

In many States, special status is given to the premises of the national parliaments, which reinforces the importance of the decisions taken by this body. Additionally, the essential question remains about the regulation of the relations between the members of parliament and lobbyists during the remote (distance) parliamentary activities.

Furthermore, the plenary sessions and the voting process in certain national parliaments constitute longstanding traditions. They are surrounded by symbols and rituals, which are essential for the political culture in that State. The parliamentary procedure of many States has developed through continued use over the centuries and is often not written in the Rules of procedure. Thus, it is known as “custom and practice”. A prime example is the UK Parliament [15]. Moreover, the rules of procedure, in most parliaments, have strict requirements for introducing and considering draft amendments, adopting the order of business, and organising the debates during the meetings in plenary

and committees. Some of these procedural requirements and customs could be exceedingly difficult to transfer to the “virtual space”.

The essential point is that the national parliaments should ensure that representatives are willing and able to engage in democracy by electronic means. MPs should have confidence in those means, and society should accept and respect the public-service value of such changes. Introducing new systems in parliamentary activities is always challenging and requires careful deliberation and planning.

**Remote (distance) voting** is arguably the most challenging measure, as this new technology concerns the core of the decision-making process in the parliaments, in particular the casting and counting of parliamentarians' votes. Remote voting significantly reduces direct human control and influence in this process, but it also introduces a whole range of new problems. For instance, the question remains on how to guarantee that in the moment of distance voting, MPs were alone and in a clear state of mind or that they have not been forced or manipulated by a third party. Remote voting can be expected to trigger more criticism and opposition than any other ICT application in parliamentary activities.

Any electronic voting systems should claim to offer a high degree of reliability, transparency, consistency, and resistance to malpractice. The use of electronic devices to count votes can provide accuracy and time effectiveness in the whole decision-making process. However, paper ballots can be physically examined, if necessary, in any post-voting disputes or any doubt about the solidity of the electronic voting system. Consequently, the combination of these two mechanisms could be the best solution, but overpriced.

**Confidentiality** of remote (distance) parliamentary activities is another serious concern. Confidentiality standards could be ensured, for example, by the introduction AI system of voice, face recognition, or installing the system of fingerprint scanners. Nonetheless, it would solve only some problems and create additional concerns regarding privacy, administration, accountability, and data protection. It also is unsure whether all MPs would accept such radical changes in how they should modify their performance duties. Additionally, some members of parliament may have dilemmas based on their religious and philosophical convictions as regards sharing their privacy and getting numeric identities. Furthermore, it would be an unjustified risk to introduce untested new technologies in a short time without extensive discussion.

Parliamentarians, who perform their duties from their own devices or unprotected networks from home, may involuntarily threaten data security (they may pay less attention to the requested security practices because of being at home). The inability to check whether MPs use secure devices to access files and general lack of control over data access may put the parliaments' protected database at risk.

**The system of proxy voting.** Another solution that is implemented in different national parliaments is the system of proxy voting. This system is currently used, for example, in the French Parliament (both in *Sénat* and *Assemblée Nationale*). However, it should be noted that votes are, in principle, personal at the French National Assembly. Consequently, voting by proxy is only allowed in exceptional cases, and each MP may only vote by proxy in a very limited manner [16, chapter XIII].

This solution has certain drawbacks. First, the content and essence of representative democracy are to delegate powers to concrete elected members of parliament. Each delegate has been elected because of his/her qualities and authority in society, and the “second” delegation by proxy may raise legitimacy concerns. Second, parliamentary decisions are often accompanied by extensive discussions involving the majority of delegates. The main challenge for representative democracy in crisis is therefore to keep

its representation feature and to continue the practice of adopting decisions in considerable debate surrounded by political pluralism. Third, it may appear that vital decisions in the time of crisis will be adopted by a limited number of MPs selected randomly or based on hasty criteria and political dealings, instead of contemplated choice by population.

**Costs and expenses.** Preparation and organisation of a transparent and well secure system of remote parliamentary activities, comprehensive controls, and accountability measures put in place could involve significant financial costs. A system with a high level of security and transparency can increase costs so much that the benefits of the remote parliamentary activities will no longer justify the expenditure.

**Final remarks.** E-democracy is not a substitute for representative democracy, but it is additional and complementary to it. [12, §§ 7, 29]. This restrictive principle should govern any further approach to the development of parliament in “virtual space”.

The general overview shows that the remote activities of the committee meetings are easier to operate than parliamentary plenary sessions. Thus, many national parliaments started to transfer their committee meetings to “virtual space”. To organise the remote voting system is the most challenging process; therefore, any new steps must be taken with extreme caution. The advantages of these technologies and techniques at the daily parliamentary activities could have substantial deficiencies and could lead to harm for democracy. It is the task of each national parliament to draw lessons from the temporary mode of operation during COVID-19 and to determine the most acceptable, democratic solution for the future.

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## **ДИСТАНЦІЙНА РОБОТА ПАРЛАМЕНТСЬКОЇ АСАМБЛЕЇ РАДИ ЄВРОПИ ТА НАЦІОНАЛЬНИХ ПАРЛАМЕНТІВ ПІД ЧАС ПАНДЕМІЇ COVID-19**

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У цій статті досліджено питання організації нових методів у роботі національних парламентів та Парламентської Асамблеї Ради Європи під час пандемії. Проаналізовано слабкі та сильні сторони у функціонуванні національних парламентів у віртуальному просторі та порівняно зміни, що відбулися на національному і міжнародному рівнях.

Автор зазначає, що перехід усіх гілок влади до віртуального простору, так звану е-демократію, обговорювали та досліджували задовго до кризи, пов'язаної з COVID-19. Щоправда, основоположний принцип е-демократії, який автор взяв за основу, зокрема про те, що е-демократія не є заміною представницької демократії та повинна лише доповнювати її, а також бути базою для розвитку, в реаліях сьогodнішньої пандемії обговорюється на усіх рівнях.

З одного боку, повний перехід роботи національних парламентів у віртуальний простір може поставити під невиправданий ризик цінності та досягнення світової демократії, але, з іншого боку, національні парламенти мають продовжувати свою діяльність у будь-який час і особливо під час кризи. Аналіз ситуації показав, що на цьому етапі немає єдиної правильної моделі функціонування національних парламентів у період кризи і те, що кожний парламент мав би розробити свої методи роботи, зважаючи на конституційно-правовий устрій, власні процедури та політико-правові звичаї. Жоден парламент на момент пандемії не мав можливості повністю функціонувати у віртуальному просторі (проводити дистанційні пленарні слухання чи засідання комітетів, а також дистанційно голосувати). Наразі встановлена мовчазна згода на те, що перехід парламентів до віртуального простору є тимчасовим та винятковим. Проаналізовано систему делегування повноважень, яку зараз активно використовують у низці національних парламентів як альтернативу переходу до віртуальної роботи, та визначено її структурні недоліки.

*Ключові слова:* електронна демократія, електронний парламент, дистанційна діяльність, дистанційне голосування, криза COVID-19.

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