

THE CHAPTER X

THE ELECTIONS AND THE ELECTORAL ORGANIZATION



Xabier

I. THE DIALOGUE CONSTITUTIONAL: THE VOTE IS A RIGHT AND UN DUTY OF ALL CITIZEN

VICTORIA: Mother, looks at all people that waits to vote in these presidential elections. What we don't know is why candidates of the formula President and Vice-president will finance, neither less why political party they make it, because your have told me that the vote is personal, secret and nonnegotiable. What I like of these convocations of the democracy is that the family can be going for a walk united by the throughout city, to see friends and well-known and unknown people. All go to the table of corresponding voting that prepares the Registrar of the Civil State of people and the electoral authorities. This is a democratic and multicolored carnival.

ARMANDO: Lucio, looks at our father it will fill the electoral Card (or "tarjetón") in that cubicle to vote for his presidential formula for the constitutional period 2004-2008. Me if he/she wanted that it was imposed in Colombia the electronic vote, because the time would be speeded up of financing, the paper of the big voting card, the count of votes would be saved it would be automatic and immediate, it would be avoided frauds electoral manuals, there would not be necessity but of a single person like voting jury; and in short, everything would be in question

of seconds and cheaper, more when in our country ordinarily is popular elections to choose members of the local administrator assembly, Mayors, Governors, Councilmen, Deputies, Representatives to the Chamber and Senators.

LUCIO: Is certain Armando that the electronic vote (*or e-voting*) would be a great technological advance in the elections of our country, but today per today, we cannot still use this computer technology because small cities and towns that don't have phone nets neither computer teams that facilitate the electronic telecommunications to finance exist just as they make it today in day in France, Italy, Germany, England, Sweden, the Scandinavian countries, Japan and the United States of America, among many others. It could put on terminal of computer to vote in the capital cities of department and in the big and medium cities of Colombia. In fact, mockeries have already been made in last presidential elections in some cities of the Andean area and north of Colombia, but it is necessary a lot to cover the total of the Colombian territory that is big.

MARÍA PAZ: Dear Victoria, you have listened your siblings on the exercise of the vote and as electing of the presidential formula. That is what moves this throughout people in this day of the Colombian democracy. All come built up hopes because that their candidates win the elections and fulfill that promised in the electoral campaigns and in government's program, which becomes in obligatory for them. This is what calls you "*Vote programmatic*". The candidates before being it should register in the Registrar, they should demonstrate that they gather the law requirements to be it that are free of disabilities and incompatibilities if they leave elect, and mainly that want to serve to the community, to be their natural spokesmen from their high positions.

LIBORIO: Please family, they wait for me here, while I deposit my vote in the urn properly sealed by the Registrar. The throughout electoral day, their organization and successful development this supervised and inspected by the Electoral National Council with headquarters in all the main cities of Colombia. It is the maximum electoral authority that observes that the parties, movements and political groups fulfill the effective Ordinance juridical and avoid frauds to the throughout electoral process from the inscription, election until the obtaining of the credentials that they credit the winners of the elections. Dear children behind these voting tables, of the juries, the public force, civic and community officials are the electoral authorities controlling everything so that these days are carried out in peace and it jousts democracy. Today for fortune we no longer have like about fifteen years ago behind, those carnivals injurious bustling, propagandistic many times among followers of candidates to the Presidency or national, regional or local popular Corporations.

II. THE CONSTITUTIONAL LESSON: TO ELECT AND TO BE ELECTED IS A FUNDAMENTAL RIGHT OF ALL CITIZEN

Everything person that has completed the ten eight (18) years and it carries their *Document National of Identity (DNI)* or citizenship identification card, is entitled to participate in the conformation, exercise and control of the political power, that is to say, to have access to the public power according to it determines it the article 40 of the Political Constitution. This fundamental right of every citizen becomes effective, in fact when electing and it is elected to any popular Corporation (Local Administrative Assembly, Town council, Assembly or Congress) or individual Institution (Governorship, Government, or Presidency and Vice-presidency of the Republic). Equally you effective this right when takes part in the elections, plebiscites, referendum, popular consultations and other forms of democratic participation. In an identical way, when it is constituted parties, movements and political groupings without limitation some; to be part of them freely and to diffuse their ideas and programs. Likewise, when it uses the institution of the abrogative one of the mandate of the elects these don't fulfill the programmatic vote or it programs of government, just as today it only happens for Mayors and Departmental Governors. In a same way, when one has normative initiative (administrative acts: Resolutions or Decrees) o legislative initiative (or laws) before the public Corporations; or also, when it interposes public actions (action of execution of administrative acts or laws, popular actions for the defense of collective rights or actions public unconstitutionality of laws or acts of law) in defense of the Constitution and of the law: Finally, when is responsible for access, I save in the case of the Colombians, for birth or for adoption that you/they have double nationality.

III. THE CONSTITUTIONAL GLOSSARY

CITIZENSHIP IDENTIFICATION CARD: it is the Document National of Identity (DNI) of every citizen in Colombia. Through this document public people can be identified before any entity or natural or artificial person. This document is suitable among other ends, to check the citizenship and to elect to people or public Corporations.

CORPORATIONS PUBLICS: People's Groupings enabled by the juridical and elected classification to conform them previously by means of the vote and corresponding elections for a certain constitutional period. In Colombia, it is known as popular or public Corporations to the Local Administrating Assembly or "LAA", Municipal Council, Departmental Assembly and the Congress of the Republic (The Chamber of Representatives and the Senate).

CURUL (Or Aediles curules): Ediles curules. Magistracy created in the Roman republican time, reserved in beginning to the patrician and soon accessible to the

plebeians. Today it is said that it is the legislative position to provide in the respective election

CUBICLE: Apparatus dedicated to a single person in a triangular way that contains a small table, which facilitates to supplement the electoral Card with the as elect of the candidates of their preference.

ELECTORAL QUOTIENT: Mechanism to elected candidates to public Corporations or consistent individual Institutions in the number that is of dividing the total of the valid votes for the one of having put to provide. The award of positions to each list will be made in the number of times that the quotient fits in the respective number of valid votes. If they were on to be provided they will award to the biggest residuals, in descending order.

ELECTORAL CRIMES: you Form or criminal conducts directed to not allowing, to obstruct, to constrain, to modify or to eliminate the right to the vote that has all citizen in personal, free, autonomous and nonnegotiable form. The Penal Code Colombian typify like electoral crimes, among other: the interference of the democratic contest, constraint to the elector, fraud to the elector, fraud in inscription of identifications, elector corruption, fraudulent vote, favor of fraudulent vote, lives in the delivery of documents related with a voting, alteration of electoral results, Concealment, retention and illicit possession of identifications and inscription Denial.

ELECTORAL CARD (Big vote card o “Tarjetón”): Thin Cardboard or rectangular Paper in which all the entered candidates appear legally for a certain election of Public Corporations or of individual Institutions. In the electoral Card the pictures of the candidates and other frames appear, such as that of blank vote. These frames will be able to be crossed out with an X, in the picture and respective frame for the voter in the moment of their election.

ELECTIONS: Democratic days in those that all citizen electing free and autonomously to a candidates or candidates to public Corporations or individual Institutions, by means of the vote or vote and for the mechanism of the electoral quotient.

E-VOTING: It is the electronic vote. It is the realized vote through means or computer or computational technologies, well be for computer terminals located in the different cities or through cross-trigger Cabins via Internet or on-line between electoral points or cities where the voters can to elect their different political candidates.

NUMBER DISTRIBUTION it is of dividing successively for one, two, three or more the number of votes obtained by each list, ordering the results in falling form until a total number of results similar to the *curules* number are the obtained to provide.

The smallest result calls number distribution. Each list will obtain so many *curules* like times it is contained the number distribution in the total of its votes

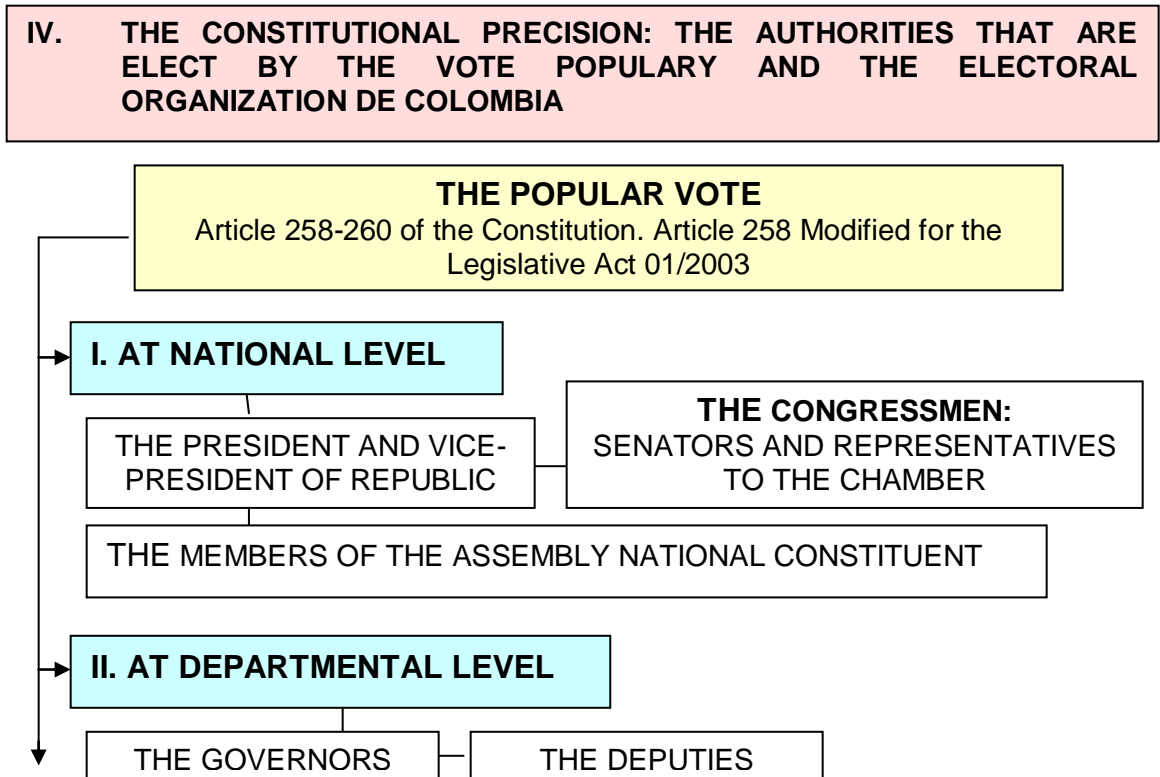
POLITICAL PARTY: united citizens' Grouping around some ethical, philosophical and political ideals, with personality juridical, some articles of association, directive autonomy and own administration.

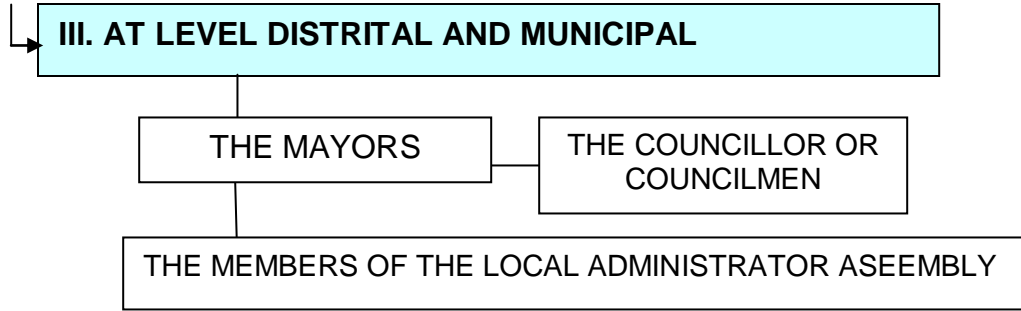
PERSONALITY JURIDICAL: Recognition like entity, person of rights and obligations, party or political movement leaves of the corresponding public authorities so that they can carry out functions, positions or official destinations of conformity with the Ordinance juridical. The official recognition of the parties, political movements make it, the Electoral National Council by means of an act of law or resolution.

VOTE (or voting): It is the right that has every citizen in Colombia to choose a person in a popular Corporation or an Institution of individual election. The vote is also known as electoral vote. The vote according to the Constitution of 1991, besides a right is a constitutional duty of every citizen. One can choose for vote to Mayors, Governors, Parliamentarian, Councilmen, deputies and members of the local administrator assembly.

VOTE PREFERABLE: The voter will be able to mark the candidate of his preference among the names of the list that you/they appear in the electoral card. The List will be ordered of agreement with the quantity of votes obtained by each one of the candidates. The assignment of the *curules* among the members of the respective list will be made in descending order beginning with the candidate that has obtained the biggest number of preferable votes.

VOTE PROGRAMMATIC: the participation mechanism by means of which the citizens that vote to choose Governors and Mayors, impose as mandate to the elect the execution of government's program that has presented as integral part in the inscription of their candidacy.





THE ELECTED CANDIDATES AND THEIR SUBSTITUTES
(Article 261 of the Constitution)

The absolute vacancies and temporary will be replaced by the candidates that according to the inscription order in running form and descending correspond to the same electoral list.

I. VACANCIES TEMPORARY:

Death; the motivated renouncement and accepted by the plenary of the respective Corporation; the loss of the investiture; the permanent physical disability and the judgment of conviction in firm dictated by competent judicial authority.

II. VACANCIES PERMANENT:

The suspension of the exercise of the popular investiture, by virtue of judicial decision in firm; the license without remuneration; the license for inability certified by official doctor: the properly proven domestic calamity and the act of God.

The license without remuneration won't be able to be inferior at three (3) months.

The cases of inability, domestic calamity and not remunerated licenses, they will be approved by the directive table of the respective Corporation.

The disabilities and incompatibilities extend to those who assume the functions of the temporary vacancies during the time of their attendance.

The vacancies for the congress members' absolute vacancies will be replaced by the candidates' non elects according to the inscription order in the corresponding list.

THE DATES OF ELECTIONS AND SYSTEM OF NUMBER DISTRIBUTION, PREFERABLE VOTE AND THE THRESHOLD
(Articles 262, 263 and 263 of the Constitution)

I. THE PRESIDENT AND VICE-PRESIDENT OF THE REPUBLIC

The election is carried out in day different to the other elections.

II. THE PARLIAMENTARIAN AND THE DEPARTMENTAL, DISTRICT AND MUNICIPAL AUTHORITIES. The elections are made in different days and dates

THE SYSTEM OF NUMBER DISTRIBUTION

(Article 263 of the Constitution)

For all the processes of popular election, the parties and movements will present clever and unique candidates whose members' number won't be able to exceed that of *curules* or positions to provide in the respective election.

To guarantee the respective representation of the parties and political movements and citizens' significant groups, the *curules* of the public corporations will be distributed by means of the system of figure number distribution the lists of candidates that overcome a minimum of votes that he/she won't be able to be inferior to two percent (2%) of the electors for the Senate of Republic or of fifty percent (50%) of the electoral quotient in the case of the other corporations, as it establishes it the Constitution and the law.

When none of the lists of applicants overcomes the threshold, the *curules* they will be distributed of agreement with the system of figure number distribution.



THE NUMBER DISTRIBUTION, THE VOTE PREFERABLE AND THE THRESHOLD

(Article 263 of the Constitution)

The *curules* award among the members of the respective corporation will be made by the system of number distribution. This is of dividing successively for one, two, three or more the number of votes obtained by each list, ordering the results in falling form until a total number of results similar to the *curules* number are obtained to provide.

The smallest result will call number distribution. Each list will obtain so many *curules* like times it is contained the number distribution in the total of its votes.

Each party or political movement will be able to opt for the mechanism of the preferable vote. In such a case, the voter will be able to point out the candidate of his preference among the names of the list that you/they appear in the electoral card. The List will be ordered of agreement with the quantity of votes obtained by each one of the candidates. The assignment of the *curules* among the members of the respective list will be made in descending order beginning with the candidate that has obtained the biggest number of preferable votes.

In the movement of the parties or political movements that it there is opted for the mechanism of the preferable he/she votes, the votes for the party or movement that have not been attributed in particular by the voter to any candidate, will be counted in favor of the respective list for goods of the application of the norms on the threshold and the number distributions, but they won't be computed for the reordering of the list. When the voter votes simultaneously for the party or political movement and for the candidate of his preference inside the respective list, the vote will be valid and it will be computed in favor of the candidate.

THE ELECTORAL AUTHORITIES IN COLOMBIA

(Articles 264 at 266 of the Constitution)



I. THE COUNCIL ELECTORAL
NATIONAL



II. THE REGISTRAR OF THE
CIVIL STATUS

THE COUNCIL ELECTORAL NATIONAL
(Article 264 of the Constitution, modified by Act Legislative 1 of 2003)

I. COMPOSITION, PERIOD AND JURIDICAL RÉGIME

The Council electoral is integrated of nine (9) members. Elected by the Congress of the in the middle of Republic, for a period of four (4) years, by means of the system of number distribution, previous postulation of the parties and political movements with personality juridical or for coalitions among them. Their Members will be public servants of exclusive dedication, they will have the same qualifications, disabilities, incompatibilities and the magistrates' of the Supreme Court of Justice rights and they will be able to be reelected by a single time.

II. FUNCTIONS THE COUNCIL ELECTORAL NATIONAL:

1. Exercise the inspection and supervise of the electoral organization
2. Elected and to remove the National registrar of the Civil State
3. Decide the intervening resources against the decisions of their delegates on national counts and in such cases to make the declaration of the election and issuing the corresponding credentials.
4. To be advisory corporation of the Government
5. Supervise the execution of the norms on parties and political movements.
6. Distribute the contributions that for the financing of the electoral campaigns and to assure the political equity entitlement of the citizens
7. To make the general scrutiny of all national voting.
8. Recognize the personality juridical of the parties and political movements.
9. Regulate the participation of the parties and political movements in the media.
10. Collaborate for the realization of internal consultations of the parties and movements for the electing of their candidates.
11. To be given their own Regulation.

THE NATIONAL REGISTRAR OF THE CIVIL STATUS
(Article 266 of the Constitution, modified by A.L.01/2003)

I. THE ELECTION, THE REELECTION, THE PERIOD AND REQUIREMENTS TO BE REGISTRAR

The Registrar will be elected by the presidents of the Constitutional Court, the Supreme Court of Justice and the Council of State, by means of organized competition of merits according to the law. Their period is of four (4) years, it will gather the same qualifications that it demands the Political Constitution to be magistrate of the Supreme Court of Justice and not to have exercised functions in direct charges in parties or political movements in the year immediately previous to its election.

Will be able to be reelected by a single time and it will exercise the functions that it establishes the law, included the management and organization of the elections, the civil registration and the identification of people, as well as the one of celebrating contracts on behalf of the Nation, in the cases that that it prepares.

II. THE ADMINISTRATIVE CAREER OF THE SERVANTS OF THE REGISTRADURIA OF THE CIVIL STATUS

(Article 266 of the Constitution, modified by Act Legislative 01/2003)

The National Registrar of the Nation will be structured by public servants that belong to a special administrative career to which will be entered exclusively by competition of merits and that it will foresee the flexible retirement of conformity with the necessities of the service. In any event, the positions of administrative or electoral responsibility will be of free removal, of conformity with the law.

V. THE CONSTITUTIONAL READING: THE PROGRAMMATIC VOTE AND THE ABROGATIVE OF THE MANDATE OF MAYORS AND GOVERNORS

THE PROGRAMMATIC VOTE AND THE ABROGATIVE OF THE MANDATE

"Say the article 259 of the Constitution that" who governors and mayors elect, they impose for mandate to the elect the program that presented when registering as candidate" and that the law will regulate the exercise of the programmatic vote." The another part, the article 40 of the Constitution, within the participation politic right that it recognizes the citizens, enumerates: "the revoke the mandate of the elects in the cases and in the form that establish the Constitution and the law", and the article 103 of the same Constitution list the abrogative of the mandate as the mechanisms of citizen participation.

In development of the ability of regulating the exercise of the programmatic vote and the abrogative of the mandate, the National Congress sent the Law initially 131 of 1994" for which the programmatic vote is regulated", and later on 134 in the same year," for which norms are dictated it has more than enough institutions and mechanisms of civic participation", both of statutory nature. In the first one, it defined that understood each other for programmatic vote" the participation mechanism by means of which the citizens that vote to elected Governors and Mayors, impose as mandate to the elect the execution of government's program that has presented as integral part in the inscription of their candidacy" (*article 1*). *And as for the abrogative of the mandate, the same law established that it was also a mechanism of citizen participation that proceeded" for the non-fulfillment of government's program" (article 2)*. The law 134 of 1994, on the other hand, referred to the abrogative of the mandate like" a political law by means of which the citizens give for ended the mandate that have conferred a governor or a mayor" (*article 6 of the Law 134*).

When examining the constitutionality of the dispositions statuaries that have just been mentioned, the Court it put in evidence the nexus inseparable that existed among the notions of popular sovereignty, imperative mandate, programmatic and abrogative vote of the mandate. This relationship was explained of the following way:

"The programmatic vote is an expression of the popular sovereignty and the democracy participative that it narrows the relationship among the elects (mayors and governors) and the electing citizens. When consecrating that the voter imposes the elect for mandate a program, the programmatic vote facilitates a more effective control of the first envelope these last ones. The possibility of the abrogative one of the mandate is then the consequence of that new relationship consecrated by the Constitution of 1991.

"Of the agreement of the articles 259 and 103 of the Constitution, aforementioned, he/she comes off that in the mark of the democracy participative that sinks their roots in the fields of the popular sovereignty, the programmatic vote guarantees the possibility of the abrogative one of the mandate of mayors and governors in particular if these noncompliance with its program politic.

"This abrogative of the mandate is the logical consequence of the citizen's participation in the exercise of the power, as it prepares it the article 40 of the Constitution. In other words, in the new philosophical outline of the Letter the citizen is no longer limited to vote for the elected of the ruling one and then it disappears during the whole period that he mediates elections between two -like in the representative democracy-, but rather during the whole time the citizen conserves his political laws to control the elect -characteristic of the democracy participative-. The citizen, pretend not to know of their election" (**Sentences C-011-94 and C-179-2002 of the Court Constitutional Colombian**).

VI. THE ACTIVITIES OF THE STUDENT

I. Supplement the following propositions:

- 1) The Vote is _____
- 2) The programmatic Vote is _____

- 3) The Quotient electoral is _____

- 4) The citizenship identification card is _____

- 5) The Electoral Card is _____

- 6) The Party politician is _____

- 7) The Cubicle is _____

- 8) The Electoral crimes are _____

- 9) The number distribution is _____

- 10) The preferable Vote is _____

II. Mark with an X, the correct answer that corresponds to the following propositions:

1) By means of the popular vote in Colombia are elected the one:

- a) The President, Vice-president, senators and representatives to the Chamber
- b) The Mayors and Governors
- c) The Councilmen, Deputies and members of the local administrator assembly
- d) All the previous ones
- e) None of the previous ones

2) The Vote is a:

- a) Fundamental right
- b) Collective right
- c) Cultural right
- d) All the previous ones
- e) None of the previous ones

3) In Colombia they are electoral authorities the following ones:

- a) The Congress of the Republic
- b) The Registrar of the Civil State and the Electoral National Council
- c) The Superior Council of the Judicature
- d) All the previous ones
- e) None of the previous ones

4) The elections of the President and the Vice-president of the Republic are carried out:

- a) The same day of that of the senators and representatives to the Chamber
- b) The same day of that of the Mayors and Governors
- c) In different day to anyone another popular election
- d) All the previous ones
- e) None of the previous ones

5) They are the elect candidates' vacancies permanent or absolute:

- a) Illness license or of vacations
- b) The suspension in the exercise of the electoral functions
- c) The death and the investiture loss
- d) All the previous ones
- e) None of the previous ones

- 6) The Mayors and Governors are elects in the same day of the election of:**
- a) The President of the Republic and Vice-president
 - b) The municipal Councilmen and the departmental deputies
 - c) The Senators and Representatives to the Chamber
 - d) All the previous ones
 - e) None of the previous ones
- 7) The electoral Quotient in Colombia is:**
- a) An electoral formula applied in the election of mayors and governors
 - b) An electoral formula applied in the election of parliamentarian, President and Vice-president of the Republic
 - c) An electoral formula applied in the election of councilmen, deputies and members of local administrator assembly
 - d) All the previous ones
 - e) None of the previous ones
- 8) The National Registrar of the civil state is elected for:**
- a) The presidents of the Constitutional Court, the Supreme Court of Justice and the Council of State
 - b) The Superior Council of the Judicature
 - c) The Electoral National Council
 - d) All the previous ones
 - e) None of the previous ones
- 9) The Members of the Electoral National Council, they are elected for:**
- a) The Superior Council of the Judicature
 - b) The Congress of the in the middle of Republic
 - c) The Constitutional Court
 - d) All the previous ones
 - e) None of the previous ones
- 10) The electoral National Council has as special attribution:**
- a) To recognize the personality juridical of the unions
 - b) To recognize the personality juridical of the Non government Organizations
 - c) To recognize the personality juridical of the foundations and corporations
 - d) All the previous ones
 - e) None of the previous ones

VII. THE ACTIVITIES OF THE STUDENT AND THE PROFESSOR

- I. **In study symposium he/she examine and express their opinions on the following themes:**
 1. In Colombia they are carried out several elections in different dates and for diverse Public Corporations or individual political Institutions. What opinion does have in this respect? Does he/she believe that they are too many the elections and too expensive for the Colombian people?
 2. In our country it is elected President and Vice-president of the Republic for a four year-old period. What do positive opinions or negatives have in this respect?
 3. Alone to the Mayors and Governors the mandate can be revoked, whereas its election is made by means of the call "Vote programmatic". Do you believe that this vote and abrogative of the mandate should extend to the parliamentary ones and even to the elections of President and Vice-president of the Republic?
 4. The electronic Vote (or e-voting) in Colombia is hardly a prototypical application for some cities in last Presidential elections. Do you believe that in the next elections this technological or computer system of voting will be imposed for all the national, departmental and municipal elections?
 5. Does believe that they are enough or not the electoral authorities at the moment existent in Colombia? Why do you reason?