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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT REPORT

on

OUT-OF-COUNTRY VOTING

On the basis of comments by

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* This document has been classified restricted at the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents

INTRODUCTION

1. The issue of citizens voting abroad is discussed on a regular basis either in European states or the rest of the world.
2. Accordingly, the Council for Democratic Elections and the Venice Commission decided to produce a study on this issue. This will focus on the question of the right to vote and will not deal with the matter of eligibility for election.
3. Two documents describing the situation in the various European states have been produced in this connection: a document setting out the legal provisions on out-of-country voting (CDL-EL(2010)013rev2) and a summary table (CDL-EL(2010)014rev) showing the situation in the Venice Commission member states.
4. On this basis, Ms Durrieu (expert, France) and Mr Trócsányi (substitute member, Hungary) have prepared contributions on which this report is based.
5. The aim of this report is both to produce an overview and to open up some lines of discussion in order to reach a consensus on the issue of out-of-country voting.
6. *This report was adopted by the Council for Democratic Elections at its meeting (Venice,) and by the Venice Commission at its ... session (Venice,).*

I. THE PRINCIPLE OF OUT-OF-COUNTRY VOTING

1. Overview

For the Council of Europe

7. Article 3 of Protocol No. 1 to the ECHR does not require voters living abroad to be guaranteed the right to vote in parliamentary elections but states that “(t)he High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature”.
8. The Council of Europe encourages member states to permit their citizens living abroad to participate as far as possible in the electoral process: see PACE Resolution 1459 (2005) (paragraph 7) on the abolition of restrictions on the right to vote and Recommendation 1714 (2005) (paragraph 1.ii).
9. A decisive step was taken by the *European Court of Human Rights* when it delivered a judgment on Greek officials working for the Council of Europe.¹ Nikolaos Sitaropoulos, Stephanos Stavros and Christos Giakoumopoulos, all Greek nationals and officials of the Council of Europe living in Strasbourg, expressed the wish to the Greek Ambassador in France to exercise their right to vote in the Greek parliamentary elections.
10. Since the adoption of the Greek Constitution in 1975, Article 51(4) has authorised the legislature to lay down the conditions for expatriate voters to exercise voting rights. However, for 35 years the Greek legislature has failed to implement this provision. A draft law of February 2009 entitled “*Exercise of the right to vote in parliamentary elections by Greek voters living abroad*” indicated a more open-minded attitude but the intention was denied two months later by

¹ ECGR 8 July 2010, *Sitaropoulos and Others v. Greece*, Application No. 42202/07, judgment of 10 July 2010.

simply rejecting the proposal. Since then, no fresh initiative has been taken to promote Greek expatriates' right to vote.

11. In this situation, the national authorities replied at the time to the applicants that their wish could not be fulfilled owing to the absence of the legislative regulation that was required to provide for "special measures (...) for setting up polling stations in embassies and consulates".

12. The three applicants were effectively unable to exercise their right to vote and therefore decided to make an application to the European Court of Human Rights, which held in July 2010, by 5 votes to 2, that there had been a violation of Article 3 of Protocol No. 1.

13. The Court has undertaken a comparative analysis of the domestic law of 33 Council of Europe member states and established that a large majority (29) have implemented procedures allowing voting from abroad.

14. countries provide for the right of expatriates to vote from their place of residence (Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Finland, France, Georgia, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Moldova, Netherlands, Poland, Romania, Russia, Serbia, Slovakia, Spain, Sweden, Switzerland, Ukraine and the United Kingdom).

15. member states impose certain restrictions on their nationals' right to vote from abroad (Ireland, Denmark, Czech Republic).

16. do not provide for the possibility for their nationals to vote in parliamentary elections abroad: Albania, Armenia, Azerbaijan, Malta.

17. However, the Court did not consider that Article 3 of Protocol No. 1 had to be interpreted as generally imposing a positive obligation on national authorities to guarantee voters living abroad the right to vote in parliamentary elections. The situation is, however, different in Greece owing to the existence of a specific constitutional provision. Without declaring that the Greek Constitution made it compulsory to introduce the right to vote from abroad, the Court held that "the absence for such a long period of regulations on the right of expatriates to vote from their place of residence, despite the rule laid down in Article 51 § 4 of the Constitution, is likely to constitute unfair treatment of Greek citizens living abroad in relation to those living in Greece"². Referring to European practice (most states allow voting from abroad) and to the fact that the right to vote was at risk, which reduced member states' margin of appreciation, the Court held that "the absence of the legislative implementation of the rules laid down in Article 51 § 4 of the Constitution for a period lasting more than three decades, combined with the development of the law of the Contracting States in this area, is sufficient to engage the liability of the respondent State under Article 3 of Protocol No. 1"³.

For the 57 countries belonging to the European Commission for Democracy through Law

18. The Venice Commission has also carried out a comparative study of the situation in its 57 member states (see documents CDL-EL(2010)013rev2 and CDL-EL(2010)014rev). It should be pointed out that it is not necessary in all states to introduce the right to vote for citizens living abroad either in the same way or to the same degree.

² *Ibid.*, para. 43.

³ *Ibid.*, para. 47.

19. There are, for example, 12 countries where no legal provisions have been enacted to organise voting for their nationals living abroad. These countries are: Albania, Armenia, Chile, Cyprus, Greece, Ireland, Israel, Malta, Morocco, Montenegro, San Marino and Turkey.

20. Of these 12 countries, 9 are Council of Europe member states: Albania, Armenia, Cyprus, Greece, Ireland, Malta, Montenegro, San Marino and Turkey.

21. There are both small and big differences between these 12 states with regard to the absence of a legal framework for out-of-country voting and we propose to discuss them.

- Albania and Cyprus: no provision has been found in the electoral legislation (Albania) or the constitution (Cyprus).
- Armenia: out-of-country voting was abolished in 2007 by an amendment to the Electoral Code of the Republic of Armenia. This is clearly a retrograde step with regard to Article 51 of that Code, which was adopted on 5 February 1999 and regulated the procedure for out-of-country voting. The reason given for the abolition of the right to vote abroad was the introduction of dual nationality (but Armenians abroad do not necessarily have dual nationality).
- Chile, Greece, Montenegro, San Marino and Turkey: in the case of these four states, only those citizens who are in their respective countries at the time of the election are able to vote, since they can participate in all elections. As far as Greece is concerned, it is necessary to refer to the July 2010 decision of the European Court of Human Rights discussed above.
- Ireland, Israel and Morocco: the only people allowed to vote abroad are members of the diplomatic corps and the army (Ireland and Israel). Morocco allows out-of-country voting in the case of referendums. In Ireland, the reason given for the absence of the citizens' right to vote was their large number, which could influence the result, plus the fact that they pay no taxes in Ireland and do not in principle have to comply with Irish laws.

2. The principle of out-of-country voting: arguments in favour

Nationality and citizenship

The principle of “nationality” is the legal recognition of the citizen.

22. Consequently, a country's citizens enjoy the rights granted in that country. And the principle of “out-of-country voting” preserves the right of citizens who have settled outside their country of origin to participate in the politics of their country “from a distance”. Some countries even elect members of parliament who specifically represent citizens living abroad. For example, in France senators who represent citizens abroad are elected, and from 2012 the same will apply to deputies “representing French people living abroad”.

23. The voting procedure must make it possible to respect the principle that citizens living in the country, and expatriates must be treated as equals.

24. This prevents citizens from being cut off from their country of origin and fosters their sense of belonging to their home nation regardless of geographical or even economic or political circumstances.

25. In the aforementioned case concerning Greece, the European Court of Human Rights did not rule that the right to vote should be given to expatriates in general, but it did state that Article 3 of Protocol No. 1 could in certain cases require citizens to be given the right to vote abroad.

26. In this connection, it is necessary to take a look at the arguments that may justify such a right, as well as its limitations or, indeed, the refusal to grant it.

27. The following issues accordingly arise.

- Can a citizen with the nationality of a particular country be partially deprived of his/her civic rights by not being allowed to vote from abroad? This is the situation for many countries.
- Or can that citizen be given “partial” or “restricted” rights under special rules? This is the case for many countries.
- Under such circumstances, what becomes of the principle of “recognised or acquired nationality”?
- What, under such restrictive conditions, becomes of the principle of the universality and constitutionality of the “right to vote” granted in a democracy? See the case of Greece.
- How can it be justified for the right to vote to be granted to expatriates for national elections but not for local elections?
- How can it be justified to impose restrictions in respect of local elections on representatives of expatriates sitting in parliament (as may be the case for France)?
- If citizens living abroad are on the population register or an electoral roll of a specific locality, can it be justified to refuse them the right to vote?

II. WHO CAN VOTE?

1. Principle

28. The states included in the analysis may draw a distinction between citizens who are temporarily out of the country (for example, as tourists) and those living permanently abroad. This distinction may play an important role when determining the arrangements for enabling these two categories of citizens to participate in elections. Different lists may be maintained with different national authorities, in most cases diplomatic missions or local authorities. These lists will serve as a basis when compiling the electoral rolls.

29. states replied to the question:

“Citizens resident abroad or temporarily out of the country” by stating that there was no restriction concerning the length of absence or the obligation to have resided in the country.

30. These states are: Algeria, Belarus, Bulgaria, Czech Republic, Croatia, Spain, Estonia, Finland, Iceland, Lithuania, Luxembourg, Moldova, Monaco, Norway, Netherlands, Peru, Poland, Slovakia, Slovenia, Sweden, Switzerland and Ukraine. It should be noted that Kyrgyzstan only refers to “citizens resident abroad” and excludes “temporary” residents. In Andorra, it is possible to vote in advance in the country, which is not a problem for expatriates as the majority of them live close to Andorra.

31. In other states, only citizens temporarily out of the country can participate in elections. In many cases, in order to do this they must be entered on a national register.

32. That is the case in Bosnia and Herzegovina, where citizens temporarily out of the country are entered on their local population registers, and in “the former Yugoslav Republic of Macedonia”, where citizens temporarily out of the country are also recorded in the national register.

33. This also applies to Hungary. However, citizens must be entered on the population register maintained at diplomatic missions abroad.

34. Liechtenstein also only refers to the notion of “citizens temporarily out of the country”.

35. Denmark reserves the right to vote outside the country for citizens aged at least 18 who are temporarily abroad but otherwise live in Denmark.

36. It is also possible that the right to vote, while granted for a long period to expatriates, is no longer granted when this period has expired. In the United Kingdom, citizens living abroad or temporarily out of the country must have lived in the United Kingdom (at a specific moment) during the past 15 years and be entered in the electoral roll at the place of origin.

37. The meaning of the term “citizen temporarily out of the country” may therefore vary. This term should be given a precise legal framework. The basic idea is that a fairly strong tie must remain with the country of origin.

38. In another group of states, no distinction is drawn between citizens temporarily out of the country and citizens resident abroad. However, they must all be entered on the national electoral rolls, which are generally maintained by the local authorities. That is the case in Austria and the Republic of Korea.

39. Finally, in a last group of countries there is a clear distinction between citizens temporarily out of the country and citizens resident abroad.

40. In the case of Croatia, for example, for citizens resident abroad the electoral roll is maintained in Zagreb, whereas for those temporarily out of the country it is maintained at diplomatic or consular missions.

41. In Spain, citizens resident abroad register with the Regional Election Office, whereas those temporarily out of the country have to register with diplomatic missions.

42. The information on 19 states contains details of additional conditions for regulating the right to vote from abroad.

- Austria, France, Georgia, Italy, Portugal and Serbia provide for citizens resident abroad to be entered on a consular electoral roll.

- In Belgium, the citizen must be entered on the population register at diplomatic missions. No distinction is made between a citizen “resident abroad” and one “temporarily out of the country”.

- In Bosnia and Herzegovina, citizens temporarily out of the country have to be entered on the population register in their place of origin.

- Brazil provides for citizens resident abroad to be entered on the electoral rolls at diplomatic missions, whatever the duration of their stay outside Brazil.

- In Korea, a citizen resident abroad or temporarily out of the country is entered on the population register.

- Citizens resident in Hungary but temporarily out of the country are entered on the population register at a consular mission, but only on condition that the country in which the mission is located does not oppose the ballot.

- In Latvia, citizens resident abroad or temporarily out of the country may vote provided they are entered on the population register at a consular mission.

- Mexico requires that its nationals who are resident abroad or temporarily out of the country have a voter card that they have received in person in Mexico itself.
- Russia, requires a written or oral application from its citizens who are resident abroad or are temporarily out of the country.
- Ukraine requires that “a legitimate reason” be given by its nationals living outside Ukraine, whether or not they are citizens who are resident abroad or temporarily out of the country

2. Registration procedures

43. The organisation of elections and, consequently, the organisation of out-of-country voting generally begins by compiling the electoral rolls, which serve both to identify citizens who have the right to vote and to make ex post facto checks on the electoral proceedings. These rolls may be compiled in several ways, although they are based on the rolls already mentioned. Generally, a prior application is required from the citizen abroad (“active” registration system). In these cases, it is necessary to determine the deadline for citizens to register, the form required for this type of declaration and the authority to which these applications must be made.

44. Some states provide for themselves to take action in the case of persons living abroad. The state may maintain a list of its citizens and call on them to participate in elections when they are held, or else the fact that they are resident abroad may be recorded on lists that form the basis of electoral rolls (for example, population registers).

45. In the case of Algeria, Belgium, Brazil, France (register of French people living outside France), Georgia (consular population register), Italy, Latvia, Morocco and the United Kingdom, diplomatic missions abroad keep a list of citizens living permanently in the territory to which their diplomatic responsibility applies.

46. In Norway, on the other hand, it is the municipal authorities that keep the list of residents abroad. A similar system exists in the Netherlands, where the municipality of The Hague maintains such a list.

47. As far as the deadline for applying for registration is concerned, it may vary from 180 days before the election to just three days. The differences are considerable but they may nonetheless be justified for administrative reasons relating to the voting arrangements.

48. Germany, for example, provides for a period of twenty-one days. In Belgium, a form is sent between the first day of the eighth month and the fifteenth day of the fifth month before the elections and must be returned by the citizens concerned by the first day of the fourth month before the elections at the latest. In the case of Brazil, citizens have to register 180 days before the election. In the Republic of Korea, the period is 60 to 150 days, in the Czech Republic 60 days, in the Netherlands six weeks, in Finland 46 days, in Estonia 30 days, in Georgia 21 days, in Hungary 16 days and in Spain 25 days. In Poland, however, it is only three days.

49. The form of the application may also vary a great deal. It may consist of a printed form or a simple letter, or even an oral declaration.

50. The application must be made in writing in Germany, Iceland, Mexico (registered letter), the Netherlands and Russia. In the case of Belgium, Spain and Denmark a form has to be filled in. In Luxembourg, the application may be made on a sheet of paper or a form. In the case of Hungary, it must be made in person or by a person delegated for the purpose. In Malta, the

registration requires a sworn declaration, while in the case of Poland the application may be made in writing, by telephone, by telex or by fax.

51. Finally, more often than not the application has to be sent to a diplomatic or consular mission. This is the case in the following states: Austria, Belgium, Brazil, Czech Republic, France, Georgia, Italy, Latvia, the Netherlands, Poland, Portugal, Russia, Serbia, Spain, "the former Yugoslav Republic of Macedonia", Ukraine and the United Kingdom. Ukraine requires the applicant to provide "a legitimate reason".

52. The application must be made to the local authorities in Bosnia and Herzegovina, Bulgaria, Denmark, Germany, Hungary, Luxembourg and Switzerland.

53. Finally, the application must be submitted to the national authorities in some states. In Iceland, the national registry records the applications; while in Mexico this is done by the Federal Electoral Institute. Applications are sent to the Electoral Commission in Norway and the National Electoral Commission in Slovenia. In Sweden the Tax Agency keeps a list of these citizens.

54. The next step after making arrangements for out-of-country voting is the actual compiling of the electoral rolls, which is therefore generally carried out on the basis of applications from citizens resident abroad. In most cases, the same authorities that have recorded the applications are responsible for carrying out this task.

55. For example, in the case of Belarus, the heads of consular missions set up the polling stations in accordance with the procedure laid down by the central commission. They are also responsible for drawing up the consular electoral roll.

56. In the case of Belgium, each diplomatic or consular mission sends the forms returned by the citizens to the local authority chosen by the citizen via the Federal Government Service responsible for Foreign Affairs. On receipt, the local authority enters the citizen's name on the electoral roll and indicates the voting method selected.

57. In Brazil, all registration and voting procedures are the responsibility of the diplomatic mission, which draws up the list of voters registered for each election and sends it to the Ministry of Foreign Affairs. An electoral judge from the First Zone of the Federal District approves the new electoral roll and cancels the previous one.

58. The electoral rolls are still kept by the diplomatic missions in the cases of the Czech Republic (under the supervision of the Ministry of Foreign Affairs), France, Georgia (under the supervision of the Central Electoral Commission), Kyrgyzstan, Latvia, Lithuania, Morocco, Poland (under the supervision of the Ministry of Foreign Affairs), Portugal and the United Kingdom.

59. In Denmark, the electoral rolls are kept by the municipalities, even for citizens resident abroad. In Hungary too, it is the local electoral offices that draw up the consular electoral roll and forward the details to the National Electoral Office. In Liechtenstein, the citizens concerned remain on the roll on which they were entered before they left the country. In Luxembourg, the College of Mayors and Aldermen of the locality in question keeps and supervises the electoral roll for citizens resident abroad. Responsibility for compiling the consular electoral rolls lies with the local electoral office or the department in charge of elections in the case of Serbia, Switzerland and Ukraine.

60. On the basis of the population register, in Finland the Ministry of Foreign Affairs, which is responsible for organising out-of-country voting, draws up the electoral roll. In Iceland, this is done by the national registry, which is also a national authority. In Italy, the government compiles the consular electoral rolls country by country on the basis of the population register. In Mexico,

the Federal Electoral Institute keeps the register of voters abroad and temporarily removes citizens from the national constituency's electoral roll as soon as they are entered on that register. In Russia, the Ministry of Foreign Affairs submits the consular electoral rolls compiled by the Russian missions abroad to the Central Electoral Commission.

Observations

- Certain conditions seem reasonable and applicable
 - registration on a consular electoral roll
 - conduct of proceedings in writing
 - presentation of a legitimate reason
 - registration at the place of origin
 - possession of a personal voter's card
 - presentation of a passport or residence permit.

- Is there a need for more than this?
 - Should evidence have to be supplied that the person has lived in his/her country of origin for a given number of years?
 - Should a limit be placed on the time for which he/she is allowed to be away? This would require clarification of and legislation on what is meant by "temporarily" abroad. The notions of "duration" and/or "permanence" would also have to be defined.
 - If it is assumed that the notion of duration limits the period of residence abroad, it might be asked how the time-limit criterion has to be laid down. Moreover, in many cases the persons concerned retain their nationality even if they acquire another. At any rate, they do not lose their nationality after a specific period has expired.

- What might justify refusing citizens resident abroad the right to vote or placing restrictions on that right? Perhaps the demographic situations of the respective countries:
 - Some states, for historical reasons (emigration to escape poverty, ethnic or religious persecution), have a large "diaspora" whose members remain loyal to their country of origin. This applies for example to Armenia or Ireland, which pose problems with regard to "opening up the right to vote" to these individuals resident abroad.
 - By contrast, Portugal, more than 20% of whose electorate live abroad, "opens wide" all general and national-level elections.
 - The absence of a tie to the country of origin – hence the establishment of a time-limit by some states. The tie is generally easier to maintain with a country than with a locality, for example – hence greater restrictions imposed on the right to vote at local authority level.
 - Practical difficulties. These may be twofold: organisational difficulties, for example with regard to drawing up electoral rolls, the delivery of electoral materials or counting votes; difficulties in guaranteeing the integrity of the electoral process in the case of remote voting (postal voting, proxy voting, internet voting). These two types of difficulty can be avoided by restricting the voting arrangements to voting in embassies or consulates (and perhaps in a number of specially set up polling stations). However, it is necessary to be aware that in this case the guarantee of universal suffrage will only be relative as few voters will in practice be able to vote.

III. THE ELECTIONS CONCERNED

The situation varies a great deal from one state to another.

All elections: 7 states: Austria, Bosnia and Herzegovina, Denmark, Ireland, Iceland, Israel, Norway

Presidential	Parliamentary	Referendum	European	Local
Algeria	Algeria	Algeria		Algeria
Belarus	Belarus	Belarus		Belarus
	Belgium		Belgium	
Brazil		Brazil		
Bulgaria	Bulgaria			
	Croatia			
	Czech Republic			
	Estonia	Estonia		
Finland	Finland			Finland
France		France	France	
Georgia	Georgia			
	Germany		Germany	
	Hungary	Hungary	Hungary	
	Italy	Italy		
Korea	Korea			
Kyrgyzstan	Kyrgyzstan	Kyrgyzstan		
	Latvia	Latvia		
	Liechtenstein	Liechtenstein		Liechtenstein
	Lithuania	Lithuania	Lithuania	Lithuania
	Luxembourg	Luxembourg	Luxembourg	
Mexico				
Moldova	Moldova	Moldova		
	Monaco			Monaco
		Morocco		
	Netherlands		Netherlands	
Peru	Peru	Peru		
Poland	Poland	Poland		
Portugal	Portugal	Portugal	Portugal	
“the former Yugoslav Republic of Macedonia”	“the former Yugoslav Republic of Macedonia”			
Romania		Romania		
Russia	Russia	Russia		
Serbia	Serbia			
	Slovakia			
Slovenia	Slovenia	Slovenia		
	Spain	Spain		Spain
	Sweden	Sweden	Sweden	Sweden
	Switzerland	Switzerland		Switzerland ⁴
Ukraine	Ukraine	Ukraine		
	United Kingdom		United Kingdom	

⁴ Cantonal elections in some cantons.

1. National political elections

61. Opening up national elections to expatriates poses fewest problems when they take place in a single constituency (such as a presidential election) or in extremely large constituencies: the very size of the constituency suggests that the outcome of the vote cannot be altered simply because of the expatriate vote. In addition, expatriates are reluctant to complete the pre-election formalities (such as registration) and individuals permanently living outside their country of origin are less keen on actually exercising their entitlement to vote.

62. On the other hand, in the case of small constituencies there may be a fear that by choosing to vote in a particular constituency expatriates might be able to alter the outcome of the election of a member of parliament for the constituency in question. Opening up the right to vote in parliamentary elections may raise two questions:

- Where expatriates vote to elect members of the lower house (or, in cases of direct universal suffrage such as in Italy, senators) in ordinary constituencies, the question is how to choose the constituency to which the voter will be attached. If the choice is left to the voter, is there a risk of political manipulation or opportunism?
- Accordingly, it is important to set limits and insist on a legal link with the constituency (such as its being their place of birth or one in which they own a property or pay taxes). Should there be a quota of expatriate voters per constituency?
- For example, votes are counted in the place of origin in Austria, Finland, Hungary and Spain.
- In some states, a central constituency, that of the capital, receives the votes of persons resident abroad. In Georgia, for example, the votes are counted in the Tbilisi constituency; in Latvia in the Riga constituency in the case of parliamentary elections, in Lithuania in the Vilnius constituency, in Moldova, in the Chisinau constituency and in Poland in the Warsaw Centre constituency.
- Specific members are sometimes elected to represent nationals who are temporarily out of the country or have settled abroad on a long-term basis, as has been the case for French senators and will be for deputies from 2012 onwards. In Croatia and Italy, there is an electoral constituency of nationals living abroad, while in Portugal there are two such constituencies (Europe and outside Europe).
- The problem is accordingly the “establishment of the electoral college” or at least the number of seats allocated to the constituency/constituencies of citizens living abroad. If this number is too restricted, this can undermine one of the fundamental principles of democracy, that of equal suffrage. The number of voters abroad registered per seat should be equivalent to the number of voters living in the constituency.

2. Local elections

63. In constituencies with a small population (such as small local authorities) elections are sometimes decided by a very narrow margin, and a single vote can be decisive. The risk is that, by taking part in local elections, expatriates may alter majorities. This is the reason why expatriates have restricted voting rights, and sometimes none at all, at local authority level.

64. However, if they are registered at their place of origin and especially if they own property there and hence pay taxes, their rights are legitimate under an overall and consistent pattern of law. How can these individual rights be respected and fraud or manipulation be curbed?

65. The choice of voter attachment for local elections must be regulated by laying down an attachment criterion (such as place of birth, former place of residence or ownership of property).

66. How can de jure affiliation to a “country of origin” be reconciled with de facto affiliation to a “host country” through residence for a specific period or an indeterminate or unlimited time? The right to vote at the local level is accorded to a specific category of foreign nationals living in most Council of Europe member states – especially European citizens within the EU (Article 20.2.b of the Treaty on the Functioning of the European Union).

67. Can this situation or this juncture open up possibilities for a “mixture”, “exchange” or “superimposition” of rights in the two countries concerned? This is a matter that needs to be speedily addressed, especially in the EU-27, if this Europe is to become a true reality.

3. European elections

68. While the treaties entitle all European citizens to vote either in their country of residence or in the one whose nationality they have kept, it is important to ensure that the lists are properly kept in the 27 states in order to avoid double voting, which would constitute a breach of the equality of citizens with regard to universal suffrage.

IV. VOTING METHODS

69. In the countries studied, there are five different ways of conducting elections. In most cases, citizens living abroad can vote either in person or by post. It is also possible, in some cases, to vote by proxy, to vote in advance or to vote electronically.

70. In the case of sixteen countries studied (Brazil, Bulgaria, Croatia, the Czech Republic, Georgia, Hungary, Iceland, Korea, Moldova, Montenegro, Morocco, Poland, Romania, Russia, Serbia and Ukraine), citizens resident abroad can only vote in person. Voting in person is one possible method of voting in fifteen other countries studied (Algeria, Belarus, Belgium, Bosnia and Herzegovina, Denmark, Estonia, Finland, France, Latvia, Lithuania, Norway, Portugal, Slovenia and Sweden). In all these cases, voting takes place at the representation, diplomatic missions or consulates of the country concerned.

71. The citizens of 21 countries can vote by post. Nine of them only provide for this method of voting for residents abroad (Austria, Germany, Ireland, Italy, Liechtenstein, Luxembourg, Mexico, Slovakia and Spain) while in twelve this is just one possible method (Belgium, Bosnia and Herzegovina, Estonia, Kyrgyzstan, Latvia, Lithuania – for people temporarily out of the country –, the Netherlands and Portugal - in the case of parliamentary elections, Slovenia, Sweden, Switzerland and the United Kingdom).

72. There is provision for voting by proxy in the following states: Algeria, Belgium, France, Monaco, the Netherlands, Sweden and the United Kingdom.

73. Advance voting – which is especially advantageous for people who are on a brief stay abroad on election day – also exists in seven countries with varying time-limits: in Belarus, it is possible five days before the election, in Denmark up to three months in advance and in Finland from five to eight days in advance. This method of voting is also provided for in Kyrgyzstan, Lithuania, Norway and Malta, where it is the only method available to those outside the country.

74. Finally, electronic voting is also allowed in two countries (Estonia and the Netherlands – where there is no provision for internet voting, however), as well as in Switzerland, which is trialling e-voting as a new voting method.

V. CONCLUSION

75. All democracies are fragile, and the risks of political instability in some of the countries which have recently moved to democracy are giving rise to fears of vote rigging.

76. These risks, which have not been properly evaluated, call for caution or even restrictions or exclusions.

77. However, proper observance of the fundamental rights of the citizens of Council of Europe member states (freedom of expression, thought and religion, while preserving public order and the rights of others) should guarantee that:

- expatriates' voting rights and citizenship really mean something in Europe or, at any rate, in the European Union;
- respect for national citizenship, which has to be in accordance with the European Convention on Human Rights, must be fully guaranteed, without restriction, in any state governed by the rule of law;
- the right to continue to vote in one's country of origin and possibly, in some cases, in one's country of residence at the same time, should be one of the facilities granted to persons travelling in Europe, and a means of asserting "European citizenship".

78. In this Europe under construction, the role of the European Commission for Democracy through Law is not to encourage potential feelings of nostalgia but to support the rule of law, based on open and fair elections and simultaneous access to forms of national and European citizenship which respect human rights and fundamental freedoms.