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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
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DRAFT REPORT
ON
OUT-OF-COUNTRY VOTING

on the basis of comments by

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Table of contents

I.	Introduction	3
II.	The principle of out-of-country voting	3
A.	The rules of the Council of Europe	3
B.	For the 57 countries belonging to the European Commission for Democracy through Law	5
III.	Who can vote?	6
A.	Principle.....	6
B.	Registration procedures	7
IV.	The elections concerned.....	9
V.	Voting methods.....	10
VI.	Out-of-country voting: weighing up the arguments.....	11
A.	In favour of out-of-country voting	11
B.	Against out-of-country voting	11
C.	Possible restrictions and how they operate	12
D.	Specific nature of different types of election	13
1.	National political elections.....	13
2.	Local elections	14
3.	European elections	14
VII.	Conclusion.....	14

I. Introduction

1. The Council for Democratic Elections and the Venice Commission decided to produce a study on the question of the right to vote of citizens living abroad.
2. 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.
3. On this basis, Ms Durrieu (expert, France) and Mr Trócsányi (substitute member, Hungary) have prepared contributions on which this report is based.
4. This report was adopted by the Council for Democratic Elections at its meeting (Venice,) and by the Venice Commission at its ... session (Venice,).

II. The principle of out-of-country voting

A. The rules of the Council of Europe

5. Article 3 of Protocol No. 1 to the ECHR 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”. It does not deal with the vote of citizens abroad in particular.
6. In its traditional case-law, the *European Court of Human Rights* held that the restriction of the right to vote to citizens resident in national territory could be justified on the following grounds: “(1) the assumption that a non-resident citizen is less directly or continuously concerned with, and has less knowledge of, a country’s day-to-day problems; (2) the impracticality and sometimes undesirability (in some cases impossibility) of parliamentary candidates presenting the different electoral issues to citizens living abroad so as to secure the free expression of opinion; (3) the influence of resident citizens on the selection of candidates and on the formulation of their electoral programmes; and (4) the correlation between one’s right to vote in parliamentary elections and being directly affected by the acts of the political bodies so elected”.¹
7. 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, who had asked to note at the 2007 parliamentary elections.²
8. 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 simply rejecting the proposal. Since then, no fresh initiative has been taken to promote Greek expatriates’ right to vote.

¹ ECtHR 19 October 2004, *Melnichenko v. Ukraine*, no 17707/02, judgment of 19 October 2004, para. 56; *Hilbe v. Liechtenstein* (dec.), no 31981/96, ECHR 1999-VI (7 September 1999). See also the case-law of the European Commission on Human Rights, *X v. United Kingdom*, no 7730/76, D.R. 15, p. 137 (28 February 1979).

² ECtHR 8 July 2010, *Sitaropoulos and Others v. Greece*, Application No. 42202/07, judgment of 10 July 2010. This case is now pending before the Grand Chamber.

9. 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”.

10. 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.

11. 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. The situation in the Council of Europe member states will be discussed in detail later on.

12. 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”³. 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”⁴.

13. For its part, the *Parliamentary Assembly of the Council of Europe* encourages member states to allow their citizens living abroad to participate to the fullest extent possible in the electoral process: see Resolution no 1459 (2005) (paragraph 7) and Recommendation no 1714 (2005) (paragraph 1.ii) on the abolition of restrictions on the right to vote; see also Recommendation no 1410 (1999) on links between Europeans living abroad and their countries of origin (paragraph 5.iii).

14. The Code of Good Practice in Electoral Matters produced by the *Venice Commission* provides simply that “the right to vote and to be elected may be accorded to citizens residing abroad”, without making it a requirement to grant such a right.

15. Having been asked to give an opinion on the repeal of the right of Armenian citizens to vote from abroad, the Venice Commission said that “countries considering arrangements for external voting will have to balance universal suffrage against transparency and security during elections. It is also a matter of costs to what extent large groups can be accommodated”⁵. However, a reform withdrawing the right to vote from certain citizens (in this case expatriates) *should be carefully justified*⁶.

16. In another opinion concerning the grant of the right to vote to Macedonian citizens living abroad, the Commission stressed that “no precise international standards exist for implementing such measures, but elections abroad should generally meet the same standards for democratic elections as in-country procedures. The design of a system for

³ *Ibid.*, para. 43.

⁴ *Ibid.*, para. 47.

⁵ CDL-AD(2007)023, paragraph 10.

⁶ *Ibid.*, paragraph 13.

voting abroad depends on the particular circumstances of a country, including its administrative, infrastructure, budget constraints, in-country election arrangements and level of public confidence”⁷.

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

17. 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). National approaches vary widely, ranging from denial of the right to vote from abroad to a very open attitude.

18. There are, for example, 12 countries where no legal provisions have been enacted to organise voting for their nationals abroad or where the right to vote has only been granted to a very restricted category of people. These countries are: Albania, Armenia, Chile, Cyprus, Greece, Ireland, Israel, Malta, Montenegro, San Marino and Turkey.

19. Of these 12 countries, 10 are Council of Europe member states: Albania, Andorra, Armenia, Cyprus, Greece, Ireland, Malta, Montenegro, San Marino and Turkey.

20. 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, Andorra, Cyprus, Malta: no provision has been found in the Constitution or in electoral legislation. In Andorra, however, there are arrangements under which expatriates may vote in advance in national territory. In Malta, only voters resident in the country who are absent on polling day may vote in advance. It should be noted that Maltese citizens who happen to be abroad on polling day and are on the electoral register may be reimbursed by the state 90% of their travel costs if they come back to Malta for voting.

- Armenia: out-of-country voting was abolished in 2007 by an amendment to the Electoral Code of the Republic of Armenia. Article 51 of that Code, which was adopted on 5 February 1999, 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 five states, only those citizens who are in their respective countries at the time of the election are able to vote and can participate in all elections. As far as Greece is concerned, the situation could change if the July 2010 decision of the European Court of Human Rights discussed above were to be confirmed by the Grand Chamber.

- Ireland, Israel: the only people allowed to vote abroad are members of the diplomatic corps and the army.

21. In all the other states, the principle of voting from abroad is recognised. The arrangements for this vary, with a corresponding variation in the legal and practical possibilities available to citizens to vote from abroad. This will be discussed below under three headings:

- definition of the out-of-country electorate (who can vote, what is the procedure for registering?)
- definition of the elections concerned

⁷ CDL-AD(2007)012, paragraph 5.

- voting procedure.

III. Who can vote?

A. Principle

22. The right to vote is recognised in many states for citizens resident abroad or temporarily out of the country without any restrictions concerning the period of absence or the obligation to have resided in the country.

23. This is the case in the following states: Algeria, Austria, Azerbaijan, Belarus, Belgium, Brazil, Bulgaria, Czech Republic, Croatia, Estonia, Finland, France, Georgia, Iceland, Italy, Republic of Korea, Kyrgyzstan, Latvia, Lithuania, Luxembourg, Mexico, Moldova, Monaco, Norway, Netherlands, Peru, Poland, Portugal, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland and Ukraine. The principle of the right to vote from abroad of citizens who are permanently resident abroad or temporarily out of the country is therefore recognised in a broad majority of the states considered. In Morocco it applies only to referendums.

24. In Ukraine, voters must be resident abroad or temporarily out of the country “for a legitimate reason”.

25. 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.

26. 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.

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

28. Denmark reserves the right to vote outside the country for Danish citizens aged at least 18 who are temporarily abroad but otherwise live in Denmark. The same applies to Hungary (those concerned are recorded in the national register).

29. 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.

30. In Germany, citizens living outside the country can vote provided they were continuously resident in Germany for a period of at least three months and have not been out of the country for more than 25 years. A distinction is drawn between citizens temporarily out of the country, who can vote in all elections, and those who are resident abroad, who can only vote in national and European elections.

31. 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.

32. The expressions “temporarily out of the country” and “resident abroad” clearly need to be defined because their meaning may vary greatly depending on national legislation and practice.

The basic idea is that persons “temporarily out of the country” have stronger ties with their country of origin.

B. Registration procedures

33. Voting from abroad is subject to a number of practical conditions, beginning with registration on the electoral roll. 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.

34. 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 or consular offices abroad keep a list of citizens living permanently in the territory over which they have jurisdiction.

35. 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. In Sweden, it is the tax agency which keeps a list of these citizens.

36. However, that does not prevent these states, like others, from requiring voters living out of the country to register on the electoral roll. The registration requirements vary from one country to another.

- In Belgium, for example, citizens must be recorded on the population register kept by diplomatic missions. No distinction is made between citizens “resident abroad” or “temporarily out of the country”.
- Brazil requires citizens resident abroad to register on the electoral roll at diplomatic missions whatever the length of their stay.
- In Korea, citizens resident abroad or temporarily out of the country are recorded on the population register.
- Citizens resident in Hungary but temporarily out of the country are recorded on the population register at a consular office, provided however the country in which the office is located is not opposed to the election.
- In Latvia, citizens resident abroad or temporarily out of the country can vote provided they are recorded on the population register at a consular office.
- Mexico requires its nationals resident abroad or temporarily out of the country to hold a voter’s card issued to them in person in Mexico only.
- On the other hand, Romania, for example, has no registration requirement prior to voting. Neither does Estonia if the person votes at a diplomatic mission or consular office. But an application must be made to vote by post. In Russia, a written application is not essential; a verbal request may be made to the relevant polling station.
- Norway is even more open to voting by its citizens from abroad in that it keeps them for ten years on the electoral roll of the local authority where they were registered before leaving the country; once that period has expired, an application must be made to the Electoral Commission.

37. 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.

38. For example, 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 registration period is between 150 and 60 days before the election. In the Czech Republic, voters may register up to 60 days before the election. In the Netherlands the corresponding period is six weeks, in Finland 46 days, in Estonia 30 days, in Spain 25 days, in Germany and Georgia 21 days and in Hungary 16 days. In Poland, however, it is only three days. Where the periods in question are long, they are reduced in the event of early elections: for example, Belgian law stipulates that, where this is the case, all registration operations must be completed before the fifteenth day preceding the date of the election.

39. 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.

40. The application must be made in writing in Germany, Iceland, Mexico (registered letter), the Netherlands. 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 that purpose, or by registered mail. 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.

41. The application has to be sent to diplomatic or consular missions. This is the case, for example 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.

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

43. 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.

44. 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.

45. 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.

46. 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.

47. 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.

48. 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.

49. 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.

50. 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.

51. Some countries draw a distinction for purposes of registration procedure between citizens temporarily out of the country and citizens resident abroad. In the case of Croatia, for example, the electoral roll is kept in Zagreb for citizens resident abroad, while for citizens temporarily out of the country it is kept at diplomatic missions or consular offices. In Spain, citizens resident abroad register with the provincial delegation of the election office, while citizens temporarily out of the country have to register at diplomatic missions.

IV. The elections concerned

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

53. Expatriates are allowed to vote in all elections in five states: Austria, Bosnia and Herzegovina, Denmark, Iceland, and Norway. In Ireland and Israel, only diplomats and military personnel can vote in all elections; in Germany, citizens temporarily out of the country can vote in all elections.

54. For a complete picture, reference should be made to the table below.

Presidential	Parliamentary	Referendum	European	Local
Algeria	Algeria	Algeria		Algeria
Azerbaijan		Azerbaijan		
Belarus	Belarus	Belarus		Belarus
	Belgium		Belgium	
Brazil		Brazil		
Bulgaria	Bulgaria			
	Croatia			
	Czech Republic			
	Estonia	Estonia		
Finland	Finland			Finland
France	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	
		Morocco		
Mexico				
Moldova	Moldova	Moldova		
	Monaco			Monaco
	Netherlands		Netherlands	
Peru	Peru	Peru		
Poland	Poland	Poland		
Portugal	Portugal	Portugal	Portugal	
Romania	Romania	Romania	Romania	
Russia	Russia	Russia		
Serbia	Serbia			
	Slovakia			
Slovenia	Slovenia	Slovenia		
	Spain	Spain		Spain
	Sweden	Sweden	Sweden	Sweden
	Switzerland	Switzerland		Switzerland ⁸
“the former Yugoslav Republic of Macedonia”	“the former Yugoslav Republic of Macedonia”			
Tunisia		Tunisia		
Ukraine	Ukraine	Ukraine		
	United Kingdom		United Kingdom	

V. Voting methods

55. 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.

56. 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 diplomatic representations missions or consulates of the country concerned.

57. 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).

⁸ Cantonal elections in some cantons.

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

59. Advance voting – which is especially advantageous for people who are on a brief stay abroad on election day – also exists in eight 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 Andorra, Kyrgyzstan, Lithuania, Norway and Malta, where it is the only method available to those outside the country.

60. 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.

VI. Out-of-country voting: weighing up the arguments

A. In favour of out-of-country voting

61. The following arguments can be put forward in favour of out-of-country voting.

62. Legal recognition of citizens is based on the principle of “nationality”. The citizens of a country therefore enjoy, in principle, all the civil rights recognised in that country.

63. The principle of “out-of-country voting” enables citizens living outside their country of origin to continue participating in the political life of their country on a “remote” basis. Some countries even elect members of parliament specifically to represent citizens living outside the country (Croatia, France, Italy, Portugal, Romania, “the former Yugoslav Republic of Macedonia”).

64. Out-of-country voting guarantees equality between citizens living in the country and expatriates.

65. It ensures that citizens maintain ties with their country of origin and boosts their feeling of belonging to a nation of which they are members regardless of geographical, economic or political circumstances.

66. The European Court of Human Rights, in the previously mentioned case concerning Greece, did not require the right to vote to be granted to expatriates in general. It did point out, however, that Article 3 of the Additional Protocol might require this in some cases.

B. Against out-of-country voting

67. According to the traditional case-law of the European Court of Human Rights cited above, the exclusion of non-resident citizens from the right to vote can be justified on the following grounds:

- the assumption that a non-resident citizen is less directly or continuously concerned with, and has less knowledge of, a country’s day-to-day problems – which may be termed a “tenuous” link with the country of origin;
- the impracticality and sometimes undesirability (in some cases impossibility) of parliamentary candidates presenting the different electoral issues to citizens living abroad so as to secure the free expression of opinion;
- the influence of resident citizens on the selection of candidates and on the formulation of their electoral programmes;

- the correlation between one's right to vote in parliamentary elections and being directly affected by the acts of the political bodies so elected⁹.

68. To these may be added:

- the fact that the persons concerned (generally) do not pay tax in the country of origin;
- the practical arrangements involved, which include:
 - the cost of keeping a register of out-of-country voters and organising out-of-country voting;
 - the risk of uncertainty or unreliability of out-of-country voting, eg in the case of voting by post, because of problems with postal services and/or the distance involved;
 - more generally, the risks associated with the lack of transparency of the out-of-country voting process.

69. Furthermore, the situation is difficult in countries with many nationals living abroad. Fears that they might have a decisive influence on the outcome of an election are understandable. Armenia and Ireland are two cases in point, where "opening up the right to vote" to citizens living abroad poses problems. In Ireland, the failure to grant the right to vote to citizens living abroad has been justified not only by the fact that they do not pay tax in Ireland and, in principle, are not bound by Irish laws, but also by their large number, which could influence the result. When all the descendants of a state's citizens obtain that state's nationality unconditionally, the potential electorate may also expand considerably. Portugal, which has over 20% of its electorate abroad, opens all national elections widely to its citizens living out of the country.

70. The issue is particularly sensitive where states grant their citizenship on the basis of ethnic affiliation to persons living abroad, particularly in neighbouring countries.

C. Possible restrictions and how they operate

71. Given that, in the case of national elections at least, it is exceptional for foreign nationals to have the right to vote in their place of residence, expatriates are likely to be unable to vote anywhere if they do not have the right to vote in their country of origin. Denying them that right is therefore equivalent to a derogation from the right to vote. It should be possible to find a solution more in keeping with the principle of proportionality by placing certain restrictions on expatriates' voting rights.

72. Restrictions of a formal nature or based on the voting procedure make it possible to exclude persons having no ties with the country of origin – who will probably not vote anyway. The mere fact of requiring registration on an electoral roll, usually for a limited period, calls for action on the part of potential voters.

73. One might also wonder whether, instead of excluding expatriates completely, it would not be preferable to restrict the right to vote to those who have lived in the country for a certain time, and to set a limit on the period for which they retain the right to vote after leaving the country. But the situation differs depending on whether we are talking about national or local elections. These points will now be considered in greater detail.

74. Formal restrictions on the exercise of the right to vote pose no problems. They include:

- registration on a consular electoral roll
- the need for a written application

⁹ ECtHR 19 October 2004, *Melnichenko v. Ukraine*, no 17707/02, judgment of 19 October 2004, para. 56; *Hilbe v. Liechtenstein* (dec.), no 31981/96, ECHR 1999-VI.

- registration in the municipality of origin
- presentation of a personally issued voter's card
- presentation of a passport or resident's card.

75. As we have already seen, practical difficulties may also be cited as arguments against out-of-country voting. They are of two kinds: organisational difficulties, for example in drawing up electoral rolls, providing election equipment or counting votes; and difficulties in guaranteeing that the election process is conducted in the proper way when methods of remote voting are used (postal vote, proxy voting, e-voting). Both types of difficulty can be avoided by restricting the voting procedure to embassies or consulates (or possibly to a number of specially designated polling stations). It should be borne in mind, however, that, if this is the case, the universality of suffrage will not be fully guaranteed because few voters will be able to vote in practice.

76. A tenuous link with the country of origin may justify denial of the right to vote. Several factors may be taken into account in this connection:

- the period of residence in the country of origin (persons having never resided there would in any case not have the right to vote)
- the period of residence abroad. Persons no longer "temporarily" out of the country would thus be excluded. To ensure that this criterion is clearly defined, it would be preferable to specify the period of absence leading to loss of the right to vote.

D. Specific nature of different types of election

1. National political elections

77. The opening up of national elections to expatriates is least problematical when elections are held in a single constituency (presidential election or national referendum, for example) or in very large constituencies: the very size of the constituency suggests that the expatriate vote by itself cannot change the outcome of the election. Besides, it may be noted that expatriates generally show little readiness to carry out the prior formalities (eg registration) and that people living on a long-term basis outside their country of origin generally show little readiness to actually exercise the right to vote.

78. In the case of small constituencies, however, there is a risk that the result of the election of the member for a constituency might be affected by the votes of the expatriates who have (freely) chosen to vote in that constituency. The issue of the opening up of the right to vote in parliamentary elections can be settled in two ways:

79. The first possibility is that of participation in the election of members of parliament (or of senators where they are elected by direct universal suffrage, as in Italy) in ordinary constituencies. The problem here is that of the choice of constituency: should expatriate voters be free to choose the constituency to which they are attached? Would there then be a possible risk of opportunistic political manoeuvring regarding the choice of constituency?

80. Would it therefore be preferable to set limits and require a legal link (place of birth, former residence, property ownership, payment of tax etc). Should there be a quota in each constituency?

81. Austria, Finland, Hungary and Spain are examples of countries where votes are counted in the municipality of origin.

82. In some countries, a central constituency, that of the capital city, receives the votes of persons living out of the country; in Georgia, these votes are counted in the constituency of Tbilisi, in Latvia, they are counted in the constituency of Riga for parliamentary elections, in Lithuania it is the constituency of Vilnius, in Moldova the constituency of Chisinau, and in Poland the constituency of Warsaw Centre.

83. The second possibility is to elect members specifically to represent nationals living temporarily or permanently abroad, as will be the case in France for senators and deputies starting in 2012 (in 11 one-member constituencies). Croatia has an election constituency for Croats living abroad, Italy has one for Italians living abroad, Portugal has two such constituencies (Europe and outside Europe), “the former Yugoslav Republic of Macedonia” has three.

84. The problem is then to define the “electoral college”, or at least the number of seats allocated to the constituency of citizens living out of the country. If this number is too small, that may distort one of the fundamental principles of democracy, equal suffrage. The number of out-of-country voters registered per seat should be equivalent to the number of in-country voters.

2. Local elections

85. In constituencies with a small population (eg small municipalities), elections are sometimes decided by a small difference of votes and a single vote may be sufficient to decide an election. The risk is that expatriates might, by participating in local elections, change the majorities. This is one of the reasons for the restrictions placed on voting by expatriates in local elections, or even their exclusion.

86. Yet it can be argued that if voters are registered in their municipality of origin and, a fortiori, if they pay tax there because they own property, their rights are legitimate and should be conceived in terms of “globality” and “continuity”. How is it possible to respect these individual rights and to limit fraud and manipulation?

87. If expatriates are granted the right to vote in local elections, their choice of voting location should be regulated by requiring a link with the place (place of birth, former residence, property ownership).

88. Moreover, extension of the right of foreign nationals to vote in local elections, particularly within the European Union (Article 20.2.b of the Treaty on the Functioning of the European Union) might lead to the possibility of voting in two places (country of origin and country of residence). Such a situation is not necessarily desirable.

89. In short, it is usually easier to maintain links with a country than with a municipality, for example. Hence the greater restrictions placed on the right to vote at municipal or even regional level. Expatriate voting at these levels remains the exception and cannot be established on the basis of a European rule.

3. European elections

90. Although the treaties recognise the right of every European citizen to vote either in his/her country of residence or in the country whose nationality he/she retains, lists of voters should be kept very carefully in the 27 states to guard against double voting, which would constitute a breach of equality with respect to universal suffrage.

VII. Conclusion

91. National practices regarding the right to vote of citizens living abroad and its exercise are far from uniform in Europe.

92. However, developments in legislation, such as the judgment delivered recently by the European Court of Human Rights in a case concerning Greece, which is not yet final, point to a favourable trend in out-of-country voting, in national elections at least, as regards citizens who have maintained ties with their country of origin.

93. That is true at least of persons who are temporarily out of the country. But definitions of the temporary nature of a stay abroad vary greatly and if this criterion is adopted, it should be clarified.

94. Distinctions should also be drawn according to the type of elections. National, single-constituency elections are easier to open up to citizens resident abroad, while local elections are generally closed to them, particularly on account of expatriates' tenuous link with local politics.

95. The proportions of citizens living out of the country may also vary greatly from one country to another. When there are a large number of them, they may have a decisive impact on the outcome of the election, which may justify an exclusion from the right to vote which would be much more debatable in other countries.

96. It is perfectly legitimate to require voters living abroad to register to be able to vote, even if registration is automatic for residents.

97. The obligation to vote in an embassy or consulate may in practice severely restrict the right to vote of citizens living abroad. This restriction may be justified on the grounds that the other means of voting (postal vote, proxy voting, e-voting) are not always reliable¹⁰.

98. To sum up, while the denial of the right to vote to citizens living abroad or the placing of limits on that right constitutes a restriction of the principle of universal suffrage, the Commission does not consider at this stage that the principles of the European electoral heritage require the introduction of such a right.

¹⁰ On this aspect, see Code of Good Conduct in Electoral Matters (CDL-AD(2002)023rev), I.3.2.