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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
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COMMENTS

ON

ELECTORAL LISTS AND VOTERS RESIDING DE FACTO ABROAD

CASE-STUDY: BULGARIA

by

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1. Addressing the issue of de facto abroad voting has many implications as rational organization of the electoral process, guaranteeing the universality and equality of the passive voting rights of persons, optimal exercise and counting of the votes, improvement of logistics in the electoral management, optimization of the functioning electoral bodies – commissions, boards or tribunals. Correct registration and careful preparation of the most inclusive voters lists while excluding deceased or persons not residing at the place they are registered has been indispensable to the Mirabeau and Condorcet ideas of elections mirroring of peoples will and preferences in a constitutional democracy. Incorrect inclusion of voters in the election lists and de facto voting might impair election result bringing vulnerability of voting rights and instability of democratic governance legitimized by twisted unfair empowerment through elections.
2. No doubt that under the control of judiciary particularly in most of the countries member states of the Council of Europe after a constitutional court decision it might lead to cancellation of mandates or the whole result of the general elections consequently bringing to the repetition of the elections.
3. Thus, to increase safeguards against double voting or incorrect counting seems an important additional means of how to deal with voters on electoral lists who de facto reside abroad.
4. Voting abroad has faced dilemma how to be maximum inclusive by creating the easiest access of out of the country Bulgarians to cast their votes at the place they are during the time elections are being held and attempt at closing any door to electoral fraud.

Brief Review of the Bulgarian Legal Framework and Procedure for Voting Abroad

5. Bulgarian nationals outside Bulgaria have enjoyed the privilege to vote in all democratic elections for parliament, president and EU parliament (after the effective EU Membership) ever since 1991. Those Bulgarian nationals who qualify as voters as of the Election Day for Members of Parliament (MPs), for the President and the Vice President of the Republic of Bulgaria and for Bulgarian Members of the European Parliament (MEPs) are free to do so in the States where they reside providing polling stations are opened in line with the Bulgarian legislation and with the receiving country's national legislation. The vote abroad for MEPs is organized solely in EU member states. It is only local elections that shall not be held outside the Republic of Bulgaria.
6. Ever since 1991 the Bulgarian election law has been seeking to provide for the easiest possible election procedure outside Bulgaria while the required legal safeguards against abuse of suffrage or voting twice are in place.
7. The now existing Election Code provides guarantees to enable Bulgarian nationals, including those who reside outside Bulgaria, to exercise their political rights. The legislation as it is provides for an easy voting procedure for respective elections that are held outside Bulgaria.
8. Article 42, para. 1 of the Constitution reads that every citizen (above the age of 18, with the exception of those placed under judicial interdiction or serving a prison sentence) shall be free to elect Members of Parliament, the President and the Vice President of the Republic and Bulgaria's Members of the European Parliament.
9. Polling stations outside Bulgaria shall be opened subject to the Election Code and it is the Central Election Commission (CEC) that defines the circumstances under which a polling station may be opened to serve Bulgarian nationals outside Bulgaria, just as it defines, in addition, the modus, procedure and organization of voting.

10. Bulgarian nationals who reside outside Bulgaria and who enjoy the right to vote and are willing to vote are invited to apply in writing at least 25 days prior to the Election Day. The application shall be hand-signed and submitted in person or dispatched by letter post to the diplomatic mission or to the consular service of the Republic of Bulgaria in the respective State. One letter may contain more than one application, and one person may be entered in each application. Also the Bulgarian national may do it by means of an electronic application via the CEC Internet site. The applicant to vote shall enter, in the application, his or her names thereof as they appear in the passport, the military card or the identity card, the Standard Public Registry Personal Number (EGN) and the domicile thereof in the Republic of Bulgaria. The applicant to vote shall write, in Cyrillic or in Latin characters, the place abroad where he or she wishes to vote. The applicant to vote may state, in the application, an electronic address or a contact telephone number at which he or she is to be notified of the outcome of the verification of the particulars that he or she has supplied.

11. The Minister of Foreign Affairs shall forthwith publish, on the Ministry's Internet site, the terms and procedure and the arrangements for the voting of Bulgarian nationals in polling stations in locations outside Bulgaria. The heads of the diplomatic missions and of the consular services of the Republic of Bulgaria shall accordingly publish, on the Internet site of the mission or of the service, the terms and procedure and the arrangements for the voting of Bulgarian nationals in polling stations in locations outside Bulgaria.

12. The heads of the diplomatic missions or of the consular services of the Republic of Bulgaria shall forthwith transmit the applications received from applicants who wish to vote abroad by electronic means to the Central Election Commission. The applications received shall forthwith be uploaded on the CEC Internet site in compliance with the provisions of the Personal Data Protection Act. The CEC shall check the particulars as supplied in the applications in writing not later than 22 days prior to the Election Day. The particulars in the applications shall be checked upon their reception by the CEC and their entry. The CEC shall check whether the applicants to vote outside Bulgaria meet the Constitution and the Election Code requirements. Premising on the findings the CEC shall forthwith notify the Ministry of Foreign Affairs and transmit to it the names of those persons who have the right to vote abroad and of those locations where polling stations are to be opened abroad. Not later than 20 days prior to the Election Day the Ministry of Foreign Affairs shall sum the data state by state and shall forthwith transmit these data to the heads of the respective diplomatic missions and consular services so that they proceed with the establishment of polling stations. The heads of the diplomatic missions and of the consular services of the Republic of Bulgaria shall enter the names of the persons who have the right to vote in the rolls and sign these rolls that are on a state by state and place by place basis. The rolls are the validation for the polling stations to be opened outside Bulgaria.

13. The Ministry of Foreign Affairs shall transmit the summed data from all States with the names, the Standard Public Registry Personal Numbers and the domicile in the Republic of Bulgaria of the persons entered on the rolls to the Directorate General of Civil Registration and Administrative Services at the Ministry of Regional Development and Public Works not later than 18 days prior to the Election Day so that the said person could be removed from the electoral rolls for voting in the Republic of Bulgaria. The purpose of doing this is to thwart the fraud of voting twice, if attempted. The electoral rolls shall be released by the Minister of Foreign Affairs and by the heads of the diplomatic missions and of the consular services of the Republic of Bulgaria not later than 18 days prior to the Election Day. The number and the address of the polling station shall likewise be published. The heads of diplomatic missions and of consular services of the Republic of Bulgaria shall ensure to each voter searchability of the roll by Standard Public Registry Personal Number, including by means of a free-of-charge telephone number. Any applications received additionally and any intervening changes in the rolls shall be published forthwith. Any persons, who have not been entered on a roll may dispute the non-entry thereof within three days after the publishing of the roll before the Central

Election Commission, which shall pronounce within three days by a decision, which shall be appealable before the Supreme Administrative Court within three days after the pronouncement.

14. Outside Bulgaria the voting and the counting of the ballots cast by Bulgarian nationals shall be carried out in polling stations and in compliance with the Election Code provisions. Polling stations outside Bulgaria shall be opened by the heads of the diplomatic missions and of consular services of the Republic of Bulgaria while they observe the national legislation of the receiving State. Some States don't allow holding Bulgarian elections on their territory. The heads of the diplomatic missions and of consular services shall determine the location of the polling stations abroad considering the compactness of the Bulgarian community in the receiving State. The organizations of Bulgarian nationals in the respective nucleated settlement may make a proposal for the location of the polling stations abroad to the heads of diplomatic missions and of consular services. Such a proposal shall be made not later than 25 days prior to the Election Day.

15. Forthwith but not later than 55 days prior to the Election Day the heads of diplomatic missions and of consular services of the Republic of Bulgaria must approach the receiving State to request its consent, if the consent is required in order to:

- hold the elections;
- open polling stations at the diplomatic missions and consular services;
- open polling stations outside the diplomatic missions and consular services;
- open polling stations in a State where the Republic of Bulgaria does not have a diplomatic mission or a consular service but has diplomatic relations with that State and has appointed an accredited ambassador.

16. The heads of diplomatic missions and of consular services shall forthwith notify the Ministry of Foreign Affairs of the answers received from the receiving State.

17. Polling stations abroad shall be established:

- where there is a diplomatic mission or a consular service: provided that there are not fewer than 20 voters who have submitted an application to state their will to vote;
- where there is not a diplomatic mission or a consular service: provided that there are not fewer than 40 voters who have submitted an application to state their will to vote;
- in places where, in elections conducted not earlier than five years prior to the Election Day, at least one polling station was established and not fewer than 100 voters voted therein; the list of the said places shall be made public by the Central Election Commission not later than 50 days prior to the Election Day;
- in places other than those referred to above, at the discretion of the heads of diplomatic missions and of consular services on the basis of the total number of applications submitted or of the total number of persons who voted in preceding elections, including where the number of applications submitted for a certain place was below 40; the heads of diplomatic missions and of consular services of the Republic of Bulgaria shall transmit a reasoned proposal to the Central Election Commission not later than 22 days prior to the Election Day.

18. Where the number of voters exceeds 500, the number of polling stations to be established shall be arrived at by dividing the number of voters by 500. If there is a remainder, an additional polling station may be established. Not later than 21 days prior to the Election Day the Central Election Commission shall determine the places in the States where polling stations abroad will be established just as it will determine the number of polling stations in each place. Polling stations shall be established by an order of the heads of diplomatic missions and of consular services not later than 18 days prior to the Election Day on the basis of the CEC decision.

19. The heads of diplomatic missions and of consular services of the Republic of Bulgaria shall render administrative and logistic assistance to the candidates and the representatives of the parties, coalitions and nomination committees which have registered candidates upon the holding of meetings with the voters. The heads of diplomatic missions and of consular services of the Republic of Bulgaria shall extend an invitation for assistance to organizations of Bulgarian nationals abroad. The organizations may assist the activity for the preparations and arrangements for the elections abroad, ensure contacts with the local administration, an appropriate space for holding the elections, ballot boxes, polling booths, a scanner, mobile Internet and other equipment.

20. The Central Election Commission shall appoint a Section Election Commission (SEC) to oversee each polling station to be opened outside Bulgaria not later than 12 days prior to the Election Day. A SEC outside Bulgaria shall be composed of a chairperson, a deputy chairperson, a secretary and members.

21. The number of SEC members, counting the chairperson, the deputy chairperson and the secretary, shall be:

- for polling stations with up to 500 voters inclusive: up to seven members, but not fewer than five;
- for polling stations with more than 500 voters: up to nine members, but not fewer than five.

22. The Central Election Commission shall appoint the members of Section Election Commissions abroad following a consultation process with the parties and coalitions that run in the elections. The CEC shall appoint in each SEC one member nominated by the Minister of Foreign Affairs or a deputy minister empowered thereby. The Minister of Foreign Affairs or the deputy minister empowered thereby may make the proposal on the basis of proposals by organizations of Bulgarian nationals in the respective country. The members included in the Section Election Commissions, who have been nominated by the Minister of Foreign Affairs or by a deputy minister empowered thereby, shall be posted by the Minister of Foreign Affairs.

23. On the Election Day voters who vote abroad shall establish the identity thereof by producing a passport, identity card or military identity card (valid only for the military) and shall sign a declaration to the effect that they will not vote elsewhere.

24. In case the validity of the identity document of the voter has expired, the said voter shall be admitted to voting if he or she presents a certificate issued by the diplomatic mission or consular service of the Republic of Bulgaria to the effect that the said person has submitted an application for the issuance of a new identity document.

25. Bulgarian nationals who have not been disfranchised and who go to the polling station on the Election Day without prior notification shall be added to the roll for voting and thereafter admitted to vote upon the production of an identity document and a declaration to the effect that they will not vote elsewhere. The Section Election Commission shall enter the following particulars from the identity document into the roll for voting: the voter's first name, middle name and family name; the EGN (i.e. the Standard Public Registry Personal Number); the identity document number; the identity document type; the domicile in the Republic of Bulgaria and then let the voter proceed. The voter shall drop the ballot into the ballot box and shall sign the roll for voting. If the domicile in the Republic of Bulgaria does not appear in the voter's identity document, the voter shall submit a declaration with a domicile to be entered into the roll of voters. The roll of voters that the SEC entered into the roll for voting shall be signed by the SEC chairperson and secretary and shall be stamped with the SEC seal.

26. The Section Election Commission shall declare the voting results in a generally accessible place in front of the polling station by displaying the copy of the signed tally sheet stamped, on

each page, with the SEC seal and signed, on each page, by the SEC chairperson, deputy chairperson and secretary.

27. Forthwith but not later than 24 hours local time on the Election Day the SEC chairperson shall transmit to the Central Election Commission the election results by:

- a scanned copy of the signed tally sheet of the Section Election Commission;
- a scanned copy of the roll for voting abroad.

28. The senders of the tally sheet and of the roll for voting shall stay pending the CEC confirmation of the receipt of documents.

29. Improvement of the voting process outside Bulgaria seeks to bring an increased number of Bulgarian citizens to the polling stations. Their inclusion into the rolls for voting and the establishment of polling stations near where they reside or stay are made easier. Unlike the electoral rolls for voting in Bulgaria that are compiled by civil servants whose job description contains such a function, the electoral rolls for voting outside Bulgaria are an initiative that the voters themselves launch on a case by case basis (i.e. from election to election). Hence the difficulties that might be expected in the logistics and that might be cleared up by prospective legislative measures.

Brief Comments on the Explanation and Methods to resolve Discrepancy in numbers concerning out of the country voting brought by the international observation of the Elections in Bulgaria

30. "The GRAO informed the OSCE/ODIHR EOM that the voter lists, before election day, contained 6,868,455 people. Regrettably, although the information was available, the GRAO did not provide the public or the OSCE/ODIHR EOM with disaggregated data on the number of voters per electoral constituency, thereby diminishing transparency. The number of registered voters seems high when compared to the estimated 6.2 million population over the age of 18 years old.²⁵ Both the National Statistics Institute (NSI) and the GRAO referred to the different approaches in counting the population and the number of voters. While the NSI bases its calculations on the population that is present on the territory of the country or has left it for a period not exceeding one year, the GRAO calculates the number of voters by encompassing all Bulgarian citizens possessing voting rights, including those citizens residing abroad. The provision of the Electoral Code, which states that citizens who had left Bulgaria more than two months prior to Election Day should be removed from in-country voter lists for the parliamentary elections was not implemented."

31. A total of 115,737 and 114,208 voters voted in polling stations outside Bulgaria in the parliamentary elections in 2013 and 2014, respectively. The 2011 vote abroad to elect the President and the Vice President of the Republic totalled 48,581 whereas the runoff vote received 47,883 ballots. Evidently the voter turnout outside Bulgaria is extremely higher in parliamentary elections than in presidential elections or in elections where the Bulgarian Members of the European Parliament are elected.

32. Between 1990 and 2014 some 1.5 million Bulgarian citizens left the country whereas the 80,500 persons of Bulgarian extraction who acquired Bulgarian citizenship by naturalization reside permanently in other countries. The official number of voters who figured on the electoral rolls on the territory of the Republic of Bulgaria for the 2014 parliamentary election was 6,931,855. The higher than real number of voters on the electoral rolls is to be attributed to the great number of Bulgarian nationals who chose to leave the country in the past 25 years and to reside in countries other than Bulgaria? Such persons are routinely registered in the electoral rolls that cover their last domicile in Bulgaria in order to be compliant with the Election Code explicit provision to that effect. Their names in the election rolls shall not be deleted as the Bulgarian Constitution reads that everyone shall have the right to freedom of movement on the

territory of the country and the right to leave the country and to return to the country as he or she chooses. Persons who leave the country are not bound, when they settle in any State, to approach the diplomatic missions and consular services of the Republic of Bulgaria to request that they be registered, hence the impossibility to count objectively the voters who really stay on the territory of the Republic of Bulgaria as of any Election Day and to establish the identity of each such individual. Many of the Bulgarian nationals who have left the country are dead but in default of a valid death certificate that a Bulgarian public authority is to issue, their names shall not be deleted and they remain on the rolls for voting. Over the years these facts made it possible for the rolls of voters to accommodate a great number of individuals who either did not reside in the Republic of Bulgaria or died. Even with his or her name entered into a roll of voters, an individual cannot vote if he or she happens to be outside Bulgaria on the Election Day. Such an individual may cast his or her ballot in polling stations that have been opened in other States in the above-described mode. Therefore a possibility for election frauds is to be ruled out inasmuch as the vote is but individual.

33. One of the possible solutions which has been used by some countries electoral legislation to cope with the voting from abroad has been debated in Bulgaria too as a method of copying with logistics difficulties in organization and management of accuracy in counting of the votes cast.

34. While there exists a possibility to remove persons who are outside Bulgaria from the rolls for voting, this possibility is contingent upon a single or periodic active voter registration. Another possible measure is to make it binding on Bulgarian nationals to register with the Bulgarian diplomatic missions and consular services in the country where they reside, however it is difficult to put it into practice.

35. The Bulgarian legislation provides exceptional guarantees that all voters have their names entered into the rolls for voting and that they will have a free way to cast their ballot on the election day. The name of a voter who is omitted shall be additionally entered into the roll for voting on the Election Day providing his or her identity document makes it obvious they qualify as voters.

36. In regard to the registration logistics of the persons voting abroad there are various approaches in the national electoral systems and it best solutions have not been formulate as European or international standards as has been recorded in the Venice commission report in 2011. It should be also considered as a complication limiting the voting from abroad that in some countries registration with the diplomatic or consular institution has been mandatory requirement to the vote casting. See CDL-AD(2011)022:

“35. 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.

36. 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.

37. 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. Some countries do not provide for opportunity to establish foreign polling stations on their territory, or out of the diplomatic and consular services polling stations. If electronic (internet) voting has not been provided prevent the foreign nationals to participate in the elections in their country of origin.

38. The option of voting from abroad in the diplomatic and consular offices is practically out of hand (not available) if like in the case of Bulgaria they are not available or quite distant for many countries and the motherland is out of resources to provide their travel to and back to the polling stations. Bulgarian ministry of foreign affairs has made its best to organize maximum inclusive and accurate preconditions for casting votes abroad. However, due to severe finance restrictions, resulting from limited budget and inability to maintain sufficient diplomatic and consular personnel capacity abroad it has been extremely difficult and burdensome to organize out of the country voting of Bulgarians. These difficulties cannot be fully compensated with specially ad hoc assigned staff that has been regularly sent during presidential or parliamentary election in some of countries were Bulgarians have de facto residence

39. Inconsistency between the figures of de facto voting and the electoral code provisions might be further reduced if the residence requirement should be replaced with its definition that is now stated in § 1 of the supplementary provisions of the code in the context of address registration.

SUPPLEMENTARY PROVISIONS

§ 1. Within the meaning given by this Code:

1. A Bulgarian citizen who "has resided in Bulgaria in the last five years" shall be any such citizen who had actual residence and permanent abode within the territory of Bulgaria during more than half of the time of each of the five years preceding the date of the elections.

The stay outside the Republic of Bulgaria shall also qualify as residing in Bulgaria for the time during which a Bulgarian citizen was sent there by the Bulgarian State.

2. A person who "has resided in the Republic of Bulgaria or in another Member State of the European Union for at least in the last three months" shall be:

- a) any Bulgarian citizen who had a permanent-address or a present-address registration within the territory of the Republic of Bulgaria or in another Member State of the European Union;

b) any citizen of a Member State of the European Union who has a residence address within the territory of the Republic of Bulgaria or of another Member State of the European Union, for at least 60 days in the last three months as of the date of conduct of the elections.

The stay outside the Republic of Bulgaria shall also qualify as residing in Bulgaria for the time during which a Bulgarian citizen was sent there by the Bulgarian State.

3. A person who “has resided in the Republic of Bulgaria or in another Member State of the European Union at least during the last six months” shall be:

a) any Bulgarian citizen who had a permanent-address or a present-address registration within the territory of the Republic of Bulgaria or in another Member State of the European Union;

b) any citizen of a Member State of the European Union who has a residence address within the territory of the Republic of Bulgaria or of another Member State of the European Union, for at least 6 months as of the date of conduct of the elections.

The stay outside the Republic of Bulgaria shall also qualify as residing in Bulgaria for the time during which a Bulgarian citizen was sent there by the Bulgarian State.

4. A person who “has resided in the respective nucleated settlement for at least in the last six months”, within the meaning given by Article 396 herein, shall be:

a) any Bulgarian citizen who had a permanent-address or a present-address registration within the territory of the respective municipality or mayoralty;

b) any Bulgarian citizen who had a permanent-address or a present-address registration in different municipalities and mayoralties within the territory of the Republic of Bulgaria;

c) any national of a Member State of the European Union who has a residence address within the territory of respective municipality or mayoralty, at a date preceding the date of conduct of the elections by 6 months, and the persons who have changed the address registration thereof shall have the right to vote according to the previous address registration thereof, where the said persons are included in the electoral rolls.

5. A person who “has resided in the respective nucleated settlement for at least in the last six months”, within the meaning given by Article 397 herein, shall be:

a) any Bulgarian citizen who had a permanent-address or a present-address registration within the territory of the respective municipality or mayoralty;

b) any Bulgarian citizen who had a permanent-address or a present-address registration in different municipalities and mayoralties within the territory of the Republic of Bulgaria;

c) any national of a Member State of the European Union who has a residence address within the territory of respective municipality or mayoralty, at a date preceding the date of conduct of the elections by 6 months.

6. “Residence address” shall be the address whereat a person is registered upon the stay thereof in the Republic of Bulgaria or in another Member State of the European Union.

7. “Durable and permanent residence status” shall be a status acquired under the terms and according to the procedure established by the Act on Entry into, Residence in, and Exit from, the Republic of Bulgaria by European Union Citizens and Family Members Thereof.

40. Finally – last but not least – since almost a year ago, the public discourse in the area of electoral legislation has addressed the pros and cons of electronic vote that might bring maximal inclusion of voters abroad but has certain deficiencies against preventing fraud in out of the country voting and its negative side has been exposed by repeating the sound arguments of the German constitutional court decision on the subject.

41. Theoretically but not practically another option consequential from the EU citizenship voting rights might be also considered.

42. Some of the diplomatic and consular services with personnel capacity might open polling stations for EU member states that have not this option when elections of European parliament are taking place.