

There is no citizenship without identity, and without identity there is no state and – at the present stage of integration – no European Union either.

Based on the approach outlined above, dual citizenship should be understood as an entitlement which – due to the special personal circumstances of the individual – affords him or her the right to belong to two political communities and to enjoy the rights stemming from this situation as well as to undertake the obligations and responsibilities flowing from the same. Although dual citizenship may arise under different circumstances, European regional international law recognizes four groups: women acquiring multiple citizenships by virtue of marriage, individuals acquiring the citizenship of more than one state *ex lege* at birth, persons unable to renounce their previous citizenship due to restrictions imposed by third states and persons residing permanently abroad, but sharing ties with the national community, who, due to historical reasons lost their citizenship through no fault of their own.

As a result of the legal development facilitated by the Council of Europe and the Strasbourg Court, the voting rights of citizens residing abroad have not only become acceptable, but are even desirable. Such a practice takes a tolerant stance towards the question of external voting of dual citizens residing abroad as well as the legal institution itself. Considering the history of these institutions it becomes apparent that both the voting rights afforded to persons residing abroad as well as the institution of dual citizenship served as a primary instrument to compensate for past injustices. The legislation adopted and the legal development that took place in Europe in this field may be deemed exemplary.

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External Voting in the International Practice: A Comparative Analysis and Overview

The present study attempts to offer a review of several important statements and conclusions of the International IDEA Handbook 2007¹, which monitors external voting practices of 115 countries worldwide. It also examines other relevant materials and presents its own conclusions. Undoubtedly, our world is constantly changing, and we need to formulate our own answers to these challenges. Broadly speaking, globalization, migration, professional and personal life – as challenges of the 21st century – have all contributed to the increasing interest in external voting rights in recent years. At the same time, external voting is quite a new phenomenon, and it also appears on the political agenda in many countries of the world. According to the IDEA Handbook's definition, external voting is none else but "*provisions and procedures which enable some or all electors of a country who are temporarily or permanently outside the country to exercise their voting rights from outside the territory of the country*".²

First of all, it is important to emphasize that there is no uniform legislation for external voting either in the European Union or elsewhere in the world. Essentially, the European Union leaves the regulation of external voting in the competence of the member states. Considering the different electoral systems and electoral practices in the world, external voting has never been easy to implement. Currently, external voting is allowed in 115 countries and territories worldwide.³ These 115 countries represent more than 50 per cent of the world's democracies, which seems to indicate a tendency in favour of external voting. According to the IDEA Handbook's latest data, a fairly high number (41) of European countries allow external voting in the world⁴. Secondly, international migration has also had an impact on the electoral system of those countries whose citizens are increasingly leaving

¹ International Institute For Democracy and Electoral Assistance

² *The International IDEA Handbook, Voting from Abroad*, 2007, p. 67, hereinafter IDEA, <http://www.idea.int/publications/esd/index.cfm>

³ *Ibid* p 3.

⁴ IDEA, p. 3.

their country due mainly to economic reasons. Essentially, it has also been stated in the IDEA Handbook that *"the entitlement to vote is generally linked to the citizenship."*⁵ It can be stated that migration imposes unique logistical and political challenges on those countries that wish to allow their citizens to exercise their political rights recognized in international instruments. Citizens who are residents may stay abroad temporarily or permanently for different reasons on the day of the election. Broadly speaking, an estimated number of 175 to 250 million persons reside outside their home communities or countries of citizenship.⁶

Basically, the justification of external voting is based on the universal principles of the right to vote, but the reasons for introducing external voting vary according to historical or political context. From a historical aspect, external voting is quite a new phenomenon. Although there were exceptions, few countries recognized in time the possible challenges of a changing world. Iceland allowed its sailors and fishermen to cast an external vote at the beginning of the 20th century. Interestingly enough, the first external voting took place in the USA in 1862 when Wisconsin became the first of a number of US states to enact provisions to allow absentee voting for soldiers fighting in the Union army during the American Civil War.⁷ Canada introduced proxy voting on behalf of prisoners of war by their closest relatives for the country's general election in 1945. Without any military reasons, New Zealand introduced absentee voting for seafarers in 1890 and Australia did so in 1902.⁸ However, up until World War II, external voting was an exceptional arrangement.⁹ Admittedly, in the last ten years, more and more countries have gradually allowed for external voting. In 2006, Italy, Slovakia and Mexico held external voting elections for the first time. Moreover, several countries in Latin America (Argentina, Brazil, Mexico), Southern Europe (Portugal, Spain), and Central

Eastern Europe (Estonia, Latvia, Lithuania, Poland, Romania), have also introduced external voting. In general, external voting is the most common in Europe, but it exists in almost every part of the world. It is important to note that unique social, political and cultural factors have always had an influence on the conception of external voting systems existing worldwide. Namely, there is a variety of systems used in relation to external voting. In the next chapters, we will take into account the types of election to which external voting applies, the entitlement to external voting and the voting methods for voting from abroad.¹⁰ As to external voting itself, we will focus on three main aspects: the types of elections, the entitlement to external voting and the voting methods for voting from abroad.¹¹

Methods of external voting

First of all, it is important to note that for those countries who allow external voting, factors such as security, transparency and secrecy of the external elections are indispensable to ensure. As Martin Russel has noted, the implementation of external voting should mirror the electoral procedure in the home country.¹² Consequently, the procedures of the 115 countries for external voting vary from country to country. The procedure particularly depends on who is eligible to vote and participate in the registration process. In general, there are five methods of external voting. The four most common and generally accepted ways are personal voting, postal voting, proxy vote and electronic voting, and last but not least voting by fax also exists. Nowadays, the most prevalent voting method remains personal voting. This method of voting is used by only 54 countries analyzed in the IDEA Handbook.¹³ Personal voting means that the voter must go to a specific place, usually to diplomatic missions, consulates or polling place set up especially for voting abroad. This type of voting preserves the confidential nature of voting. Personal voting is the only voting method e.g. in Argentina and South Africa. As noted by the IDEA Handbook, the biggest advantage of personal voting is the confidentiality of the vote, the controlled environment and the fact that the voter's choice on the ballot paper cannot be questioned. Moreover, personal voting is one of the safest solutions for external voting,

¹⁰ IDEA p. 15.

¹¹ Ibid, p. 15.

¹² Martin Russel: *Diaspora Engagement through Representation, Diaspora matters*, University College, Dublin, p. 7., <http://diasporamatters.com/wp-content/uploads/2011/05/Diaspora-Toolkit-Booklet-7.pdf>, hereinafter Russel.

¹³ IDEA p. 23.

⁵ IDEA p. 89.

⁶ Jeremy Grace: *Challenging the Norms and Standards of Election Administration: External and Absentee Voting*, International Foundation for Electoral Systems, p. 1., <http://www.ifes.org/~media/Files/Publications/White%20PaperReport/2007/596/3%20IFES%20Challenging%20Election%20Norms%20and%20Standards%20WP%20EXTVOT.pdf>

⁷ A Preview of the Forthcoming International IDEA Handbook External Voting, p.1., hereinafter, Preview of IDEA Handbook, http://www.idea.int/elections/upload/External_voting_Preview_withlayout_07june06_final.pdf

⁸ IDEA p. 41.

⁹ Raniner Bauböck: Stakeholder Citizenship and Transnational Political Participation: A normative Evaluation of External Voting, *Fordham Law Review*, Volume 75, Issue 5, 1-1-2007, p. 2398., <http://law2.fordham.edu/publications/articles/500flspub8266.pdf>, hereinafter Bauböck.

although its greatest disadvantage is that it is extremely difficult to manage as a result of geographical distances, which imply limited accessibility and high travel costs. There is another type of personal voting, which is very similar to the previous one except that it takes place at special polling stations abroad, where larger communities of external voters live. The 1996 election in Russia, the Dominican elections in 2004 and Iraqi elections in 2005 were held at special polling stations. This method has nearly the same advantages and disadvantages as personal external voting at embassies and consulates. It is essential to note that the participation of external voters depends on the elaborateness of the home country's diplomatic and consular network around the world.¹⁴ There are considerable differences between countries with respect to the number of diplomatic and consular missions. For the sake of comparison, Russia has diplomatic or consular missions in more than 140 countries whereas Azerbaijan has only twenty. Although the IDEA Handbook emphasizes that the correlation between the number of diplomatic missions overseas and the coverage of potential external voters is not a linear one, the rate of participation also depends on the geographical distribution of potential external voters.¹⁵

As has been noted by the IDEA Handbook, the second most accepted method for external voting is postal ballots. Twenty-five countries use postal voting only. Voters fill in the ballot paper wherever they choose to do so, and their votes are then transmitted by ordinary post. It is the most common method in Western Europe and North America.¹⁶ Postal voting method is the only voting method in Canada, Norway, Mexico and Switzerland. Voting by post is an easier way of external voting: it reduces personal costs while being flexible. However, the duration of postal service from all the different parts of the world needs to be taken into account. This type of voting allows for voting from most countries in the world. The disadvantages of postal voting are the lack of proper control that must be an integral part of voting, the high costs of postal service, and the differences in the time of the delivery of ballot papers. Nonetheless, the IDEA Handbook emphasizes that postal voting can be an efficient and low-cost method if postal services operate well.

The next method of external voting is proxy voting, which means that the voter can find a person to represent him and vote for him at a polling place or in the home country. A citizen living abroad or

staying abroad temporarily can thus be allowed to vote by choosing a proxy, who casts the vote for the voter at a polling place in the home country or abroad.¹⁷ Of course, confidence is indispensable in this kind of voting because no one can control what happens at the time of the actual voting, except the proxy. In other words, what guarantees that the proxy votes for that party or person he was commissioned to? There is no way to know. Proxy voting is not very common; only four countries make use of it worldwide. There are countries which combine proxy voting with personal voting or postal voting. Typically, proxy voting is not the only voting method for external voting. The practice of 27 countries allows citizens living abroad to participate by proxy or by post in using two or more mixed procedures.

Electronic voting, also known as e-voting, takes place when voters can use the Internet, personal digitant assistants (PDAs), telephones or mobile phones to vote. Only few countries have offered e-voting so far, such as Estonia, Netherlands, France. The spread of communication and information technologies in the 21st century, especially the use of the Internet, may lead to the spread of e-voting. Nevertheless, there are several pitfalls to the introduction of this system. First of all, it is extremely expensive. Second, voting via the Internet raises several issues in connection with secrecy and the security of the vote. There are also other, less common methods, which have been introduced by only a few countries. There are countries that rely on electronic technologies as part of the external voting process, without casting votes electronically. For example, Australia, New Zealand and Singapore allow the use of electronic technologies to enhance external voting programmes: Australia authorizes the faxing of documents to obtain the postal ballots, New Zealand lets external voters download their ballot papers and return them by fax or by post, and Singapore allows external voters to download a voter registration form to be returned by registered post.¹⁸

Remote electronic voting is a type electronic voting, which means that votes are being cast via computer instead of being marked on a paper ballot. As pointed out by Bauböck, e-voting carries the risk of system failure and fraud. It is important to mention the European Parliament elections in the Netherlands where Internet voting was employed as well as the local elections and referenda in Estonia in 2005. It is also being tested in the USA, the United Kingdom and Switzerland.¹⁹ Realizing the possible disadvantages and pitfalls of a single

¹⁴ IDEA, p. 24.

¹⁵ Ibid, p. 24.

¹⁶ Bauböck 2404.

¹⁷ IDEA p. 6.

¹⁸ Preview of IDEA Handbook, Chapter 11, E-voting and External voting.

¹⁹ Bauböck 2405.

method of voting, several countries offer more than one options for external voting. The IDEA Handbook has identified a mixed system, which allows for personal voting and postal voting, or personal voting with proxy voting, in 27 countries of the world. The predominant combination, used by 12 of these 27 countries, is the mixture of personal and postal voting.²⁰ For example, in Belgium three options are available for external voters: personal voting, proxy voting and postal voting. These options are put into practice in the following way: personal voting at the diplomatic mission where external voters have been registered, voting through proxy at a diplomatic mission or at the national municipality or voting by post.²¹

Factors influencing external voting

In theory, there are several factors that can influence the choice of the type of external voting procedure, such as the geographical distribution, the estimated participation rate, and the number and location of diplomatic missions.²² Broadly speaking, there are two basic types of citizens living abroad: those living abroad temporarily and those staying there permanently. Countries prescribe different requirements related to residency, and methods of voting registration. As emphasized by the IDEA Handbook, creating the right balance for a sustainable electoral system, electoral integrity and the values of electoral inclusion are indispensable for countries using external voting.²³

The IDEA Handbook points out that external voting is a widespread practice. When an external voter is eligible to vote, there is usually a second requirement to be met: the need to be registered in the electoral register in order to show that he or she is entitled to vote.²⁴ Special registration requirements may be necessary for external voters, or the latter may be required to register in the same way as all other voters.²⁵ In Britain, citizens living abroad are eligible to register and vote as overseas voters if their name was previously on the electoral register with a UK address, and no more than fifteen years have passed between the date of their registration and the date of their application to register as an overseas elector.²⁶ In general,

external voting usually poses a "two-level" requirement for citizens living abroad. The first level is the eligibility to vote and the second level is the requirement for registration to demonstrate that they are entitled to vote.

It has been noted by the IDEA Handbook that several categories of external voters can be distinguished by their residential circumstances: citizens who reside outside their home country without a definite intention to return, citizens who reside temporarily outside their home country who have an intention to return, and finally, citizens with certain occupations, such as diplomatic staff, military personnel, public officials and their families. The fourth category is composed of citizens living outside their home country as refugees or migrant workers. The last category contains those who are non-citizens and have been granted the right to vote in a country through residency but who are temporarily outside that country.²⁷

Consequently, each type of voting has its own advantages and disadvantages. However, regardless of the type of external voting, each type poses a "unique challenge"²⁸ with respect to implementation. In general, we can say that external voting requires additional time both for the registration and the voting stages, especially where voters are scattered over a vast geographical area. There are some countries, which impose additional or special requirements on voters living abroad, such as a minimum period of previous residence or the intention to return to the country. Interestingly enough, in a few countries only limited groups of external voters are eligible to vote such as diplomats, members of the armed forces and their families as well as public officials. On the other hand, there are countries which extend the right to vote to all their citizens living abroad without any limitation of time spent outside their home country.

As we have mentioned earlier, "*Eligibility to vote is usually a link to citizenship*".²⁹ This statement of the IDEA Handbook is of fundamental importance; namely, that the majority of the 115 countries and territories' legislation on external voting does not include any special criteria to enable external voters to vote.³⁰ There are approximately 80 countries and territories in the world that do not specifically restrict entitlement to external vote.³¹ For instance, Belarus, Bosnia-Herzegovina, Estonia, Norway, Poland, South Africa, Sweden and the USA all guarantee their citizens living abroad the right to

²⁷ A Preview of IDEA Handbook, Chapter 4.

²⁸ Ibid.

²⁹ IDEA p. 89.

³⁰ Ibid, p. 18.

³¹ Ibid, p. 21.

²⁰ IDEA p. 25.

²¹ Ibid p. 26.

²² Ibid p. 91.

²³ Ibid p 47.

²⁴ IDEA p 97.

²⁵ Ibid.

²⁶ Ibid p. 100.

vote regardless of the length of time they have spent away from their country.

Nevertheless, there are some countries that have formal limitations or special/restrictive requirements for external voting. Basically, there are two types of restrictive criteria: those related to activities and those related to the length of staying abroad. There are 14 countries and territories, which impose limitations on the external vote. For example, Israel and Ireland allow external voting only for citizens on official missions of a diplomatic or military nature abroad. On the other hand, India allows external voting only for members of the armed forces and civil servants. As for activity-related restrictions, in most of the cases, external voting is allowed only for those on official mission abroad. However, South Africa represents a unique case within this category for it allows external voting not only for diplomatic staff but also for registered voters who are temporarily abroad. To cite another example, Ghana allows external voting also for students studying with a government scholarship.³² Interestingly enough, there are some countries and territories (as already mentioned above) which restrict entitlement to external vote on the basis of the length of staying abroad, such as Australia, Canada, New Zealand, the Cook Islands, the United Kingdom, and Germany. In Australia, Canada, and New Zealand, the duration of the stay is limited to maximum six, five, and three years spent abroad, respectively. Germany draws the line at 25 years of residence in countries that are not members of the Council of Europe, while the time limit is 15 years in the UK. Let us cite two additional "extreme" examples: that of Brazil where it is compulsory for external voters to vote, however, only 5% of temporary and permanent residents abroad register, 33 and that of Belgium where voting is mandatory, but registration is not.

Regarding the potential difficulties of external voting, it suffices to recall the controversies of the American presidential elections of 2000 in Florida and those of 2004 in Ohio. The participation of nearly 4 million American overseas voters, both civilian and military, shook public confidence in America's electoral administrative system.³⁴ The presidential election is governed by the Uniformed and Overseas Citizens Absentee Voting Act (1986). The Act covers two main groups: U.S. civilian citizens who reside temporarily or permanently overseas and active-duty armed forces both within and outside the

United States, including their spouses and family members entitled to vote.³⁵ Several academic papers have found that civilian citizens had a harder time registering and voting than military overseas citizens. Consequently, the key factor was the timely transmission of voting materials, and the option of sending votes electronically (by fax, email, or via the Internet) was viewed favourably. At the same time, there are four states in the USA, namely Montana, South Carolina, Florida, and Illinois that have an option of receiving and sending voting materials by electronic transmission (fax, email or Internet). Nonetheless, 73% of respondents from these states requested their ballots or registration forms by regular mail, while only 9% used email or fax.³⁶ One of the main reasons of the result could be that younger generations are much more familiar or comfortable with electronic technologies, whereas older generations have more confidence in the traditional ways of voting like voting by post. One of the biggest challenges of voting by post, which was demonstrated by the presidential election in 2000 in Florida and in 2004 in Ohio, is the time needed for election materials to travel through the various international postal systems. According to the latest study, it took 22 days on average for an absentee ballot to reach the recipient overseas.³⁷

Types of elections

In general, there are three major sources which contain legal provisions for external voting: constitutions, electoral laws and regulations. External voting can be interpreted in the context of four types of elections: legislative/national elections, presidential elections, referendums and sub-national elections. The choice of the modalities of external voting is always influenced by political, institutional, technical, and logistical considerations. It is essential to note here that for the member states of the European Union, there is only one external voting for a supranational institution, which is the elections to the European Parliament. As pointed out earlier, there are 115 countries worldwide that have provisions for external voting as observed by the IDEA Handbook. The most common instance of external voting is constituted by legislative elections because 31 countries allow their voters living abroad to vote in this way. The second most common is the combination of legislative elections and presidential elections, with 20 countries allowing for them. Next in line are presidential

³² Ibid, p. 19.

³³ Bauböck p. 2404.

³⁴ Bruce E. Cain, Karin Mac Donald, Michael H. Murakami: *Administering the Overseas vote*, University of California, Berkeley, Public Administration Review, September/October 2008, p. 802.

³⁵ Bruce E. Cain, Karin Mac Donald, Michael H. Murakami p. 802.

³⁶ Ibid, p. 802.

³⁷ Ibid.

elections with 10 countries. The fourth is the combination of legislative elections, presidential elections, sub-national elections and referendums, with six countries signing up for that. The fifth type of voting is the combination of legislative elections and referendums allowed by seven countries. The sixth most common type of external voting is the combination of presidential elections and referendums adopted by seven countries. Finally, there are nineteen countries who adopted other combinations of external voting types.

Implementation

Obviously, implementation depends on several factors such as the number and the location of electors, and geographical distances within the country where the external voting takes place. Additional administrative complications can occur in relation to the security and supervision of election materials, which require special attention. Administrative problems and delay in the implementation of the external voting may easily lead to deliberate acts of fraud, so it is crucial to eliminate foreseeable pitfalls in advance. The registration of external voting also requires special attention. Generally, electoral registers constitute public records, and the data to be published in the registers need to be approved.³⁸ It should be highlighted that all the measures taken internally in order to protect the confidentiality of the ballot must be duplicated abroad. The implementation of external voting definitely implies additional costs for the election, and it can be especially expensive when security is especially relevant in the case of a country, or due to the costs of the transportation of materials.

Special representation for external voters

As noted by the IDEA Handbook, there are eleven countries, four in Europe (Croatia, France, Italy, Portugal) four in Africa (Algeria, Angola, Cape Verde and Mozambique) and three in the Americas (Columbia, Ecuador, Panama) that not only allow their citizens abroad to participate in electoral processes, but also enable them to elect their own representatives.³⁹

The law on parliamentary elections in Croatia was adopted in 1995, and it created a special electoral district in the single-chamber Parliament to represent Croatians abroad. Twelve seats were

assigned to that district. As a result of criticism regarding the excessive number of seats assigned to Croatians expatriates, the law was amended, and currently it provides only six seats. Under the current Croatian legislation, the exact number will be determined after every election using a formula that takes into account the number of votes cast from abroad and the average number of votes needed to obtain a seat in the Parliament. In the elections of 2003, Croatians abroad were given only four seats, thus there seems to be a trend of gradual decrease in the participation of Croatian expatriates.⁴⁰ Interestingly, France has provided French expatriates with representation in the Senate since 1948, and this number went up to 12 seats in 1983. However, it should be underlined that these 12 senators are not chosen directly by the French abroad. Rather, they are selected by an electoral college made up of 150 elected members (out of the 183 persons who make up the High Council of French Citizens Abroad, also created in 1948), which represents approximately 2.5 million French expatriates for the French government. The 150 members of the Council are elected directly by French voters abroad.⁴¹ The constitutional reforms approved in 2000 in Italy provide for representation for Italian citizens living abroad in both chambers of the Parliament, which means 12 seats in the House of Representatives and 6 in the Senate. These constitutional arrangements were regulated by a specific law enacted in 2002, a few months after the May 2001 elections. The law created four electoral districts abroad in both chambers: one for Europe, one for South America, one for North America and Central America and one for Africa, Asia, Oceania and Antarctica. For every district a minimum of one deputy seat and one senator seat is assigned, and the remaining ones are distributed in accordance with the number of external voters.⁴² External voting was exercised for the first time in a referendum held in May 2003.⁴³ Interestingly, Portuguese living abroad have also been represented in the House of Representatives since 1976. Voters living abroad make up two electoral districts, one for Europe and one for the rest of the world. Two deputies are elected, although only if a minimum of 55,000 electors vote within the district. If there are fewer voters, only

⁴⁰ Andy Sundberg: *Diasporas Represented in Their Home Country Parliaments*, Prepared Andy Sunberg based on information from, *Voting from Abroad: The International IDEA Handbook*, 2007, p. 2., https://www.overseasvotefoundation.org/files/Diasporas_Represented_in_their_Home_Country_Parliaments.pdf hereinafter Sundberg.

⁴¹ Sundberg p. 2.

⁴² *Ibid*, p. 2.

⁴³ *Ibid*.

³⁸ *Preview of IDEA Handbook*, Chapter 5, The Implementation of External Voting.

³⁹ *IDEA* p. 28.

one seat is assigned to the corresponding district. In the parliamentary elections of 2005, both districts obtained two seats.⁴⁴

Conclusion

Currently, tens of millions of Europeans live outside their countries of origin, and migration within Europe is constantly on the increase. This new challenge has given rise to the recent phenomenon of external voting. The proportions of citizens living outside the country may also vary from country to country. It is important to see that the right to vote for citizens living abroad is a highly complex problem, which is never easy to put into practice. Ideally, when analyzing the right to vote for citizens living abroad, it is essential to take into consideration the specific features of each case, the socio-political context of each country. On the whole, national practices granting the right to vote for their citizens living abroad are far from being uniform in Europe. Although there is no "one size for all" solution⁴⁵ for the regulation of the voting rights of citizens living abroad. It is also important to emphasize that most European countries guarantee the exercise of this right to their citizens. Nevertheless, it is the state's competence to decide whether it wishes to grant the right to vote to its citizens residing abroad. Consequently, each state may give a different response to this challenge depending on its own circumstances in the name of democratic openness. All in all, it is undeniable that there is a worldwide tendency in favour of external voting as an answer to this particular challenge of our changing world.

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⁴⁴ IDEA p 30.

⁴⁵ Russel p 2.