

THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

Recommendation 369 (2015)¹ Electoral lists and voters residing *de facto* abroad

1. The right of citizens to free elections by secret ballot is an internationally recognised human right enshrined in the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 9) as amended by Protocol No. 11. Universal suffrage is a pillar of international law in this respect, and contained in relevant international standards.

2. Notwithstanding that universal suffrage is a ruling principle of free and fair elections established by international treaties and standards, the right to vote may be subject to a number of conditions which should be reasonable and provided by law. The most usual exceptions are age and nationality. The right to vote may also be subject to residence requirements. With regard to local and regional elections, the residence requirements are not incompatible – a priori – with the principle of universal suffrage.

3. Without prejudice to existing regulations in different countries with regard to voters who move abroad, there is agreement among international actors in the field of election observation that voters on electoral lists who *de facto* reside abroad have become increasingly relevant in a wide range of States. There is also an understanding that the quality of electoral lists is the underlying issue and that accurate and updated voters' lists are essential to ensure fair and genuinely democratic elections.

4. It was identified during missions of the Congress of Local and Regional Authorities of the Council of Europe that voters who remain on electoral lists although they *de facto* reside abroad pose a problem for effective electoral management, the integrity and transparency of electoral processes and the prevention of fraud or manipulation.

5. The Congress therefore bears in mind:

a. the Universal Declaration of Human Rights and the United Nations International Covenant on Civil and Political Rights;

b. the Convention for the Protection of Human Rights and Fundamental Freedoms, also referred to as the European Convention on Human Rights (ETS No. 5);

c. the European Charter of Local Self-Government (ETS No. 122) and its Additional Protocol on the right to participate in the affairs of a local authority (CETS No. 207);

d. the Statutory Resolution CM/Res(2011)2 relating to the Congress of Local and Regional Authorities of the Council

of Europe and the revised Charter appended thereto, adopted by the Council of Europe Committee of Ministers, defining observation of local and/or regional elections and the presentation of reports to the Committee of Ministers as priorities of the Congress;

e. the Code of Good Practice in Electoral Matters (2002) of the European Commission for Democracy through Law of the Council of Europe (Venice Commission), and its Declaration of Principles for International Election Observation (2005);

f. its Recommendation 124 (2003) on the Code of Good Practice in Electoral Matters;

g. its Resolution 233 (2007) on the observation of elections – co-operation between the Congress and national associations of local and regional authorities;

h. its Resolution 274 (2008) on Congress policy in observing local and regional elections;

i. its Resolution 306 (2010)REV on observation of local and regional elections – strategy and rules of the Congress.

6. The Congress underlines that the state and conditions of electoral processes at the local and regional level are assessed by local and regional elected political representatives of the 47 Council of Europe member States on a peer-to-peer basis, in order to contribute to the legitimacy and credibility of electoral processes at local and regional level.

7. It recommends that the Committee of Ministers invite the governments of member States to ensure that:

a. the right of nationals to participate, as voters or candidates, in the election of members of the council or assembly of the local authority in which they reside² is recognised by law and as a minimum requirement;

b. the right of other persons to so participate,³ in accordance with the respective constitutional order and international legal obligations, is implemented with the necessary safeguards, so that effective electoral management, the integrity and transparency of electoral processes and the prevention of fraud or manipulation during local and regional elections are guaranteed.

8. In addition, the Congress recommends that further ratifications of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)⁴ and the Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144)⁵ be taken into consideration by member States.

1. Debated and adopted by the Congress on 25 March 2015, 2nd Sitting (see Document CG/2015(28)6FINAL, explanatory memorandum), rapporteur: Jos Wiene, Netherlands (L, EPP-CCE).

2. Paragraph 4.1 (Article 1), Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

3. Paragraph 4.2. (Article 1), *ibid.*

4. Ratified by 12 member States.

5. Ratified by eight member States.