

# THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

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## Resolution 378 (2015)<sup>1</sup> 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).<sup>2</sup> Universal suffrage is a pillar of international law in this respect, contained in relevant international standards.<sup>3</sup>

2. The right of citizens to exercise their democratic choice in a universal, equal, free, secret and direct suffrage is the most important foundation of political participation at local and regional level and this is enshrined in 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).<sup>4</sup> The Human Rights Committee of the United Nations confirmed the guarantees of Article 25(b) of the International Covenant on Civil and Political Rights (ICCPR)<sup>5</sup> also with regard to local elections.<sup>6</sup>

3. Notwithstanding that universal suffrage and non-discrimination are ruling principles of free 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.<sup>7</sup> Reasonable and limited residence requirements are permissible restrictions to the right to universal suffrage also in accordance with the UN Human Rights Committee<sup>8</sup> and pertinent judgments of the European Court of Human Rights.

4. During missions carried out by the Congress of Local and Regional Authorities of the Council of Europe, in particular, to Armenia, Bosnia and Herzegovina and Moldova, it was found that voters who remain on electoral lists although they *de facto* reside abroad pose a problem with regard to effective electoral management, the integrity and transparency of electoral processes and the prevention of fraud or manipulation.<sup>9</sup> Similar problems were also raised by observers with respect to elections at national level.

5. Without prejudice to existing regulations in different countries with regard to this category of voters, 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 common knowledge about the underlying issue – the quality of electoral lists.

6. The right to vote is linked closely with the capacity of the State authorities to accurately determine who is eligible to vote and to establish accurate voters' lists. Voter registration can be "active" (legislation requires the voter to indicate to the authorities interest in taking part in elections) or "passive" (voters' lists are compiled on the basis of existing State data, e.g. national population registries) and it seems that the problem of voters residing *de facto* abroad whose names remain on electoral lists occurs mainly in countries with passive registration systems. Regardless of the system of voter registration, voters may also have a personal interest in not declaring that they no longer reside in their country of origin and thus staying on the electoral list. The entitlement to social security benefits may be among such interests.

7. Concerning the concept of "residence", provisions vary considerably between different States and only general parameters may be derived from international standards and best practices. Concerning the latter, the International Court of Justice (ICJ) found in the *Nottebohm case*,<sup>10</sup> that a "genuine connection" has to be proven for the link between a country and a person. When defining the "genuine" link, the ICJ referred to the centre of the applicant's interests and of his business/economic activities. At domestic level, many countries rely on the concept of "permanent residence"<sup>11</sup> which generally requires inclusion in the registry of the respective locality in accordance with the corresponding definition of "residence". Despite varying definitions of "permanent residence", a "genuine link" through predominant relations between a person and a country seems to be the common denominator of domestic regulations.

8. With regard to an adjacent issue, the right of foreigners to cast their ballot in local elections, there is a tendency perceivable, based on international standards, to increase enfranchisement of (certain) foreigners, notably in the light of the voting rights at local level for European Union citizens.<sup>12</sup> The 1992 Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144)<sup>13</sup> provides that member States may undertake to grant to every foreign resident the right to vote in local elections.<sup>14</sup> The enfranchisement of non-citizens resident in a given community in local elections is explained by the better integration of foreigners into the life of the community and by the fact that they are also – as is the case for citizens – particularly affected by local politics.<sup>15</sup>

9. The Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority<sup>16</sup> guarantees "the right of nationals of the party to participate, as voters or candidates, in the election of members of the council or assembly of the local authority in which they reside."<sup>17</sup> Pursuant to Article 1.4.1 of the Additional Protocol, member States may confer the right to vote only on persons who have the citizenship of the respective country. The Explanatory Report to the Additional Protocol makes clear that the provisions do not oppose the granting of electoral rights to other persons, such as nationals not resident in the local authority or non-nationals,<sup>18</sup> which is reflected by the different approaches of member States as regards voters who move abroad.

10. In light of the above and based on practical experience acquired during missions to observe local and regional elections, the Congress underlines the importance of accuracy of electoral lists to ensure fair and genuinely democratic elections.

11. Therefore, it invites local and regional authorities in Council of Europe member States, taking into account their responsibility for the practical side of electoral management including the quality of electoral lists, to pay special attention to the problem of voters on electoral lists who *de facto* reside abroad with regard to effective electoral management, transparency and integrity of the process and the objective to prevent electoral fraud, in particular to:

- a. efficiently implement existing legislation on residence requirements for voters eligible to vote at local level;
- b. on the basis of existing legislation, in countries where removal from electoral lists is foreseen, implement the necessary corrections;
- c. notwithstanding the primary responsibility of State authorities – in most members States – for the accuracy of electoral lists, assume their role for the promotion and conduct of sustainable electoral audits.

12. The Congress invites its own bodies and members, its partner organisations and national associations, as well as the local and regional authorities in Council of Europe member States to raise awareness of the importance of a “genuine link”, through predominant relations (permanent residence, central point of life interests, etc.), between a voter and the country in which he/she casts the ballot at local level.

13. It calls on its own bodies to foster the dissemination of information about regulations and best practices concerning this category of voters through targeted action, in the interest of ensuring the integrity of electoral processes at the local level and increasing public confidence in elections as such.

14. The Congress instructs its Monitoring Committee to keep the question of voters residing *de facto* abroad under review and to suggest further activities, if appropriate. It calls on its election observation delegations to regularly address this issue and to make reference in their reports to specific provisions dealing with this category of voters with due attention paid also to problems in implementation, in coherence with the opinions of the European Commission for Democracy through Law (Venice Commission) and its Council for Democratic Elections.

15. It encourages local and regional authorities in Council of Europe member States, notably in light of the consultations between territorial bodies and the central government, as stipulated by the European Charter of Local Self-Government (ETS No. 122), to appeal to the authorities to amend, if required, regulations concerning voters on electoral lists who *de facto* reside abroad, on the basis of

international standards and best practices for permissible action concerning this category of voters.

1. Debated and adopted by the Congress on 25 March 2015, 2nd Sitting (see Document CG/2015(28)6FINAL, explanatory memorandum), rapporteur: Jos Wielen, Netherlands (L, EPP-CCE).
2. Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 9), Article 3, <http://conventions.coe.int/treaty/EN/treaties/html/009.htm>.
3. Including: the Universal Declaration of Human Rights, Article 21, <http://www.un.org/en/documents/udhr/>; the International Covenant on Civil and Political Rights (ICCPR), Article 25(b), <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>; the Copenhagen Document of the Organization for Security and Co-operation in Europe, paragraph 7.3., <http://www.osce.org/odihr/elections/14304?download=true>; the Code of Good Practice in Electoral Matters of the European Commission for Democracy through Law of the Council of Europe (Venice Commission), [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2002\)023-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2002)023-e).
4. 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), entered into force in June 2012, <http://conventions.coe.int/Treaty/en/Treaties/html/207.htm>.
5. International Covenant on Civil and Political Rights.
6. See different decisions of the United Nations Human Rights Council (UN-HRC) with regard to local elections, <http://www.ohchr.org/en/hrbodies/ccpr/pages/ccprindex.aspx>.
7. Code of Good Practice in Electoral Matters, explanatory report, page 15: “the residence period specified does not exceed a few months, any longer period is acceptable only to protect national minorities.”
8. UN-HRC General Comment No. 25 (57), paragraph 11, <http://www1.umn.edu/humanrts/gencomm/hrcom25.htm>.
9. Recommendation 313 (2011) on local Elections in Moldova <https://wcd.coe.int/ViewDoc.jsp?id=1855277&Site=Congress>; Recommendation 339 (2013) on local Elections in Bosnia and Herzegovina <https://wcd.coe.int/ViewDoc.jsp?id=2048201&Site=CM>; Recommendation 344 (2013) on election of the members of the Avagani (Assembly of Aldermen) of the City of Yerevan (Armenia), <https://wcd.coe.int/ViewBlob.jsp?id=2123917&SourceFile=0&BlobId=2499511&DocId=2072026&Index=no>.
10. International Court of Justice (ICJ), Nottebohm case (*Liechtenstein v. Guatemala*), judgment of 6 April 1955.
11. The Code of Good Practice in Electoral Matters refers to the notion of “habitual residence”, explanatory report, page 14.
12. Charter of Fundamental Rights of the European Union, Article 40: “Every citizen of the Union has the right to vote and to stand as candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.”
13. Ratified by eight member States.
14. Article 6.1 provides franchise once a foreign resident “has been a lawful and habitual resident in the State concerned for the 5 years preceding the elections.” <http://conventions.coe.int/Treaty/en/Treaties/html/144.htm>.
15. Paragraph 18 of the Explanatory Report to the European Convention on the Participation of Foreigners in Public Life at Local level states that “For those who live in a local community, numerous aspects of their daily life – such as housing, education, local amenities, public transport, cultural and sports facilities – are influenced by decisions taken by the local authority”, <http://conventions.coe.int/treaty/en/Reports/Html/144.htm>.
16. Ratified by 12 member States.
17. Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, Article 1, paragraph 4.1, <http://conventions.coe.int/Treaty/en/Treaties/html/207.htm>.
18. Explanatory Report to the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, <http://conventions.coe.int/Treaty/EN/Reports/Html/207.htm>.