



European Economic and Social Committee

SOC/504
Disenfranchisement

Brussels, 29 April 2014

OPINION

of the

European Economic and Social Committee

on the

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on addressing the consequences of disenfranchisement of Union citizens exercising their right to free movement

COM(2014) 33 final

Rapporteur working alone: **Andris Gobiņš**

On 7 March 2014 the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on addressing the consequences of disenfranchisement of Union citizens exercising their right to free movement
COM(2014) 33 final.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 April 2014.

At its 498th plenary session, held on 29 and 30 April 2014 (meeting of 29 April), the European Economic and Social Committee adopted the following opinion by 203 votes to 5 with 8 abstentions.

*

* *

1. View of the Committee

- 1.1 The EU's citizens are at the heart of Article 10(3) TEU which states that "Every citizen shall have the right to participate in the democratic life of the Union". By the very nature of things, this must also include the right to take part in elections, which is an essential part of democracy and a fundamental human right.
- 1.2 One of the fundamental rights of EU citizens is the right to free movement. EU citizens can reside and work in any of the 28 Member States.
- 1.3 The Charter of Fundamental Rights – which has the same legal value as the Treaties – states in Articles 39 and 40 that EU citizens who exercise their fundamental right to free movement have the right to take part in European and local elections under the same conditions as nationals of their country of residence. Participation in national elections, however, is not included in the Charter.

- 1.4 A total of 23 EU Member States allows their citizens living abroad in the EU to vote in national elections. In an unofficial survey carried out by *Europeans Throughout the World* (ETTW) for the purpose of this opinion, expat organisations in Europe mention, amongst other things, the following positive reasons for retaining the right to vote:
- Voting in elections – whether they are local, regional, national or European – is a fundamental democratic right, which must be supported and safeguarded.
 - In order for national elections to be truly democratic, the voice of all citizens must be heard – including the voice of those who have decided to live and work abroad.
 - Voting rights in national elections allow expats to maintain important ties with their home country and continue to be "responsible citizens" and "good Europeans".
 - Expats are, by definition, "ambassadors" of their home countries and also often have to face the consequences of political decisions taken by their home countries.
 - Voting abroad in Europe is seen as a realisation of the European motto "Unity in diversity".
- 1.5 Five EU Member States – Cyprus, Denmark, Ireland, Malta and the United Kingdom – prevent their citizens living abroad in the EU from voting in national elections – either immediately after leaving their home country or after a certain period of time. It is uncertain how many EU citizens are affected or potentially affected by this kind of disenfranchisement but it is estimated that some 3 million EU citizens from the five countries in question live abroad in the EU¹.
- 1.6 The majority of citizens disenfranchised as a result of such policies also cannot take part in national elections in the country where they live². These practices have created a lost electorate – a group of citizens with no rights to vote in national elections whatsoever.
- 1.7 One of the arguments often used in favour of disenfranchisement is that citizens living abroad lose contact with their home country. This may have been true in the past. However, thanks to modern communication technology, it is easy nowadays for EU citizens living abroad to maintain close links with their home country. They can follow current affairs in their home country on television, the radio and the internet – with the internet in particular being a common tool for interaction and participation. They can travel home quickly and cheaply. And in many cases they even pay taxes in or draw pensions from their home country. The place of physical residence can hardly be justified as a proportionate indicator for losing voting rights.

¹ According to Eurostat figures, 1.17 million EU citizens from the five countries in question were living abroad in the EU in 2013, but this figure does not include foreign EU citizens living in Greece, France, Croatia, Cyprus, Lithuania, Luxembourg, Malta and the UK (though Irish citizens living in the UK are counted).

² According to the Commission, no Member State has a general policy granting other Member States' nationals residing in its territory the right to vote in national elections. There are, however, exceptions: "qualifying Commonwealth citizens" can vote in national parliamentary elections in the UK and UK nationals have the right to vote in national parliamentary elections in Ireland.

- 1.8 In its Recommendation of 29 January 2014, the Commission urges the five Member States concerned to allow their citizens to retain the right to vote in national elections if these citizens demonstrate a continuing interest in the political life of their home country, for instance through an application to remain registered on the electoral roll. The Committee would have appreciated the inclusion of a general request to all Member States to ensure that voting is as straight-forward for citizens living abroad as for citizens living in the home country.
- 1.9 The Committee strongly supports this recommendation which accompanies the communication to which this opinion relates.
- 1.10 Article 20 TFEU defines Union citizenship as additional to national citizenship. It can thus be seen as odd that some citizens are deprived of one fundamental right – the right to vote – when exercising another fundamental right – the right to move. It is understandable if many see this as being against the whole philosophy of EU citizenship.
- 1.11 The rules concerning voting rights in national elections are clearly a national – and not European – competence. The EU does not and must not put this important principle into question. Seen from the citizens' point of view, however, progress is needed on the matter. Citizens should still be entitled to exercise those fundamental rights which all Member States have acceded to in the EU Treaties, without being disenfranchised by national legislation for doing so.
- 1.12 The Committee encourages the five Member States concerned to find ways to be more flexible. The solutions will naturally differ from one country to another. The crucial point is that all EU citizens should retain the right to vote in the national elections of their country of origin. The Committee encourages these Member States to consider the European Commission's view that, rather than limiting the right to vote based on a residence condition, expats should have the opportunity to demonstrate their continuing interest in the political life of their country of origin. Time limits for retaining the right to vote are by their very nature likely to be arbitrary.
- 1.13 The Committee furthermore wants to underline the importance of providing expats with clear information about their rights and how these rights can be exercised.
- 1.14 The Committee urges the competent national authorities to make the procedures for registration and voting as simple and transparent as possible.
- 1.15 Finally, the Committee stresses that disenfranchisement in national elections is only one example of the encroachment on citizenship rights that citizens experience when living abroad in the EU. The Committee urges the Commission to map all such encroachments in order to provide a full overview of the current state of play in Europe, whilst paying special

attention to opportunities for active citizenship and participation in "day-to-day" decision making.

2. **Additional background information**

- 2.1 The Recommendation from the Commission gives a good overview of the legal situation in each of the five Member States concerned. Based on information from ETTW, the Committee would, however, like to add a few comments to what the Commission has said:
- 2.2 *Cyprus*: Around 480 000 citizens of Cyprus live in other EU countries, most of them in the UK. Despite what has been said, these citizens actually could take part in last year's national elections. In other words, there seems to be a discrepancy between the legal situation and actual practices.
- 2.3 *Denmark*: Around 140 000 Danish citizens live in another EU country. The Danish constitution states that a Danish citizen has the right to vote in Danish Parliament elections if he or she has permanent residence in the country. However, a number of exemptions have been introduced. Under certain circumstances, citizens retain their right to vote for 12 years or in some cases even more. These exemptions call into question the constitutional argument for a continued "general" disenfranchisement of Danish citizens living abroad.
- 2.4 *Ireland*: The number of Irish citizens living abroad is very high – according to a recent official estimate, it is around 3 million, half a million of whom live in another EU Member State. One of the arguments against giving expats voting rights has been that they could become a dominant factor in Irish politics. Recent developments, though, indicate that Irish citizens living abroad could gradually gain voting rights. 78% of the delegates in the ongoing Constitutional Convention favour giving expats the right to vote in presidential elections. In a reform bill for the Seanad (the Upper House of Parliament) it has even been proposed that expats should have the right to vote in Seanad elections. While the government's response to the Constitutional Convention is still pending, there seems to be a wind of change concerning the question of disenfranchisement in Ireland.
- 2.5 *Malta*: 101 700 Maltese citizens live in another EU Member State, the vast majority of them in the UK³. The Maltese constitution states that a Maltese citizen has voting rights if "he is resident in Malta and has during the eighteen months immediately preceding his registration been a resident for a continuous period of six months or for periods amounting in the aggregate to six months". In a landmark court case in 2003, a Maltese court ruled that the reference to "residence" in the Maltese Constitution was to be interpreted as "habitual residence", as the more restrictive interpretation of "residence" as "physical residence" would infringe the European Convention on Human Rights. This Court decision was never followed up by a constitutional amendment.

³ Figure provided by the Maltese government.

- 2.6 *United Kingdom:* Almost 2.2 million UK citizens live in another EU Member State. The rules on their voting rights in UK parliamentary elections have changed three times over the last 30 years. Before 1985 expats could not vote at all, but as of 1985 citizens would lose their voting rights only after five years abroad. This period was increased to 20 years in 1989 and then reduced to 15 years in 2000, which is still the period in force. In a very recent development, the Liberal Democrats – who form part of the coalition government – decided, at their party congress on 1-2 March 2014, that UK citizens in Europe should have the right to vote in national elections.

Brussels, 29 April 2014

The President
of the
European Economic and Social Committee

Henri Malosse
