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## **The Constitutional Principle of Voting Equality Viewed through EU Standards – the Case of the Ex-Patriot Vote**

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### **Abstract**

*Election systems in modern democracies are continuously remodeled and adjusted to meet the needs of societal changes. One of the recent issues regarding elections, attracting the attention of comparative politics 'concerns' the mechanisms countries adopt in order to allow the nationals of countries' who have moved out of the country to be able to vote. The topic raises various, often opposed opinions on the manner in which this right ought to be accomplished, the type of elections on which ex-patriots would be able to vote (such as national elections, presidential elections and referendums), the number of seats reserved for the representation of ex-patriots' compared to the national seats, the election model selection and adjustments, and other issues. According to international documents and conventions, expert recommendations as well as the Macedonian Constitution, one of the election principles that by all means ought to be respected while creating the election model of the country is to consider the principle of the voting equality. This indispensable and essential democratic rule is built on the equality of citizens and ought to be respected for all types of elected political representation, including the seats assigned for the ex-patriot voters. This paper intends to analyze whether in legal and practical terms the principle of the equality of voting is respected in the case of domestically elected members of Parliament in Macedonia, compared to the elected ex-patriot*

*MPs, considering comparison with the experiences of other countries. Included are the OSCE/ODIHR recommendations on the Macedonian Electoral Codex, the Venice Commission recommendations, as well as studies and comparative papers from IDEA, IFES and other organizations and authors.*

*Keywords: elections, equality of vote, political representation, ex-patriot vote, out-of-the-country vote*

## **Introductory Remarks**

The democratic establishment of political authorities as laid down in the constitution, especially the elected parliament as a representative body of the citizens, makes together with the freedom of speech and the freedom of association the most important triad of contemporary states, which are considered to be democratic. In practice, the first listed prerequisite is founded on the recognition and application of the general, equal, direct and secret right to vote, while elections represent the essential tool for achieving this right in every country. By freely and democratically electing political representatives, citizens accomplish the very essence of a process through which is transferred, expressed and confirmed their opinion, will, authority and legitimacy to the elected representatives and further, through, them, to the executive power of state. Acknowledging the value and significance of the right to vote, the fathers of the American Constitution, stressed the importance of the free expression of the will of the people through voting, viewing it as an immanent possession or property of free citizens. As such, they rightly emphasized the:

Personal rights, of which the right of voting for representatives is one - *a species of property of the most sacred kind*: and he that would employ his pecuniary property, or presume upon the influence it gives him, to dispossess or rob another of his property or rights, uses that pecuniary property as he would use fire-arms, and merits to have it taken from him.

In modern states, the election system itself is the mechanism by which citizens' votes are translated into seats. It has the task of ensuring that the will of citizens is correctly transferred in the elected legislature, in a manner in which universal civil and political freedoms and rights such as: freedom and fairness of elections, guaranteed secrecy of the vote, universal right to vote, and the equality (the equal weight) of votes are operatively applied and respected in practice.

Historically observed, voting universality and equality have not been initially granted in the form that is widely perceived in contemporary societies. Older democracies have transited through a long battle of at first gradually including into the electoral process various society groups by obtaining the right to vote (like the working class, poor rural population, women, non-white voters), and secondly, the design of election systems which slowly progressing towards ensuring equality (equal value or weigh) of the vote. Consequently, the promotion slogan of the then progressive forces was: "one man, one vote, one value".

There was a country to country variety of experiences in the past for achieving these two main goals, while the historical cases of misuse may today serve as examples to be avoided: in political science jargon is widely known the expression "gerrymandering", named after the Boston candidate Governor Elbridge Gerry who in 1812 drew the constituency *boundaries* in which his Democratic-Republican party was favored, a success secured according to his calculations of the votes support from the included population. Similar examples are provided by the drawing up of constituency boundaries in France, during the Fifth Republic when political bias favoring de Gaulle was created intentionally mixing urban and rural population in one constituency, in order to diminish left-wing influences in urban areas.

Another parallel problem is the *average number of votes obtained per candidate*, which has indicated many significant breeches of the equality of the voting principle in the past (see Table 1). Realizing the serious issues that may occur in practice, especially considering its electoral first-past-the-post majoritarian model in single member constituencies, Great Britain founded the Boundary Commission in 1917 (which currently functions as four permanent Commissions for England, Wales, Scotland and Northern Ireland). The Boundary Commission serves as a strong independent body, that follows population movement

in the set constituency boundaries and makes sure that there is a similar average number of votes per Member of Parliament (MP) seat in every constituency, in accordance with the population figures and migration. In all countries in the meantime, the situation from this perspective has significantly improved, while the newly established democracies have more rapidly grasped the experience and made efforts to speedily overcome these potential problems.

However, even today, the fight for the equality is not over. Although set in all relevant international documents, stated in many national constitutions and election laws, this principle may not be entirely met in some cases, especially when considering various criteria which are applied while shaping a country's electoral model, or drawing constituency boundaries and determining the average number of potential voters or votes cast in it for electing one political representative or MP.

### **A Theoretical Background to the Voting Equality Principle**

There are numerous political theories and ideologies throughout the development of human thought that strive to define and practically implement the concept of democracy. Although it is still seen as a valuable principle or an idea that is very difficult to apply in its entirety in a political system, there is an ongoing effort for the ideal to be reached as closely as possible. Robert A. Dahl in his work *Democracy and Its Critics* estimates that although democracy is perceived as a utopian idea, it can still be reached through meeting five criteria: (1) citizens should have effective participation through adequate and equal opportunities to form their preference, place questions on the public agenda and express reasons for one outcome over the other; (2) voting equality should be secured at the decisive stage - each citizen must be assured his or her judgments will be counted as equal in weight to the judgments of others; (3) achieving enlightened understanding - citizens must enjoy ample and equal opportunities for discovering and affirming what choice would best serve their interests; (4) there should be control of the agenda - people must have the opportunity to decide

what political matters actually are and what should be brought up for deliberation; and (5) there should be inclusiveness – equality must extend to all citizens within the state, as everyone has a legitimate stake within the political process.

Linked with the above mentioned criteria, it is determined that the basic characteristics of any system of elections are: the defining of constituency boundaries (including the aspect of territorial division, the number of inhabitants, the number of voters, number of mandates per constituency), rules for conducting the election race, voting procedure and the way of translating votes into seats. The principle of equality, working through these systemic instruments is at its best described in the Oxford Dictionary of Politics, “Equality is a factual and/or normative assertion of the equal capacity of equal standing of persons, generating claims about distributive justice...The normative claim involves four main “applications” which are not wholly separable: (1) equal consideration within a scheme of (moral) decision-making. In this sense, the claim to be taken equally into account, as in the “utilitarian” concern that each count for one in the aggregation procedure. (2) even-handed treatment - claiming that similar cases are to be treated alike; (3) equality in distribution - here equal treatment requires that each person receives an equal amount of a “good” And (4) equality in outcome – meaning that all persons should end up in the same conditions, taking account of their situation before distribution and adjusting the amount to be distributed to each accordingly” (McLean & McMillan, 2003, p. 173).

Even more simply described, according to Dieter Nohlen, “equal election rights as a rule demand that the weight of the vote of all persons that have the right to vote be equal and not be differentiated by property, class, taxation, income, religion, race, gender or political position... While drawing up the boundaries must taken into account the necessity of having an approximately *equal number of voters* in every constituency giving the same number of representative seats in the parliament” (Nohlen, 1992, p. 26).

The referred theoretical positions create a strong support of the understanding of the equality of the right to vote through the idea of the equitable (fair) representation of all individuals obtaining such a right with special attention to the weight of votes (equal numerical value of votes). What’s more, voting equality is clearly relevant to the practical

operational tailoring of the election model, above all when drawing up the constituency boundaries in a country, in the sense of having an approximately equal number of potential voters for each parliamentary seat in all constituencies throughout the country, regardless of how many mandates each constituency elects. Numerous theoreticians and psephologists emphasize that this rule is practically the most important one of all the principles of the electoral process.

Sticking to this principle, the legal determination of the average quantity or “value” of the number of voters that covers a single mandate in a country is anticipated beforehand. In this sense, in election practice two procedural possibilities are understood: 1. determined by as many single-member constituencies as there are mandates to be distributed, while in each constituency there is an average number of voters that belong to that constituency, with a small range of variability of that average number, depending on the configuration of settlements. The drawing up of boundaries is of inherently special importance for those single-member districts, in which candidates are elected by the use of the majoritarian electoral system; or 2. it is calculated how many mandates should be allocated per constituency (in this case there are multi-member constituencies and the use of the proportional representation election model-PR model) whose number depends on the number of potential voters per constituency, divided by the national average “value”, which the result offers to the adequate number of mandates per constituency.

In principle, electoral constituencies should be structured initially and as stable as possible on longer terms, in order to avoid suspicion of potential fraud thereby inducing political instability. When drafting constituency boundaries, there should be an obligatory consensus, that is to have higher level of social cooperation and acceptance in the state, encompassing all significant political actors in society. By reaching such an agreement the legitimacy of the elected candidates can be secured. However, once set, constituency boundaries are not determined for an indefinite amount of time, making it necessary to be continuously followed and re-examined, in order to adjust them to the migrational, demographic and other population changes that occur in relation to the number of mandates such a constituency gives. It is a widely applied standard that, the determined “mean” or “average” of the number of voters covering one mandate should be re-examined about every

ten years, thereby allowing for a constant rather small numerical swing depending on the characteristics of the geographic settlement distribution existing in the constituency.

The same principles of the equality of the vote are clearly formulated as practical recommendations by the Venice Commission (European Commission for Democracy through Law, 2002) for countries to follow. They are that: the right to equal voting is understood as each voter has in principle one vote, whilst when the electoral system provides voters with more than one vote, each voter should have the same number of votes; the equal voting power is defined through seats that must be evenly distributed between the constituencies. The principle must at least apply to elections to lower houses of parliament and regional and local elections; and should entail a clear and balanced distribution of seats among constituencies on the basis of one of the following allocation criteria: population, number of resident nationals (including minors), number of registered voters, and possibly the number of people actually voting. While drafting constituency boundaries, the geographical criterion and administrative, or possibly even historical, boundaries may be taken into consideration; the permissible departure from the norm should not be more than 10%, and should certainly not exceed 15% except in special circumstances (such as the protection of a concentrated minority, or a sparsely populated administrative entity); in order to guarantee equal voting power, the distribution of seats must be reviewed at least every ten years, preferably outside election periods. With multi-member constituencies, seats should preferably be redistributed without redefining constituency boundaries, which should, where possible, coincide with administrative boundaries. When constituency boundaries are redefined it must be done impartially, without detriment to national minorities and taking account of the opinion of a committee, the majority of whose members are independent.

### **Relevant International Documents on Voting Equality**

The importance of the principle of voting equality is reflected in many international documents, such as the Universal Declaration of Human Rights, which in Article 21 paragraph (1) states that “Everyone

has the right to take part in the government of his country directly or through freely chosen representatives” and in paragraph (3) emphasizes that “The will of the people shall be the basis of the authority of the government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures”. Similarly, Article 3 of the Protocol of the European Convention of Human Rights (1952), determines the right for free elections: “The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature”. Of special importance for the elections is Article 7 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE in 1990, by which participating states in order to ensure that the will of the people serves as the basis of the authority of government will among other things: “(7.3) - guarantee universal and equal suffrage to adult citizens; (7.4) - ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public”. None of the mentioned documents deals with the vote of citizens abroad in particular, but it is understood that the same rules and principles that are applied with the national voting rights and principles should equally apply to out-of-country voting. In this sense, the Parliamentary Assembly of the Council of Europe encourages member states to allow their citizens living abroad to participate to the fullest extent possible in the electoral process (Resolution no 1459 (2005) (paragraph 7) and Recommendation no 1714 (2005); Recommendation no 1410 (1999).

How this principle concretely applies to specific issues linked to elections in the Republic of Macedonia and can be detected through the position of the relevant international bodies that monitor elections and comment on the specific legal solutions on the matter, namely the ex-patriot seats. The 2009 Joint OSCE/ODIHR and Venice Commission Opinion on the Electoral Code of Macedonia, commenting specifically on out-of-country voting and the new parliamentary districts set for that purpose, emphasizes: “while there is no legal standard for measures to vote abroad, and the procedures vary widely in scope and approach, the election should generally meet the same standards for democratic



elections as in-country procedures. It appears that the method outlined in the current legislation does not achieve such a standard and it is recommended that a new formula is considered.” It is also noted that “the Code provides a proportionally-based system for the parliamentary elections (with six districts of high magnitude, 20 seats each) but the three single member constituencies break with this principle, as a single mandate district cannot be proportionally distributed (...) it should be noted that while the domestic districts are designed to produce approximately the same number of votes per seat, the three districts abroad are predefined to one seat each regardless of the number of registered voters.... Therefore, the number of voters electing each of these mandates will likely differ considerably amongst themselves, as well as from the in-country constituencies. This risk compromises the principle of equal suffrage, and more precisely the principle of equal voting power”. Further, the report advises that: “While the creation of a virtual district is a viable option for voting abroad, assuming that a large enough number of voters would participate to allow equal suffrage, mandates should be allocated in such a way as to allow for a proportional system to be effective (in this case by having more than a single mandate). In the absence of such, it is recommended that votes cast from abroad are counted in the domestic districts of the voters’ last residence.”

After the completion of the Macedonian early parliamentary elections of 2011, the OSCE/ODIHR Election Observation Mission Report followed in which was reaffirmed the same position on the matter of the ex-patriot vote, as had been elaborated previously. It was said that the legal framework provides for the fundamental civil and political rights and freedoms necessary for the conduct of democratic elections, however the position is that it still requires further improvement in order to fully comply with OSCE commitments and other international standards. Among other things, remarks have been given on the *speedy introduction* of the ex-patriot vote, which is not in compliance with good electoral practice and has affected the timely and consistent implementation of the law. What's more, the Mission repeated the deep concern it has regarding the small number of voters who ultimately registered to vote abroad and raised questions about the equality of the in-country and out-of-country votes; emphasizing that the small number

of voters who registered abroad underlines concerns about the equality between in-country and out-of-country vote; and that any deviation from the equality of voting should be minimal. In the recommendations following these findings, the Mission suggests that the authorities should review the current system of the allocation of mandates in out-of-country electoral districts to ensure that the number of votes needed to elect MPs does not significantly diminish the equality of the vote, as guaranteed by the Constitution and Electoral Code.

### **Out-of-Country Voting Comparative Experience**

A thorough analysis and a summary comparing of the experience of various countries comprised in the Report on Out-of-Country-Voting prepared by the Venice Commission (European Commission on Democracy through Law, 2011) shows that the right of persons voting abroad is a very complex issue. On the one hand it is a question of principle, whether to grant the right to vote to this particular category of citizens, whilst on the other hand however, specific questions with regard to different modalities of the execution of this right, including the dilemma of how persons living abroad can benefit from this right, are raised. With respect to democratic openness, each state may give a different response to this problem depending on circumstance, as it is within the state's own scope of sovereignty to decide whether they wish to grant the right to vote to their citizens residing abroad or not. The Report notes that: "no precise international standards exist for implementing such measures, but elections abroad should generally meet the same standards for democratic elections as in-country procedures. The design of a system for voting abroad depends on the particular circumstances of a country, including its administrative, infrastructure, budget constraints, in-country election arrangements and level of public confidence".

As the report points out, there are three categories of citizens living abroad: those who may be abroad on election day for business or personal reasons; citizens who for academic or employment purposes spend a definite or temporary amount of time in another country, where they will reside for a given period; and citizens residing abroad for a much longer period of time, who may sometimes have

double nationality and who settle down in the host country in a more permanent manner. For example, groups of people staying or residing abroad who are entitled to vote may be: migrant workers, refugees, internally displaced persons (IDPs), individuals in certain professional groups, such as military personnel, public officials or diplomatic staff (and their families) and all the country's citizens living or staying abroad, on a temporary or permanent basis. Inevitably, bearing in mind the differences between these three categories, the voting process demands a different approach to enjoying the right to vote. At the same time and even more importantly, there should be a clear "definition of the electoral college" in the sense that it should be distinguished which group votes in which constituency and for which candidates (in-country candidates or ex-patriate candidates), or what proportion of out-of-country voters per MP seat should be the equivalent to the proportion of in-country voters, linked to the type of election concerned and the election system of the given state.

Similarly, the IDEA handbook (2007) presents three main structural problems which are typical for out-of-country voting which should therefore be considered in political debates while introducing it. These are: (a) the problem of the political representation of citizens living abroad; (b) the problems of organizing free and fair elections, the transparency of external voting procedures, and the freedom and fairness of party competition, and (c) the problem of the judicial review of elections held. The IDEA Handbook states: institutional provisions for the assignment of external votes are politically important because they define how external votes are translated into parliamentary seats. In other words, these regulations will largely decide the extent to which external voters can influence domestic politics." In practice, there may be two basic options: creating extraterritorial electoral districts for external electors *or* to assigning these votes to existing electoral districts inside the country, (possibly in the electoral district in which the external elector was last registered). Each of the two options may create a different political effect domestically: The first has a great influence in the case of the need to create a majority government, or in giving greater strength to an existing ruling party or pulling at times conservative trends in domestic policies. The second influences the election results in domestic constituencies so that as a consequence the country's politics may be "externally" determined.

Table 6 gives a very informative approach to the types of elections ex-patriots can vote in forty-one countries, indicating that various countries, depending on their social characteristics, historical heritage, political circumstances and diasporic specificities have adopted a variety of possibilities regarding the out-of-country vote. In only five states – Austria, Bosnia and Herzegovina, Denmark, Iceland and Norway are citizens allowed to vote in all types of elections. At the same time, there are 12 countries (Albania, Andorra, Armenia, Chile, Cyprus, Greece, Ireland, Israel, Malta, Montenegro, San Marino and Turkey) where no legal provisions have been enacted to organize voting for their nationals abroad or where the right to vote from abroad has only been granted to a very restricted category of people.

The legal basis under which a person obtains the right to vote in a particular country is based on the principle of nationality, that is citizenship. Out-of-country voting enables citizens living outside their country of origin to continue participating in the political life of their country of origin. There are even some countries that have special seats for MPs who are dedicated to representing their ex-patriots, like Croatia, France, Italy, Portugal, Romania, Macedonia and others (see Table 5) for which the design of the national election systems had to undergo some changes. In these cases, it is interesting to observe to what extent, according to the number of reserved seats in the parliament the diaspora is able to influence domestic politics, even reaching the majority decision on national policies and laws, as well as being able to assist in forming a government. Bearing in mind these possibilities, there is an additional reason why the ex-patriot MPs should guarantee the same voting representation, support and legitimacy that “domestic” MPs enjoy.

At this point, it is interesting to mention the Croatian experience in drafting the electoral model for the Croatian diaspora seats. The Law on parliamentary elections in Croatia of 1995 created a special, single constituency, at that time providing 12 parliamentary seats, in order to represent the considerable Croatian diaspora (estimated at about 400.000 voters). The number of seats was the same with 12 seats for each of the domestic 10 multi-member constituencies. As a result of fierce criticism, the law was reformed. Currently, the maximum number of seats from the diaspora can be up to 14 but firstly it is computed

according to the “price in votes obtained” for an average domestic parliamentary seat, whose number is then divided by the total of the votes cast out of the country. The quotient obtained determines the number of seats that are going to be allocated for the diaspora in that particular election. In that way, Croatia secures the equality of principle of voting equality in both the domestic and out-of-country vote.

Other interesting examples are provided by Italy and Portugal. The Portuguese abroad have been represented in the House of Representatives since 1976. For this purpose, voters abroad also make up two electoral districts, one for Europe and the other for the rest of the world. Two deputies are elected in each of these districts, but only if a minimum of 55,000 electors cast a vote within the district. If fewer voters cast a vote, only one seat is assigned to the corresponding district. In the parliamentary elections of February 2005, both districts obtained their two seats. In addition to providing for the external vote for elections to the legislature and referendums, the constitutional reforms approved in Italy in 2000 stated that citizens abroad are provided with representation in both parliamentary chambers — 12 seats in the House of Representatives and six in the Senate.

## **The Macedonian Example**

An overview of national elections in Macedonia may serve as an example of the manner in which the principle of voting equality was initially applied and is still in use. At first, in the national elections of 1990 and 1994 a majoritarian two-round election model was employed, for which the whole country was divided into 120 constituencies, each producing 1 parliamentary seat; in the national elections of 1998 the model changed, as 2/3 or 85 parliamentary seats remained to be elected by the majoritarian two-round election model for which the country was retailored into 85 single-member constituencies, while the remaining 35 parliamentary seats were distributed by use of the D’Hondt PR formula, based on nationwide closed party lists.

For the 2002 national elections in Macedonia the regional-proportional election model was introduced for the first time, where each of the set six multi-member constituencies elected an equal number of parliamentary seats (20 seats in total) in the Macedonian

Assembly. Constituencies have been tailored to represent approximately 276.000 voters on average (see Table 2) indicating that there was great consideration for respecting the equality principle. Since then, as the population numbers changed, there were some corrections in the constituency boundaries in order for this principle to be maintained correctly and in terms of the Election Codex and the Constitution. However, compared to the regulation that has been applied to these “domestic” constituencies, it cannot be said that this principle has been equally applied to the newly established ex-patriot constituencies and consequently to the number of parliamentary seats. Facts show that the current legal framework on these particular three parliamentary seats differs greatly from the other 120 domestically elected seats, seriously questioning the legitimacy of the elected ex-patriot MPs.

According to Article 22 of the Constitution of the Republic of Macedonia (1991, 2001), every citizen on reaching 18 years of age acquires the right to vote. The right to vote is equal, universal and direct, and is exercised at free elections by secret ballot. Article 62 determines that the Assembly of the Republic of Macedonia is composed of 120 to 140 Representatives. They are elected at general, direct and free elections and by secret ballot. This constitutional provision practically determines the minimum and the maximum number of seats the Macedonian Assembly can have (from 120 to 140) thus leaving space for the law to further set the definite number of seats, which can vary within this range, and the election model that will be applied.

In Article 4 paragraph 2 of the Electoral Codex (2006, 2008, 2011) it is foreseen that in the Assembly of the Republic of Macedonia 123 Members of Parliament are elected of whom 120 MPs are elected by the proportional representation model, for which reason the territory of the Republic of Macedonia is divided into six constituencies (electoral districts) whose boundaries are determined by law, and in each constituency 20 MPs are elected. This article has been amended and now sets three other constituencies (no.7-Europe and Africa, no.8-North and South America and no.9-Asia and Australia) where each gives one parliamentary seat by application of the majoritarian first-past-the-post election model for the Macedonian Assembly. Article 4 paragraph 3 anticipates that the number of voters in the domestic PR multi-member constituencies may differ at most +-5% from the average number of voters. These constituencies are tailored to contain a certain

number of potential voters which allows for an acceptable swing in voting support per parliamentary seat in a district without distorting the constitutionally determined rule of vote equality. However, these three out-of-the-country constituencies do not abide to this rule, that is, by law they are exempt from this principle. Article 127-a paragraph 2 (Electoral Codex 2011) determines that for these three constituencies the candidate who is elected won more votes than the other candidates, under the condition that he obtained not less than 2% of the voters inscribed in the voters' list, whose threshold is an extremely low one and does not provide the required voting equity.

In practice, the effect of these legal provisions demonstrates that in the 2011 national elections nationwide 1.156.049 persons voted (out of which there were 1.124.064 valid notes and 31.985 votes were invalid), showing a turnout of 63,48%. By dividing the number of votes cast by the 120 domestically distributed seats, it can be seen that the average "value" of one parliamentary seat in the Assembly in 2011 is 9.633 votes. However, in that same year, Macedonian ex-patriots had the opportunity for the first time to cast their votes, for which in the three new election districts (7, 8 and 9), in total 7.213 voters were registered, out of which 4,088 people voted (valid ballots 3.972, invalid 116). The turnout in these three districts averaged to 56,67% (See Table 4). All three winning candidates belong to the same party – VMRO-DPMNE.

Comparing through time the "value" or "weight" in votes of these three parliamentary seats with the average "weight value" of the other 120 domestic parliamentary seats, observed through all national elections since 2002, it can be seen that the average number of votes per national parliamentary seat varied from 9.965 in 2002, to 8.124 in 2006, 8.459 in 2008 and 9.633 in 2011 (see Table 3), but was never that low like the number of votes by which these three candidates had been elected. Namely, the candidate from the European and African constituency got six times less votes than any other domestic candidate, while the two that had been elected in the Americas and Asia-Australia got seventeen times less votes than any domestic candidate. Data make it clear that there is an explicit breach of the constitutionally guaranteed equality of voting principle. Practically, there is six or seventeen times ponderation of the out-of-country vote towards any domestic voter, resulting in the creation of deep political inequality among the citizens and seriously questioning the legitimacy of the elected MPs.

Other than this particular fact, the law does not make a clear distinction between citizens who are temporarily residing and working abroad and those who have permanently left the country, but who still keep their Macedonian citizenship and are interested in voting. This distinction ought to be made, because the first group of persons would be voting for the 120 domestic parliamentary seats, while the second would be expected to vote for the three parliamentary seats allocated to the ex-patriots. The possibility of having a double listing in the country and abroad of the same persons should be avoided, and a clear definition of what an ex-patriot is should be set in the law. What's more, there is no determined time limit, after which a Macedonian national would be considered as a person that has permanently moved abroad. In this sense for example, Great Britain determines that time-frame on 15 years during which time a person would be living out of the country.

## Conclusions

The right to vote is connected with the possession of a country's citizenship, as it belongs to the gamut of legally guaranteed political rights, representing one dimension of the universality of voting rights. Undoubtedly, the Macedonian state has the freedom of deciding how this right is to be operated, and which election model shall be adopted; but, at the same time the state must make sure that the principle of voting equality guaranteed by the Constitution is respected. The basic electoral model carefully considers the application of this right, while this is not the case with the three elected ex-patriot parliamentary seats, as the Election Codex does not instrumentalize correctly the set principle. Critical voices were heard not only by the domestic experts and some political forces in the country but also by the relevant international organizations in charge of harmonizing domestic legislation with international legal documents and best practices. It should be borne in mind that comparative international experience shows how such voting practices create problems, especially when younger democracies are in question which have difficulties in electoral administration and/or have a certain history of electoral fraud. Therefore, the Republic of Macedonia should urgently abide by the constitutionally guaranteed



principle and correct the electoral model concerning the election of the three ex-patriot parliamentary seats.

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## Appendices and Tables

Table 1: Number of voters by mandate in several countries (Dieter Nohlen, 1992, p. 49)

Country	Year	Final mandates (votes per seat)	Type of constituency
Brazil	1962	From 2100 to 53.500	Multi-member constituency
Brazil	1986	4.663 – 499.800	Multi-member constituency
Chile	1969	28.000 – 296.000	Multi-member constituency
France	1973	9.520 – 60.000	Single-member constituency
Germany	1907	18.800 – 220.000	Single-member constituency
Spain	1977	35.500 – 141.200	Multi-member constituency

**Table 2: Average number of voters per constituency in 2002  
 (State Election Committee of the Republic of Macedonia)**

Constituency number	Number of voters in the voter’s list	Votes cast
1	277.782	180.806
2	272.842	187.265
3	277.126	211.498
4	277.236	206.173
5	279.717	203.011
6	279.593	207.134
<b>Total</b>	<b>1.664.296</b>	<b>1.195.887</b>

**Table 3: Comparative overview of the average “cost” of one MP seat in  
 national elections since 2002 (State Election Committee of the Republic  
 of Macedonia)**

Year of elections held	Total number of voters inscribed in the Election List	Total number of votes cast	Average number of votes obtained per one seat in the Assembly
2002	1.664.296	1.195.887	$1.195.887 : 120 = \mathbf{9.965}$
2006	1.741.449	974.891	$974.891 : 120 = \mathbf{8.124}$
2008	1.779.116	1.015.164	$1.015.164 : 120 = \mathbf{8.459}$
2011	1.821.122	1.156.049	$1.156.049 : 120 = \mathbf{9.633}$

Table 4: Number of votes by which the ex-patriot candidates have been elected in their constituencies (State Election Committee of the Republic of Macedonia)

Constituency number	Total number of voters inscribed in the voter's list	Total number of votes cast	Number of votes by which the candidate has been elected in his constituency
7	4.591	2.494	<b>1.578</b>
8	1.824	994	<b>560</b>
9	798	600	<b>548</b>
	7.213	4.088	

Table 5: Model of ex-patriot political representation (number of seats) compared with the total number of parliamentary seats in the country

Country	Number of MP seats (percent of the total number of seats in the national assembly)
Algeria	8 (2% of 389 seats)
Angola	3 (1,4% of 220 seats) this kind of voting has not been yet implemented
Cape Verde	6 (8,3% of 72 seats)
Colombia	1 (0,6% of 166 seats)
Croatia	6 (3,9% of 152 seats) for maximum of 14 seats*
Ecuador	6 (4,6% of 130 seats)
France	12 (3,6% of 331 seat) only for the Senate
Italy	12 (1,9% of 630 seats)
Mozambique	2 (0,8% of 250 seats)
Panama	6 (4,6% of 130 seats)
Portugal	4 (1,7% of 230 seats)

Table 6: Country comparative overview of the types of elections ex-patriots vote

PRESIDENTIAL	PARLIAMENTARY	REFERENDUM	EUROPEAN	LOCAL
Algeria	Algeria	Algeria		Algeria
Azerbaijan		Azerbaijan		
Belarus	Belarus	Belarus		Belarus
	Belgium		Belgium	
Brazil		Brazil		
Bulgaria	Bulgaria			
Croatia	Croatia	Croatia	(Croatia)	
	Czech Republic			
	Estonia	Estonia		
Finland	Finland			Finland
France	France	France	France	
Georgia	Georgia			
	Germany		Germany	
	Hungary	Hungary	Hungary	
	Italy	Italy		
Korea	Korea			
Kyrgistan	Kyrgistan	Kyrgistan		
	Latvia	Latvia		
	Liechtenstein	Liechtenstein		
	Lithuania	Lithuania	Lithuania	Lithuania
	Luxembourg	Luxembourg	Luxembourg	
		Morocco		
Mexico				
Moldova	Moldova	Moldova		
	Monaco			
	Netherlands		Netherlands	
Peru	Peru	Peru		
Poland	Poland	Poland		
Portugal	Portugal	Portugal	Portugal	
Romania	Romania	Romania	Romania	
Russia	Russia	Russia		
Serbia	Serbia			
	Slovakia			
Slovenia	Slovenia	Slovenia		
	Spain	Spain		Spain
	Sweden	Sweden	Sweden	Sweden
	Switzerland	Switzerland		Switzerland
Macedonia	Macedonia			
Tunisia		Tunisia		
Ukraine	Ukraine	Ukraine		
	United Kingdom		United Kingdom	

Table 7: Overview of the arguments “for” and “against” the introduction of external voting

	For	Against
Theoretical arguments	Full implementation of the <i>universal suffrage</i> as a part of human rights	<i>Residency</i> as a central criterion of suffrage and of political representation
	Increased <i>political participation</i>	Problematic <i>transparency</i> of external election process
		Problematic <i>dispute resolution</i> of external voting
Historical and empirical circumstances	Small number of permanent external electors in relation to domestic electors	Large number of permanent external electors in relation to domestic electors
	Equal distribution of political preferences of external electors	Uniform ideological orientation of external electors
	Democracies with long experience of elections and a well-established electoral organization	New democracies with problems of electoral administration and/or a history of electoral fraud