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The Political Rights of French Citizens Abroad and their Parliamentary Representation

In order for globalization not to be accompanied by the impoverishment of the ties between states and their expatriate nationals, it is indispensable to generalize the deterritorialization of political rights, including parliamentary and presidential elections and referenda. Migrants need to be involved in the active and civic life of their state of residence, while preserving their right to participate in the national elections influencing the future and orientation of the country they are expatriates of.

Nonetheless, in light of the current migratory flux, the deterritorialization of political rights is still inadequate, and it is regrettable that globalization does not affect the political rights of the expatriates of several states.

According to the *Manual on out-of-country voting* developed by the Swedish Institute for Democracy and Electoral Assistance (IDEA) published in 2007, 115 states out of 193 dispose of measures enabling electoral participation outside their national borders, which is a mere 60 percent of the states of the world.

The editors of the above study conclude that out-of-country voting suffers from problems regarding the organization of states, logistical obstacles and short deadlines. In the era of globalization, when in the year 2000, one out of 35 citizens was classified as “international migrant”, every citizen should be able to enjoy their political rights guaranteed to them by the constitution.

Although the possibility of participation in national elections of the state of residence is more appreciated these days (even if on 8 September of last year the Canadian Minister of Foreign Affairs published a memorandum informing the ambassadors posted in Canada that the government “will continue to refuse any demand of other states to add Canada to their respective extraterritorial election districts”), the situation was different in the middle of the 20th century. The reason behind this is that the political rights, namely the right to vote, of expatriate citizens were rarely exercised.

The context today is totally different, and the European institutions, particularly the Council of Europe, are mobilized in favor of expatriate voting rights.

The European Court of Human Rights had the occasion to pronounce a judgment on the deterritorialization of political rights

on 8 July 2010 in the case *Sitaropoulos and others vs. Greece*. The decision was based on numerous texts adopted by the Venice Commission.

In its judgment of 8 July 2010, the Court concluded that Article 3 of Protocol No. 1 of the ECHR had been violated and assessed that the lack of efficient measures for more than three decades to guarantee – for the applicants – the possibility to exercise their right to vote in the national elections from their place of residence infringed the right to free elections.

Applicants were of the opinion that the impossibility to vote from their state of residence for the Greek parliamentary elections constituted a violation of both the Greek constitution and the Convention. However, the Court clearly limited the scope of their decision by specifying that “[the Court] *does not consider that Article 3 of Protocol No. 1 should be interpreted as generally imposing a positive obligation on national authorities to secure voting rights in parliamentary elections to voters living abroad.*” (para. 41)

The deterritorialization of political rights has not yet amounted to efficient migrant rights, but the marked political will of the institutions of the Council of Europe associated with the evolution of numerous national laws in their favor marks the beginning of a new phase towards their official recognition.

Although heavily related to the French concept of the all-encompassing nation from the beginning, the French experience in this respect is worthy of studying to the extent of its voluntary but progressive approach (institutional representation followed by gradually extended political rights) that might serve as an example for other governments. While the proportion of French citizens residing abroad is way inferior to that of great industrial states, France has indeed been a pioneer regarding expatriate representation.

French Citizens Abroad: a Growing Population

Although, as we have seen, the number of French citizens abroad is estimated to be approximately 2.5 million, only 1.5 million of them are registered in the Global Register of French Abroad.

The Global Register, which has replaced the consular registration lists since 2004, contained 1,504,001 persons on 31 December 2010, which corresponds to a 60 percent increase in comparison with the 1995 consular lists. The average annual growth of the number of French abroad since 1987 has increased by 2.33 percent with marked disparities regarding the different continents. Between 1990 and 2005, when the national population increased by 8.7 percent, and

the number of immigrants grew by 19 percent, this value was 43.4 percent for the expatriates.

Even if this phenomenon remains less spectacular than in numerous other European countries – France accounts for only 2.4 percent of expatriates as opposed to the respective 17.5 and 11.5 percent of Ireland and Portugal (based on OECD data) – the number of French residing abroad has never been this high.

The Origins of Political Representation for Expatriate French

It is in the colonial history of France that we need to look for the roots of the French exception: the institutional and parliamentary representation of expatriates. France was effectively the only power ever to recognize the right to vote about the political organs of the state for the people originating from its colonies.

The reclamation of the political rights by French citizens abroad is an ancient phenomenon, but it increased in power since the organization of the expatriates into a global Federation, the French Foreign Union, established in 1927.

Due to the fact that French expatriates took a considerable part in the activities of the Resistance and in the liberation of the territory after that, it seemed logical for General De Gaulle to listen to their demands of political expression and institutional representation. Consequently, French citizens abroad benefited from institutional representation from 1943 at the Algerian Provisional Consultative Assembly (set up by the ordinance of 17 September 1943). This Assembly, sitting for the first time on 3 November 1943, had 84 members 12 of which were representatives of the French Resistance.

The Constitution of 27 October 1946 instituted a bicameral parliamentary system. The National Assembly was elected based on direct universal suffrage, and the Council of the Republic was elected in the same way. It was decided that if French citizens abroad could not vote for their deputies directly, then they should be represented in the High Assembly of the Council of the Republic. Law n° 46-2383 of 27 October 1946 on the composition and election of the Council of the Republic prescribed that from among the 50 councilors of the Republic elected by the National Assembly, 8 seats would be attributed in view of the representation of French citizens abroad (5 for the countries of the Protectorate and 3 for “other countries”).

10 years later, in 1958, France inscribed in the Constitution the principle of their parliamentary representation in the Senate and 50

years later in the National Assembly (Article 24 of the Constitution of 1958 as modified by the constitutional organic law of 23 July 2008 sets forth the following: “*French citizens residing abroad are represented both in the National Assembly and in the Senate.*”)

I. The Institutional Representation of French Citizens Residing Abroad

Creation of the High Council of French Citizens Abroad

Since direct representation at the National Assembly was rejected by the 1946 Constitution, the creation of a Council of French Citizens Abroad attached to the Ministry of Foreign Affairs seemed like a possible replacement. The High Council of French Citizens Abroad was established by the decree of 7 July 1948, and it was the first institutional structure representing expatriate citizens attached to the government for the purpose of defending their rights and interests.

It might be attributed to the modest handing out of consultative positions in the beginning that the first High Council had 55 members (8 by law, 42 elected by “*organizations of French citizens abroad*”, and 5 members delegated by the Ministry of Foreign Affairs).

From 1959 to 1982, several legislative texts improved the representativity of the High Council through the enlargement of its territorial basis, which adapted it to the fluctuation of the French population abroad. The arrival of the left into power in 1981 accelerated the debate on the election of the High Council by universal suffrage. The laws of 7 June 1982 and 18 May 1983 instituted that the delegates to the High Council would be elected through “*direct and universal suffrage*”.

The legitimacy and voice of the High Council are based on a considerably enlarged foundation. Only the elected members of the High Council have the right to elect senators, the number of whom was modified to 12 in 1983.

In the meantime, on the occasion of the 1997 election of the High Council, high rates of abstention from voting were recorded (with only 2 percent of participation) as well as in 2000 (with 19 percent of participation), which brought into question the representativity of the Council and led to the creation of a temporary commission put in charge of the reform of the Council in September of 2000. In 2003, several measures recommended by the commission were put into practice with a view to the creation of the Assembly of French Citizens Abroad one year later.

According to former Senator Charles de Cuttoli, “*evidently, in the beginning, the Council had been conceived to have a purely consultative role; not as an electoral college.*” Fewer were in favor of creating a representative body.

The Transformation of the High Council into an “Assembly of French Citizens Abroad”

The Law n° 2004-805 of 9 August 2004 confirms this transformation. The new denomination, “Assembly” translates into a kind of recognition for the public community of the French citizens abroad. The Assembly provides the government “*with opinions on issues of interest to the French citizens abroad, and on the development of French presence abroad.*” It can be requested to interact or it can intervene of its own will.

Since its renewal of June 2009, the Assembly, presided by the Minister of Foreign Affairs, is composed of 155 councilors elected for 6 years through direct universal suffrage by those French citizens abroad who are registered on electoral rolls in 52 districts. Half of the Assembly is renewed every three years. The method of election is proportional representation in the districts that elect at least three councilors, and a majoritarian vote in other districts. The list of election districts and the number of seats available in each are to be found in the Annex to the Law n° 82-471 of 7 June 1982 on the Assembly of French Citizens Abroad, as modified by the Law n° 2004-805 of 9 August 2004.

This law reduced the number of the delegates from 20 to 12, who had only consultative votes based on a list previously barring them from functions. Later on, 12 senators were added to represent French citizens abroad, as well as 11 new deputies in a little while, since the Law n° 2011-411 of 14 April 2011 prescribed that the deputies of French citizens abroad were to be members of the Assembly of French Citizens Abroad by law, just like the Senators for French citizens residing abroad.

Nevertheless, the Assembly struggles to mobilize expatriates. As a matter of fact, the level of participation is extremely low, and it did not stop shrinking in the course of elections: 28.17 percent in 1994, 24.08 percent in 1997, 18.97 percent in 2000, 22.65 percent in 2003, and 14.25 percent in 2006, even if it increased to 20.44 percent at the last elections of June 2009. The introduction of e-voting (on the Internet), launched with the aim of boosting participation by facilitating access to voting, but also carrying the potential risk of numerous incidents, turned out to be a failure due to the fact that a mere 2 percent of voters used e-voting.

This disaffection of French citizens abroad to the election of their own representatives can be put down to several factors.

Firstly, nothing is done to incite French citizens abroad to sign up on the electoral lists or to vote. The consular electoral lists are less well-managed than the registers available in France; certain citizens forgot to have themselves crossed out on their departure from these territories or – on the contrary – fell victim to arbitrary deletion. Article 13 of decree n° 2003-1377 of 31 December 2003 on the registration of French citizens abroad, as modified by the decree n° 2005-302 of 30 March 2005, sets forth precisely that “*any registration into the register of French citizens residing abroad is valid for five years [and that it is] renewable. Three months before the expiration of their registration every French citizen shall receive a notice informing them to confirm their residence in the consular district by way of either a certificate or a personal declaration.*” Numerous districts, however, omit to send out these notices to those concerned, thus, expatriate French citizens do not pay attention to the validity of the registration into the consular registry. Once deleted *ex officio*, the procedure to get re-registered seems to be too difficult for them. Many of them ignore the fact that they have the possibility to vote in voting wards for them abroad, so their numbers are insufficient or they vote by postal voting.

Consequently, French citizens abroad have little information on the role and the activities of the Assembly; therefore, they are not encouraged to make an effort to vote. A civic initiative of information broadcasted in national and foreign media about the Italian model has become indispensable, and it is already the subject of several proposals for amendment in the Senate. However, the equality of information is not laid out in the law, and everything depends on the programs, finance and good intentions of the radio and television stations.

On top of the lack of information, the total prohibition of any electoral campaign abroad (outside of Europe) has also greatly harmed the participation of French citizens abroad.

Institutional Reforms to be Implemented

Several reforms are imperative in order to improve the participation of French citizens abroad in the election of their representatives and reinforce the representativity of the Assembly.

The transformation of the High Council into an “Assembly” in 2004 did not translate into the granting of new powers to the organization since the Assembly remained a uniquely consultative body, and the project of creating a veritable “territorial” community of

the French citizens abroad, a “community beyond the borders” was discarded.

Back when a “reform commission” was created within the Assembly to propose constructive changes, its recommendations – particularly with respect to the creation of a public, beyond-the-border community in 2006 – were not put into practice.

This “beyond-the-border community” would have been a *sui generis* public community while not composed of people residing in French territory. This community would have provided a real administrative bedrock and legal recognition to the *de facto* community that exists today.

In fact, French citizens abroad are a constitutional category subject to Articles 24 and 39 of the Constitution, represented in the Senate, and from 2012, in the National Assembly as well.

Ever since the start of the reform activities in 2003, no real decision-making power has been granted to the Assembly of French Citizens Abroad. Only its consultative rights have been specified. However, the Assembly must be consulted on a mandatory basis in terms of the legislative and regulatory texts that concern French citizens abroad.

It would be necessary to define the status of those elected into the Assembly, and their competence, rights and prerogatives should be recognized.

Finally, the qualified membership of the Assembly should be dissolved enabling that the Assembly comprise solely those elected through universal suffrage and that its president may no longer be the Minister of Foreign Affairs, but as in the case of every political assembly, it be elected by the members of the Assembly.

II. The right to vote and parliamentary representation

Granting the Right to Vote for French Citizens Residing Abroad

The right to vote is an ancient demand of French citizens abroad, which gained ample force with their organization from 1927 into the French Foreign Union that continued to assert this demand.

A decisive step forward occurred a little before the advent of the Fifth Republic. For the first time the possibility of a direct – postal – vote from abroad was accorded to French citizens abroad by ordinance n° 58-734 of 20 April 1958 on the organization of a referendum. Despite their enthusiastic participation (96 percent of Yeas of the 373,316 votes), diplomatic concerns and protest by certain states doubtful about their territorial sovereignty put an end to this voting experience of the French citizens abroad.

Certainly, French citizens abroad could exercise their right to vote, but in order to do that it was necessary for them to travel to the municipality where they were registered, which of course rendered the exercise of this right theoretical for people geographically distant.

Finally, the year of 1976 saw the introduction of a law about the right to vote from abroad. Since the number of French expatriates rose at a very quick pace, it was imperative to facilitate their participation in national consultations (elections).

Finally, the organic law n° 76-97 of 31 January 1976 on the vote of French citizens residing abroad on the presidential elections, completed by the law of 7 July 1977, instituted voting in the presidential elections, referenda, and European elections in voting wards set up at diplomatic or consular outposts with the consent of the states concerned or in the adjacent counties of the neighboring countries, if the former did not give their consent. (That was the case in federal Germany, Switzerland, the USSR and Cameroon.)

210 voting wards were set up at diplomatic or consular outposts, and in 1979, French citizens abroad could participate in the very first election through universal suffrage of the European Parliament, and two years later, in the presidential elections of 1981.

Casting the vote was to take place on the same day everywhere, in person or by proxy, and the consular authorities had “permanent standing orders” to organize special rounds for those voters whose residence was far from the seat of the consulate or to whom compliance with the formalities of giving a proxy was difficult.

It was not necessary to be registered at the Consulate in order to register on the list of a voting ward, and for the three consultations in question, the right to vote of voters registered in a voting ward was automatically suspended in any municipality of France where they could have been equally registered.

Even though proxy voting was approved, postal voting was not open for French citizens abroad except for the election of the High Council and then that of the Assembly, the latter from 1982 (Law n° 82-471 of 7 June 1982). This latter election was considered to be more “administrative” than political!

According to the Foreign Relations Ministry of the era, allowing postal voting for French citizens abroad as well as for all the votes of interest to French citizens in their entirety “*could go against the principle of equality of citizens before the law.*”

Postal voting – either by mail or by electronic means – was nonetheless reintroduced by ordinance n° 2009-936 of 29 July 2009 on the election of deputies by French citizens abroad. On the occasion of the June 2012 general elections, French citizens abroad will have the

possibility to vote for their deputies either in voting wards set up at diplomatic outposts, by postal voting or by e-voting.

Decree n° 2011-843 on the election of deputies by French citizens abroad adopted by the Council of the State on 15 July 2011 sets forth that “*in the interest of augmenting the participation of French citizens residing abroad, the possibility to resort to derogatory measures such as postal or electronic voting is offered to voters.*”

We can only hope that this innovation will be accompanied by success on 2 and 16 June 2012, for postal voting (also by electronic means) will be introduced in all national consultations involving French citizens abroad.

The extension of postal voting to other national elections still remains unaccepted e.g. in terms of the presidential elections, while this procedure is widely used in other European states. Its introduction could be justified by the fact that the difficulties of exercising the right to vote from abroad constitute a rupture with the principle of the equality of citizens.

The level of abstention from voting is particularly high: it was more than 40.30 percent in the first round of the presidential elections of 2007 and it was 42.10 percent in the second round.

Reclaiming the Right to Vote for French Citizens Residing Abroad in the European Elections

The very first election, in which French citizens abroad could participate after the law n° 77-729 of 7 July 1977 (Article 23) provided them with this possibility, was the first election of the European Parliament through universal suffrage in 1979. The vote took place at diplomatic and consular outposts.

However, in 2003, the regionalization of voting reduced the rights of French citizens abroad. In fact, Article 28 of the law n° 2003-327 of 11 April 2003 ended the possibility of French citizens abroad to vote in voting wards abroad for the election of the French representatives in the European Parliament, which they used to have since the first elections in 1979, and which they still have today for national elections (presidential elections, referenda and the elections of the Assembly). French citizens abroad could no longer vote in these elections but by proxy or by returning to their French municipality of registration, or – if they were French citizens residing in another Member State of the EU – they were free to vote for the candidates of their country of residence.

Legislative Progress: Law n° 2011-575 of 26 May 2011

The bylaw Law n° 2931 on the election of the representatives of the European Parliament, adopted on 26 May 2011, put an end to the

above situation by allowing once again that French citizens abroad participate from abroad in European elections.

This law fixes, for one, the modalities of election for the two supplementary French representatives in the European Parliament prescribed by the Lisbon Treaty and, on the other hand, it reinstates the possibility of French citizens abroad to vote in European elections by setting forth that they will be accounted for in the Ile de France district.

Certainly, this can be considered as a renunciation of a specific form of representation of French citizens abroad in the European Parliament. Nonetheless, it is coherent with the administrative strings of the Assembly of French Citizens Abroad in Paris.

Finally, although we should be satisfied to have regained the possibility to vote in voting wards abroad, we may still doubt the real impact of this possibility on voter participation abroad since no candidate would represent them at all in the European Parliament.

The demand for a specific district for Europeans residing outside of the European Union recently resurrected in France, with the entry into force of the Lisbon Treaty. In fact, the Treaty of Lisbon attributed two supplementary European seats to France, which led to an increase in the number of mandates from 72 to 74 in the 2014 European elections.

Unfortunately, France did not take the opportunity to distribute these two seats to French citizens abroad.

Nonetheless, the necessity for a representation of European expatriates in the European Parliament has the risk of becoming pressing when the external relations policy of the EU becomes more crystallized and more assertive, namely through the reinforcement of consular and diplomatic protection. European citizens residing beyond the borders of the EU will take to measuring the advantages of European citizenship and will demand the entirety thereof. We could also envisage a specific district on the EU level, a transnational one, which would correspond to the visions of the Founding Fathers of Europe.

III. Institutional and Parliamentary Representation of French Citizens Residing Abroad

Representation in the Senate and then in the National Assembly under the Fifth Republic

“French citizens abroad are represented in the National Assembly and in the Senate.” (Article 24, Constitution of 4 October 1958 as modified by the constitutional organic law of 23 July 2008)

Senators of French Citizens Abroad

The Constitution of 4 October 1958, giving the name Senate to the High Assembly, affirmed the principle of parliamentary representation for French citizens abroad, a representation which, as we have seen, began with the Constitution of 1946.

The ordinance of 15 November 1958 set the number of these Senators at 6 and prescribed that they should be from then on elected not by the National Assembly but “*by the Senate, upon the presentation of candidates by the High Council of French Citizens Abroad.*” It was thus the High Council, created 10 years later, that presented the Senate with the list of candidates.

Today, the 12 Senators representing French citizens abroad are elected by the elected members of the Assembly of French Citizens Abroad for a term of 6 years, provided that half of the mandates are renewed every three years. (Organic law n° 2003-696 of 30 July 2003)

On the occasion of the next senatorial renewal in 2014, the electoral college of the senators of French citizens abroad will be enlarged by the presence of 11 deputies for French citizens abroad.

The Deputies of French Citizens Abroad

The constitutional revision of 21 July 2008 modified Article 24 of the Constitution as follows: “*French citizens abroad are represented in the National Assembly and in the Senate.*”

The creation of seats for deputies of French citizens abroad through the constitutional organic law n° 2008-724 of 23 July 2008 on the modernization of the institutions of the Fifth Republic places resident and expatriate citizens on equal footing.

The law n° 2011-411 of 14 April 2011 ratifies ordinance n° 2009-936 of 29 July 2009 on the election of deputies by the French citizens residing abroad. Article 3 of this law sets forth that “*the deputies elected by the French citizens residing abroad are members of the Assembly of French Citizens Abroad by law.*” (para. 1) and modifies Article 13 of ordinance n° 59-260 of 4 February 1959 on the election of senators, in prescribing that the senators representing French citizens residing abroad are elected by a college consisting of (1) the deputies elected by the French citizens abroad, (2) the members of the Assembly of French Citizens Abroad (para. 2).

The number of these deputies was fixed at 11. The government initially intended for a much smaller number (a maximum of 8 deputies), but the Constitutional Council decided that the number shall be fixed with due attention to demographic considerations, and the numbers of the 2.5 million French expatriates justified these 11 seats.

The National Assembly decided that the all-encompassing number of deputies must not surpass 577, thus, 11 districts on the national territory have been abolished in order to allow entry for these new deputies: those of French citizens abroad, whose election will take place on 10 and 17 June 2012.

The ordinance n° 2009-936 of 29 July 2009 on the election of deputies by French citizens abroad determines the technical modalities of the elections of these deputies.

This system, which is unique in the whole world, requires that *“the deputies of French citizens abroad be elected as others, in an election based on single-member constituencies and with two rounds. The electoral lists are established based on the consular registers.”*

The limitation and definition of districts must take place, here as well, on the basis of demographic considerations attaching to the number of French citizens in the respective districts. There is going to be a sole district for Asia and Oceania (a zone where French citizens are not so numerous, unfortunately) and two for the Americas (one of which for the whole of Latin America and part of the South of the United States). Two seats will represent Africa and a third will cover Central and Eastern Europe and the Middle East. Western Europe will be divided into five districts: one for the United Kingdom, Ireland, Scandinavia, the Baltic States, and one for Germany. One other district will be assigned to Switzerland (the country where the French presence is the most pronounced, according to the consular registers, with 132,000 voters registered). The several ten thousands of French in Monaco are going to be put in the group of those who live in the Iberian Peninsula.

Even if the method of voting is the same as in France, several adjustments are equally programmed. Postal voting and e-voting will be generalized (decree n° 2011-843 of the Council of State of 15 July 2011 on the election of deputies by the French citizens abroad) for the first time in national elections in response to the wishes of the elected representatives and the associations of French expatriates that had been many times reiterated. The first round for French citizens abroad will be brought forward with a week, thereby providing for a three-week-long span between the two rounds. Campaign finances will also be extended taking into account the distance that the candidates have to travel.

The introduction of deputies for French citizens abroad places them on an equal footing with their compatriots, who reside in France. If the mobilization of voters succeeds, e-voting may be then generalized for other national elections as well (namely, the presidential), in which French citizens abroad may participate.

The year 2011 was an important year: a year of progress for the political rights of French citizens abroad. From the regained possibility to vote from abroad at the European elections to the ratification of the ordinance on the election of deputies for French citizens abroad and to the establishment of a Secretariat of State for French Citizens Abroad on 29 June 2011, the demand of our compatriots residing abroad concerning the right to vote was heard by the government.

The dynamic started in 2011 in favor of the political rights of French citizens abroad will continue and I will continue to battle with my colleagues in the Senate and soon in the National Assembly in order to assure a veritable equality between citizens regardless of their place of residence. In an attempt to convince those countries that have not yet conferred full political rights upon their expatriates, I assert that political rights are fundamental human rights, and nothing can justify the deprivation of citizens of these rights at present.