

Interrelation Between the Universal Suffrage and its Restrictions

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Abstract

The article presents a discussion on the notion of universal suffrage, restrictions settled by states, the different approaches to limitations, and the importance of universal suffrage as one of the main measurements of democratic elections. Presented study focuses on the analyses of the theory, regulations, and judicial practice regarding main restrictions such as citizenship, residency, and age. This article reviews in detail existing regulations worldwide study the approach of different states concerning limitations of universal suffrage, discusses judicial practice both of states and international organizations, on the bases of comparative analysis identifies main problems and challenges, shows the interrelation of universal suffrage with the principles of inclusiveness, draws own conclusions and makes recommendations for rising the effectiveness of the principle of universal suffrage.

Key Words: Elections, Universal Suffrage, Age Restrictions, Citizenship and Residency

INTRODUCTION

Domestic and International human rights systems recognize the right to political participation in the democratic governance of State, which includes the right to vote and the right to be voted for.

Talking about elections, one should consider various limitations governing the right to vote. These conditions and limitations may vary according to states since they have the authority to determine the mechanisms for effective exercising the right to vote. “The

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choices made by states to give effect to the right to political participation are subject to constitutional standards at the domestic level”(Abebe, 2013, 411).

International principles significant to democratic elections have been progressively recognized in recent years, which are evidenced by treaties, declarations and other international instruments, in particular:

- Universal Declaration of Human Rights (10/12/19948);
- International Covenant on Civil and Political rights (16/12/1966);
- African Charter on Human and people’s Right (26/06/1986);
- American Convention on Human Rights (18/07/1978);
- First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (03/03/1952).

During the exercising active and passive electoral rights, universal and equal suffrage may be restricted by law. Reasonable restrictions must be imposed only in good faith and be necessary for governments to meet their obligations to respect and ensure electoral rights (Merloe, 2008, 2).

The principle of inclusiveness is a central consideration in the choice of a country’s electoral system (Merloe, 2008, 3). There are diverse types of electoral systems, namely proportional, majoritarian and mixed systems, and all of them can be democratic. Within these systems, the principle of the authority of government derives from the will of the citizens expressed through universal and equal suffrage. To avoid useless restrictions states should find factors, which hinder the right to vote.

Following political transformations during the last century, the notion of universal suffrage has broadened, in particular, no one is disqualified from the opportunity to vote and to be selected based on gender, education, social standing. It means that nearly all countries have adopted the rule of universal suffrage (Beckman, 2008, 1). Despite this, there is no electoral system where all members of society have the right to vote. Resident

aliens, expatriates, prisoners, people with cognitive impairments, children are everywhere excluded from the electoral process.

The main aim of the presented paper is to investigate the main notion of “universal suffrage” and how this term should be deployed in order not to confuse the society, to analyze the current practice of states, and to identify how the existing restrictions serve to universal suffrage. To achieve the research aim, we selected *comparative analysis* of existing legal regulations, practices and *case studies* based on judicial practice of various countries. During research we also rely on the analysis of scientific papers regarding the restrictions of Universal Suffrage.

1. RESTRICTIONS OF UNIVERSAL SUFFRAGE AND THE PRACTICE

The principle of universal suffrage suggests that every adult citizen has the right to participate in elections. Despite the general definition, mentioned principle is restricted by laws existing in various countries that impose specific limitations.

Restrictions on the right to vote and right to be elected must be limited to citizenship, residency, age, mental incapacity, criminal record, an education level (Beckman, 2008, 4). “The purpose of mentioned limitations are not to separate specific social layers from the electoral process; the purpose is to involve such citizens in elections, who possess appropriate civic responsibility” (Melkadze, 2012, 28).

1.1. Citizenship and Residency

Citizenship and residency limitations are closely linked to the universality of elections. In the legislation of the majority of countries, only citizenship is not enough to exercise suffrage; the residence has crucial significance when exercising both active and passive suffrage.

A residency implies that a voter or candidate must reside in a particular country or particular constituency for a certain period to be eligible to participate in elections.

To exercise active suffrage, the United States has established a one-month residency period in a particular constituency, in Germany- three months, six months period – in Belgium and France (Melkadze, 2012, 28), etc.

Exercising passive suffrage, residence limitation is given greater importance. A US citizen by birth, who has lived in the United States for 14 years, maybe elected as the President of the United States of America (Melkadze, 2012, 28).

According to the legislation of Georgia, a citizen of Georgia who has lived in Georgia for at least 10 years can be elected as a Member of Parliament (Constitution of Georgia, 1995, Article 37(4)) as a president - a citizen of Georgia who has lived in Georgia for at least 15 years (Constitution of Georgia, 1995, Article 50(2)).

Montenegro imposed residency requirements as a condition for citizens to be eligible to vote. In particular, citizens could only vote if they had been resident in the country for 24 months before the election.

U.S. Supreme Court reviewed the case “**Holt Civic Club v. The city of Tuscaloosa**” in 1978. Based on Alabama Statutes the police jurisdiction of Tuscaloosa extended 3 miles from the city’s corporate limits. All residents within 3-mile fringe were subject to the city’s police and sanitary regulations, the criminal jurisdictions of the city’s court, and the city’s power to license businesses, trades, and professions, but were not permitted to vote in city elections. The applicants submitted a complaint to Alabama District Court and claimed that the city’s extraterritorial exercise of police powers over them without the right to vote on an equal footing with city residents violated the due process and equal protection clauses of the 14th Amendment. The District Court denied the request and dismissed the complaint. The Supreme Court affirmed the judgment of the District Court. According to the decision, it can be concluded that it’s legitimate for a state to limit the right to vote in general interest elections. On the other hand, other court decisions stated that state may permit nonresidents to vote in municipal elections so long as the classification of nonresident voters entitled to vote has a rational relationship to the promotion of legitimate state interest and those nonresidents to whom the vote is extended

are directly affected by the outcome of the election (Palmer, Feigenbaum, Skelton, 1990, 5-210).

In case “**Dunn v. Blumstein**”, the applicant moved to Tennessee in June 1970 to being employed at Vanderbilt University in Nashville. He had an intention to participate in the upcoming August and November elections, so he tried to register on the 1st of July, but he was refused registration for not meeting durational residency requirements. Tennessee Law permitted the registration only to those who have state residency of one year and country residency for three months. U.S. District Court held that the durational residency requirements were unconstitutional. But the case was brought to Supreme Court by the Governor. The Supreme Court appeared to have set a constitutional limit of 30 days for durational residency as a precondition for voting in congressional, state, and local elections, which is the maximum length of pre-election residence. However, in other cases (Burns v. Forston, 1973; Marston v. Lewis, 1973) Supreme Court approved a 50-day durational residency in Arizona and Georgia based on the necessity to promote compelling state interests (Palmer, Feigenbaum, Skelton, 1990, 5-27, 5-28).

In some countries, the mentioned restrictions are very difficult to overcome. Human Rights Committee reviews the reports of member-states and makes concluding observations, in particular:

- The Roma minority in Albania continues to face discrimination in participating in political life. The State party should take immediate steps to ensure that all Roma have identity cards to exercise right to vote (arts. 2, 25, 26 and 27) (Human Rights Committee, 2013);
- More than 4 million persons still don't have citizenship certificates, which is essential for the enjoyment of various rights, including political rights (Human Rights Committee, 2014, par. 20);
- Undue limitations on the right of citizens to genuinely take part in the conduct of public affairs, to vote and to be elected, such as based on long-residency and language-proficiency requirements (Human Rights Committee, 2015, par. 26);

- Naturalized Kuwaiti citizens are denied the right to vote for 20 years and are denied the right to be elected (arts. 22 and 25) (Human Rights Committee, 2016, par.46).

The case-law of the European Court of Human Rights on the discussed issue is very important. According to the Judgment on “**Affaire Py v. France**” (06/06/2005), a French national from mainland France was refused to participate in elections to the Congress of New Caledonia on the ground of absence of 10 years of residence in the territory. According to Court, there had been no violation of Article 3 of Protocol No. 1 to the Convention. The legitimate aim to ensure that the consultations would reflect the will of “interested” persons and would not be altered by a massive vote cast by recent arrivals without solid links to the territory. The status of New Caledonia, a transitional period prior to recognition of full sovereignty, was such that they could be regarded as “external conditions” that required limitations as important as the ten-year residency, a provision which had also been instrumental in alleviating the bloody conflict (Affaire Py v. France, Judgment of 06/06/2005).

In Case “**Polacco and Garofalo v. Italy**” applicants were unable to vote in regional elections on the ground that they lacked the residence prerequisite of four years. The application was inadmissible as “given the particular social, political and economic situation of the [region], it cannot be regarded as unreasonable to require that an elector reside there for a lengthy period before he can take part in the local elections, as it is not unreasonable to expect that such a long period of living in the region is necessary for the elector to have a thorough understanding of the regional context so that his vote in the local elections can reflect the concern for the protection of the linguistic minorities” (Polacco and Garofalo v. Italy, 1997).

1.2.Age Restrictions

One of the important limitations concerns the age, which differs in the scope of the passive and active suffrage of a citizen. According to article 2 of the Election Code of Georgia (2011) active suffrage is the right of a citizen of Georgia, through voting, to

participate in the elections of the people's representatives to the representative body of public authority and the general elections, referendum, a plebiscite held to appoint authorities; passive suffrage is the right of a citizen of Georgia to run for Office of a public authority in the representative body and to hold public office.

The age limit for passive suffrage is higher than that for active suffrage, and states define it in their domestic law. In recent years there has been an attempt to the reduction of the voting age in various states. The response to this initiative differs based on the level of democracy, the political and economic stability of states, and the political and legal intelligence of society.

According to the laws of different countries, the age limit for active suffrage varies from 16 to 21 years. States, which have active suffrage age limit of 18 years, constitute the majority on the world political map, 100 states. However, there are some exceptions, in particular: in the United States of America, the age of active suffrage is 18 years, although in some states the exercise of active suffrage by a 17 years old person is permitted in the primary elections. This rule is intended to encourage young people to take part in elections. Such states include Connecticut (Constitution of Connecticut, 2008), Delaware (Delaware Code, 2010), Illinois (Illinois Revised Statute, 2013), Mississippi (Mississippi Code Ann. §25-15-11, enacted in 1997), Indiana (Indiana Code, §3-7-13-1, enacted in 1995), Nebraska (Nebraska Revised Statute, 1994), etc.

Regarding age restrictions in 1972 U.S. District Court for the Southern, District Ohio reviewed the case, "**Gaunt v. Brown**". The Constitutionality of Ohio Statute limiting the right to vote at a primary election to qualified electors who are 18 years or older was challenged in a U.S. District Court by 17-year-olds who would be 18 at the time of the general election following the primary one. The issue was: do 18-year-olds, as a matter of equal protection of laws, have the right to participate in the primary in which the candidates they may vote for at the general elections are selected or in other words, can a state deny a "soon-to be-18-year-old" the right to vote in the connected primary? According to the decision of court, a state has the right to limit the right of "soon-to be-

18-year-olds” to vote in primaries under Article 1 of the Constitution and the 10th Amendment (Palmer, Feigenbaum, Skelton, 1990, 5-31).

According to the legislation of Bosnia and Herzegovina the age limit for exercising active suffrage is 18 years, however, a 16-year-old employed person is eligible to take part in voting (Election Law of Bosnia and Herzegovina). Argentina determined 18 years, in exceptional cases 16-18 years old are eligible to vote (Hufford, 2012).

In other countries, the mentioned age limitation is represented as follows:

- Countries with an active suffrage age limit of 16 years—Scotland (Scottish Independence Referendum Act 2013), Brazil, Cuba, Ecuador, Austria (White, 2015, 27);
- Countries with an active suffrage age limit of 17years— Greece (Bouras, 2016), Indonesia, Sudan, North Korea;
- South Korea is the only country with an active suffrageage limit of 19 years;
- In Singapore (Singapore Electoral Department), Malaysia, Kuwait - 21 years;
- In the United Arab Emirates - 25 years.

The age limit for active suffrage differs from that of passive suffrage age limit. This is conditioned by the liability arising from passive suffrage. In this respect, the age limit varies from 21 to 45 years.

According to the legislation of Georgia, a citizen of Georgia from the age of 25 may be elected as a Member of Parliament (Constitution of Georgia, 1995), a citizen of Georgia from the age of 40 may be elected as a President of Georgia, a citizen of Georgia from the age of 25 -as a Mayor (Code of Local Self-Government, 2014, article 49(2)).

In Argentina, in the representative body, the age limit for passive suffrage is 25 years (for the House of Representatives) and 30 years (for the Senate) (Constitution of Argentina,1853); passive suffrage age limit in Turkey is 30 years; In France for lower house is 23 years; in Italy for the upper house – 40 years, and for presidential elections– 50 years.

The question about lowering the voting age is a topic for the debate and it cannot be determined by one single factor. “The debate raises several political, legal and social issues, such as implications on election turnout, or constitutional and normative arguments that need to be taken into consideration” (Council of Europe, 2015, 7). The opinions among the public, the politicians, and academic circles differ.

Prof. Robert Blackburn stated that “the argument against any further age reduction in voting rests simply upon grounds that some arbitrary age limit has to be drawn, and that many 16-17-year-old people are unlikely to have gained the necessary political maturity to be able to express a considered political judgment” (Blackburn, 1995, 73). According to Ian McAllister, lowering the age “does not stand up to empirical scrutiny”. His comprehensive Australian modeling finds that extending the vote to 16 and 17-year olds would have “likely partisan consequences” (Human Rights Centre, 2016). Given argument is based upon two assumptions:

- 16-17-year olds’ voting patterns will be similar to 18-19-year olds;
- Enrolment of 16-17-year olds will be similar to 18-19-year olds.

The validity of McAllister’s argument, therefore, turns on whether these assumptions are correct. These assumptions have been argued because it’s difficult to get 18-year olds to enroll and vote. After all, this can be a time of great upheaval in their lives. Therefore, the number of enrolled 16-17-year olds may be significantly higher as they are often in a “more stable family environment, and still at school” (Human Rights Centre, 2016).

The opponents of abovementioned argumentations state that lowering the voting age to 16 and 17 will bring young people's right to vote into line with other rights they enjoy at that age, in particular, they can drive, work, consent to sexual activity, participate actively as consumers, have disposable income, make decisions about their education, health and employment and similarly pay taxes to persons over the age of 18 (Human Rights Centre, 2016).

The involvement of young people from the age of 16 would allow them to actively participate in matters that significantly affect them. According to the UN Convention on the Rights of the Child states that each child has the right to express his or her views in all matters affecting the child (Convention on the Rights of Child, 1989, article 12(1)). As such, proscribing young people from having a voice in key election issues such as taxation, education, health, justice, child protection, and employment may not be a reasonable restriction from the franchise.

European Court of Human Rights in case – “**Hirst v. the United Kingdom**” - discussed as possible limitations the imposition of minimum age, finding that it “may be envisaged to ensure the maturity of those participating in the electoral process... Any departure from the principle of universal suffrage risks undermining the democratic validity of the legislature thus elected and the laws it promulgates. Exclusion of any groups or categories of the general population must accordingly be reconcilable with the underlying purposes of Article 3 of Protocol No. 1” (Hirst v. the United Kingdom, 06/10/2005).

Austria has several changes in regarding with the age restrictions. After these reforms Austria became the first Country in the History of European Union, to adopt the voting age of 16 at all levels. The changes were as follows:

- In 1992 - voting age was reduced from 19 to 18 at all levels;
- In 2000 - five regions of Austria lowered the voting age to 16 in local elections;
- In 2006 – age was reduced in all regions and at all levels of elections;

Based on several academic studies, some findings are made, in particular since young people are interested in elections, the turn out practically the same as older people's. It means that there is an positive impact on the representation of the electorate; young people have their own interests, that should be represented. Therefore campaigns and political activities are needed to increase the awareness and at the same time the interest of young people in mentioned field (Council of Europe, 2015, 17).

In 2014 the Scottish referendum on independence was conducted. The importance of this referendum conditioned by several factors, and one of them was the lowering voting age to 16-17 year. This would cause the high levels of enthusiasm among Scottish teenagers. According to official data, the turnout of 84.6% was the highest recorded for an election or referendum in the UK since the introduction of universal suffrage. 109593 persons under 18-year registered and 75% claimed to have voted (Electoral Commission, 2014). Based on presented results, in case of perceiving own importance, young people will enjoy their political rights. For more effective results some main conditions should be fulfilled, for example, timely provisions in regard with legislations, organizational capacity, civic education (Council of Europe, 2015, 18).

CONCLUSION

The main issue concerning the country's electoral system is the principle of inclusiveness. As mentioned above, all types of Electoral systems (majoritarian, proportional and mixed systems) can be considered to be democratic, but the main principle of all of them is that the authority of a government should be derived from the will of citizens, expressed through universal and equal suffrage.

The correlation between the electoral and other civil and political rights shows that democratic elections mean inclusiveness for citizens who want to exercise the right to vote and for those who wants to be elected. States must provide inclusiveness in electoral Processes.

However, the principle of universal suffrage does not imply that everybody shall participate in elections. Despite the expansion during the last century, that included Afro-Americans, the poor, illiterate, women, and other marginalized groups, the principle of universality may be still limited by specific restrictions, most of which are aimed at holding democratic elections and recruiting the government by the relevant electorate.

According to the analysis of theories, regulations, reports, and judicial practice, the following conclusions can be drawn:

- Any conditions applicable to exercising the voting right should be based on objective and reasonable criteria. Active and passive electoral rights require different age limitations. It may be claimed that expanding the franchise would have beneficial impacts on the legal status of young people's rights in certain countries, but it's based on the abovementioned trends, reducing the voting age will have a significant impact in a long perspective.
- While citizenship-based restrictions are recognized as an acceptable limitation in several States, problems persisted with the disenfranchisement of certain groups of permanent residents without citizenship or with "undetermined citizenship". States must take appropriate steps to ensure that all persons eligible to vote can exercise that right, in particular, obstacles to the registration process should be eliminated. If residence requirements apply to registration, they must be reasonable (which means proportional to restrictions) and should not be imposed to exclude the political ability of the homeless.

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