



Absentee Voting for Citizens Residing Abroad

Austria • Netherlands • Spain

1993

LL File No. 1994-0125
LRA-D-PUB-001950

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AUSTRIA

Scope and procedures of absentee balloting for Austrians residing abroad

Absentee balloting was introduced through legislation in 1990,¹ and this reform not only opened the franchise to Austrians residing or travelling abroad but also made voting possible for resident Austrians otherwise prevented from voting in their local voting district. As a result of this reform, absentee balloting for non-residents is now available for national elections; these are the election of the National Council which is the representative chamber of the bicameral federal legislature and the election of the Federal President. In addition, votes can be cast from abroad by non-residents for plebiscites that introduce bills to the National Council. Non-resident Austrians cannot vote for the other two federal institutions of direct democracy: the referendum, by which new legislation can be submitted to a popular vote and the public-opinion poll.²

In order to vote by absentee ballot, an Austrian must be included in the register of voters. This register is kept by the local authorities of each voting district. Austrians who reside in Austria are entered into the register automatically by the authorities, on the basis of questionnaires that must be filled out by each resident. In Austria, this is easily accomplished because all residents are recorded with the local authorities.

Austrian citizens who reside abroad must apply to be included in the register of voters. The proper place of application is the place of the last Austrian residence. In its absence, the following apply in descending order: place of birth; residence of spouse or of a family member; residence of employer; place where property is owned; and, if none of these apply, the place to which the applicant has other significant contacts.³ This exact statutory prescription of the place in which non-residents can vote was suggested in the court decision of 1989, and it serves to ensure that voters cannot choose the place of balloting.

Absentees cast their vote by mail, after having received a ballot from their voting district. Those residing abroad can either apply for a ballot with the authorities in the place of their registration by mail or in person or they can request a ballot from the Austrian diplomatic or consular representation of their country of residence. According to the statutory provisions,⁴ applications must be received three days before the election, whether they have been sent by mail or through an embassy. The voter bears the risk of the timely receipt of the application.

The local voting districts then send the ballots and polling cards to the absentee voters. Each voter receives an envelope which serves as a polling card and a ballot to be placed in this

¹ Wahlrechtsänderungsgesetz 1990, Feb. 28, 1990, *Bundesgesetzblatt* (BGBl., official law gazette of Austria) no. 148/90.

² Bundes-Verfassungsgesetz (B-VG), repromulgated Dec. 1929, BGBl. no. 1/1930, arts. 26, 41, 43, & 60.

³ Wählerevidenzgesetz 1973, Nov. 17, 1973, BGBl. no. 601/73, as amended.

⁴ Nationalratswahlordnung 1971, Nov. 27, 1970, BGBl. no. 391/70, §§ 41-43.

envelope. To cast a valid vote, the voter must mark the ballot in the presence of an acceptable observer, either a notary or an embassy official. This, however, should be done so as to preserve the secrecy of the vote. The voter then places the ballot in the envelope and the observer certifies on the outside of the envelope that the properly identified voter has cast his vote in the enclosed envelope. This procedure must be undertaken before the polls close in Austria. Then, the voter or the embassy is free to mail the ballot to the voting district.⁵

Development of absentee balloting

The 1990 law that introduced absentee balloting was enacted after the Constitutional Court ruled in 1989⁶ that suffrage is constitutionally guaranteed to all Austrians, regardless of their place of residence.⁷ For a long time before that decision, a spirited debate on the desirability of absentee balloting in general and for non-resident Austrians in particular had been waged. This persisted even after the Council of Europe had recommended in 1986 that the member states make it possible for their non-resident citizens to cast a vote in national elections.⁸ The Austrians who had opposed the voting rights of absentees had argued that the secrecy of the vote and the personal casting of the vote, both constitutionally guaranteed, would be jeopardized by absentee balloting; yet, it has also been alleged that political considerations, particularly the likely outcome of the non-resident vote, were also at issue.⁹

In its 1989 decision, the Austrian Constitutional Court found the right to vote of non-residents implied in article 26 of the Constitution¹⁰ which provides that National Council (*Nationalrat*, representative chamber of the bicameral federal legislature) is elected by the people in accordance with the principles of equal and direct suffrage; likewise, for the election for the federal president, the Court found this guarantee in article 60 of the Constitution.

It is interesting to note how differently Austria and West Germany have implemented the 1986 Council of Europe resolution on absentee voting. Germany already had absentee voting at that time, but it was limited to German citizens who resided in Germany. In anticipation of the Council of Europe resolution, Germany allowed absentee voting for German citizens residing in Council of Europe States and to other German citizens residing abroad for less than ten years provided they had resided in Germany for at least 3 months before their departure.¹¹

⁵ *Id.* § 62 a.

⁶ Verfassungsgerichtshof decision, Mar. 16, 1989, 17 *Europäische Grundrechte Zeitschrift* 67 (1990).

⁷ Exclusions from the right to vote can only be imposed by the courts for criminal offenses or other serious reasons [B-VG, art. 26].

⁸ Council of Europe Recommendation No. R (86) 8.

⁹ H. Neisser, *Bundeswahlrecht und direkte Demokratie* 45 (Wien, 1990).

¹⁰ *Supra* note 2.

¹¹ Bundeswahlgesetz, repromulgated Sept. 1, 1975, Bundesgesetzblatt (BGBl., official law gazette of the

In Austria, on the other hand, absentee balloting was newly introduced in 1990 for all voters. In addition, Austrian citizens living abroad are guaranteed a right to vote regardless of their place of residence or their length of absence from Austria. Even Austrians who have never set foot in Austria can vote.

Prepared by Edith Palmer
Senior Legal Specialist
European Law Division
Law Library of congress
November 1993

Federal Republic of Germany) I, p. 2325, as amended by Gesetz., Mar. 8, 1985, GBGBI. I, p. 521.

THE NETHERLANDS

Until 1977 the right to vote for members of the Second Chamber of the Parliament of the Netherlands was limited to those nationals of the Netherlands who were also residents there. In that year, through an amendment of the Election Law,¹ the right to vote was extended to those non-resident citizens of the Netherlands who were working in the Dutch public service outside the country. According to the tax laws, such citizens kept their domicile in the Netherlands and they could justly appeal to the old adage: "no taxation without representation." The Constitution of 1983² gave the right to vote for the members of the Second Chamber to all Dutch nationals who had attained the age of eighteen with the exception of those who had been excluded by a law of Parliament by virtue of the fact that they are not residents of the Netherlands. As a consequence, the Election Law³ was amended; and, in 1985 the right to vote was given to non-resident nationals, with the exception of those nationals of the Netherlands who live in the Netherlands Antilles or Aruba, since they can vote for the representative bodies of these counties. In order to execute the voting right, a duty to register is required. It was suspected that only those nationals who maintain close ties with the Netherlands would use this right. Since 1985 three elections have taken place, and the participation of non-resident nationals has been low.⁴ For the elections of the Second Chamber in 1986 only 10.4% of those entitled to vote actually registered and 7% participated in the vote. For the election of the European Parliament in 1989 the figures were 6.3% and 3.9% respectively. For the elections of the Second Chamber in that same year the figures were even lower: 4.3% and 3.1% respectively.

Prepared by Karel Wennink
Senior Legal Specialist
European Law Division
Law Library of Congress
October 1993

¹ Law of Mar. 5, 1977, *Staatslad* (official gazette of the Netherlands, Stb.) 113.

² Art. 54.

³ Law of Sept. 25, 1985, Stb. 527, art. B1.

⁴ P.W.C. Akkermans & A.K. Koekkoek, *de Grondwet, een artikelsgewijs commentaar* 566 (2d. ed., Zwolle, W.E.J. Tjeenk Willink, 1992).

SPAIN

Absentee voting is governed by the provisions of the Organic Law on the General Electoral Regime.¹ This Law provides basic general principles for absentee voting and also adds specific requirements to be observed by absentee voters who reside abroad. It states that those citizens who anticipate that they will not be present at the locality where they are required to vote or may not come to the polls in person may cast their ballot by mail, provided they have filed an application with the Provincial Delegation of the Office of Electoral Census in observance of the following requisites:²

- The voting citizen must submit an application within the term running from the time the call (*convocatoria*) is made to five days before the election day. The corresponding local delegation may grant a certificate of registration.
- The application must be filed in person. The Post Office employee in charge of receiving the ballots will verify the identity of the voter and his/her signature. Identity may only be verified through the Official ID document. No photocopy is acceptable.
- When a voter cannot appear in person for reason of illness or incapacity, the application may be filed on behalf of the voter concerned by a duly authorized proxy, properly identified and documented as such by means of a notarized or consular instrument. Verification of compliance with these requirements is entrusted to the corresponding electoral board (*Junta Electoral*).

At the time the application is received by the corresponding provincial delegation, the registration is verified, and a marginal annotation is entered on the census record so that the applicant may not vote in person. A certificate for voting by mail is also issued. As soon as the ballots are available, the Office of Electoral Census shall send the voter all the required papers, instructions, the certificate and an official envelope with the address of the location where the polling will take place.³

Once the voter has cast the ballot, the document and the certificate must be placed in the official envelope and sent to the designated polling place by registered mail. The corresponding post office must collect all mail in this category until election day. At that time, such mail must be delivered to the addressed polling places (*Mesas Electorales*) at 9:00 a.m. Ballots received by the post office during the course of that day must be delivered before the twentieth hour (8:00 p.m.). The Postal Service must keep complete records on all material received under this statute so it may be made available to the Electoral Board.⁴

The Provincial Delegations of the Electoral Census will, on its own initiative, provide registered absentee voters residing abroad with a certificate identical to that referred to above as well as the ballots, instructions, other corresponding documents and the official envelope. A ballot cast by someone living abroad must also be sent to the Provincial Electoral Board by registered mail no later

¹ Ley Organica 5/1985, in *Codigo Electoral* (1st ed., Madrid, Editorial COLEX, 1992).

² *Id.* art. 72.

³ *Id.* art. 73, paras. 1 & 2.

⁴ *Id.* paras. 3 & 4.

than the 34th day following the call or before the 42nd day, if an objection was filed on the registration and announcement or recognition (*proclamacion*) of candidates.⁵ Voters in this category exercise their electoral rights in the manner prescribed above. The envelopes containing the certificate and ballot(s) must be sent to the corresponding Electoral Board for counting no later than the day before election day. Compliance with this time requirement must be certified by the post office concerned. On election day, the corresponding Electoral Board must present itself at the designated balloting place to deliver the ballots sent by absentee voters. This must be done before the regular voting begins.⁶

Amendments or alterations of these general electoral principles may be introduced by the Spanish Government upon recommendation by the Central Electoral Board.⁷

There are no specific considerations or distinctions made by the statute or in the precedents consulted concerning the reasons why a voter may be absent. It appears that absentee voting is, therefore, not contingent upon the reasons of the absence but rather the absence itself.

These standards are not applicable to municipal elections which are governed by a separate statute.⁸

Prepared by Rubens Medina, Chief
Hispanic Law Division
Law Library of Congress
November 1993

⁵ *Id.* art. 75, paras. 1, 2 & 3.

⁶ *Id.* paras. 3, 4 & 5.

⁷ *Id.* para. 6.

⁸ *Id.* para. 7.