

8 MULTIPLE CITIZENSHIP – A BREAK WITH THE ONE MAN, ONE VOTE PRINCIPLE?

Petra Lea Láncos*

8.1 INTRODUCTION

The current concept of citizenship was formed by the period of centralization and the construction of the nation state in the nineteenth century. In the effort of constructing the nation, the exclusive relationship between the state and its citizens acquired a remarkable significance.¹ This approach to citizenship is vividly illustrated by the *Nottebohm* judgment of the Hague International Court of Justice rendered in the mid-twentieth century, according to which

nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute the juridical expression of the fact that the individual upon whom it is conferred, either directly by the law or as the result of an act of the authorities, is *in fact more closely connected* with the population of the State conferring nationality than with that of any other State.²

Although the trends in the development of international law seem to substantiate the exclusive concept of citizenship put forward in *Nottebohm* judgment and the Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws expressly seeks to prevent situations of multiple citizenship,³ by the end of the twentieth century a

* Adjunct professor, Péter Pázmány Catholic University, Faculty of Law; Legal advisor to the Hungarian Ombudsman for Future Generations. E-mail: lancos.petra.lea@jak.ppke.hu.

1 Carine Bachmann and Christian Staerklé, 'The Meanings of Citizenship: From Status to Social Process', in Carine Bachmann et al. (Eds.), *Reinventing Citizenship in South Caucasus*, Final Research Report, SCOPES (2003), pp. 16-21. Charlotte Ene et al., 'From European Citizenships to EU Citizenship', 8 *European Journal of Science and Theology* (2012) Suppl. 1, p. 164.

2 *Nottebohm, Liechtenstein v. Guatemala*, Judgment, 1953 I.C.J. 111 (18 November). For a deconstruction of the *Nottebohm* concept see: Mike Bottery, 'The End of Citizenship? The Nation-State, Threats to Its Legitimacy, and Citizenship Education in the Twenty-First Century', 33(1) *Cambridge Journal of Education* (2003), pp. 102-113.

3 See second paragraph of the preamble of the Convention on Certain Questions Relating to the Conflict of Nationality Laws, the Hague – 12 April 1930.

significant number of states seem to abandon such a restrictive interpretation of citizenship and are less reluctant to accept multiple citizenship.⁴ The concept of citizenship as an exclusive bond between the state and the citizen has become particularly outdated in the European Union,⁵ as with the introduction of union citizenship as well as the ensuing rights of non-discrimination⁶ Member State citizenship has gradually lost its distinctiveness,⁷ its practical relevance has been significantly reduced in scope.⁸ Parallel to these developments the majority of the Member States introduced favourable conditions⁹ for the naturalization of persons who left the state or lost their citizenship for reasons of changing borders,¹⁰ political persecution¹¹ or economic migration,¹² but remain bound to the country of origin for reasons of common culture, language or descent.

The wide acceptance of multiple citizenship¹³ as well as the aspiration of Member States to extend their citizenship to a widening scope of aliens results in a significant rise in situations of multiple citizenship. The number of union citizens is increased by way of the Member States' naturalization of third country nationals,¹⁴ however, a potential challenge

4 Sándor Illés, 'Többes állampolgárság három perspektívából', in Andrea Kiss et al. (Eds.), *Táj, környezet és társadalom*, SZTE Éghajlattani és Tájéldrzejzi Tanszék (2006), pp. 316, 319.

5 'The special feature in the transnationalism of migrants is that their status disintegrates the exclusive relationship with the territory and population of the state', Sándor Illés citing Judit Tóth, *ibid.*, p. 316.

6 At the same time 'the Union regards this relationship as an ethnically, linguistically and culturally independent, neutral and purely legal bond, which resembles citizenship, although that it is not.' Judit Tóth, 'Miért nem lehet, ha szabad? A többes állampolgárság a nemzetközi és az európai közösségi jog felől', *2 Romániai Magyar Jogtudományi Közöny* (2004), p. 10.

7 Illés draws attention to the fact that 'according to the post-national model of citizenship, the significance of citizenship will gradually decline with the general recognition of individual fundamental freedoms and the enforcement of supranational norms, whereby the relative advantage attached to citizenship as a status offering certain privileges as opposed to immigrant and other migrant statuses will decline', Illés (2006), p. 317.

8 Szabó Marcel, *International Law and European Law Aspects of External Voting with Special Regard to Dual Citizenship* (megjelenés alatt), 3. o.

9 'Seven of the old member states and all new ones permit their emigrants to transfer their citizenship by descent from generation to generation without any residence requirements in the country of origin.' Rainer Bauböck, 'Kik Európa polgárai?', *EUROZIN*, www.eurozine.com/articles/article_2008-06-26-baubock-hu.html (2008).

10 Bauböck points out that citizens of one state which are culturally bound to another state constitute a special problem for citizenship law – this is typically the case when state borders are redrawn in the aftermath of international conflicts and those living in the affected regions must assume a new citizenship as well as becoming a minority in their new state. Bauböck *op. cit.*

11 Bundesvertriebenengesetz (Gesetz über die Angelegenheiten der Vertriebenen und Flüchtlinge (1953). Hermann Kurthen, 'Germany's Coming Out: Citizenship and Immigration Reform Since Unification', in Ruth A. Starkman (Ed.), *Transformations of the New Germany*, Palgrave (2006), pp. 183, 186-187; in Spain Ley 51/1982, de 13 de julio offers symbolic citizenship to the descendants of those who fled the Franco regime.

12 See the Portuguese rules on multiple citizenship, Nuno Piçarra and Ana Rita Gil, *Country Report: Portugal*, EUDO Citizenship Observatory, European University Institute, <http://eudo-citizenship.eu/docs/CountryReports/Portugal.pdf> (2012), p. 25.

13 Tóth *op. cit.*, p. 11.

14 Art. 9 of TEU: 'Every national of a Member State shall be a citizen of the Union.'

8 MULTIPLE CITIZENSHIP – A BREAK WITH THE ONE MAN, ONE VOTE PRINCIPLE?

to European democracy is posed not by such naturalizations. Namely, the naturalization of the citizens of other Member States may also give rise to democratic concerns regarding the principle of one man, one vote.

In the following I will examine the challenges posed by the naturalization laws of Member States in the light of European democracy.

8.2 MULTIPLE CITIZENSHIP, MULTIPLE VOTING RIGHTS AND THE ‘ONE MAN, ONE VOTE’ PRINCIPLE

The voting rights of multiple citizens give rise to concerns rooted in constitutional philosophy. In particular, the extension of voting rights to persons who – for lack of domestic residence – only come into touch with the respective state’s economic, social and political life sporadically, can be deemed problematic. According to Follesdal, ‘The political right of citizenship gives expression to the general norm that those affected by the use of public power should also be in a position to influence that use.’¹⁵ And vice versa: those unaffected by the central government should not participate in the formation of the same. In the case of citizens residing abroad, this special requirement is not met.

It is important to note that citizenship (and possibly also voting rights) granted by the Member States to persons residing abroad is often a sort of compensation for a historic injustice. Those granted citizenships are generally bound to the nation by cultural, linguistic or ethnic ties. At this point, it is worth mentioning the fact that *Member State citizenship constitutes a special bond to the nation*. Union law – albeit inexplicitly – affords protection to this special relationship by granting foreign union citizens the right to vote only in local municipal and European Parliamentary elections in the Member State of residence. Thus, it excludes aliens – be they union citizens or not – from voting in national parliamentary elections which determine the immediate future of the nation. As a result of the interplay of national law and Union law, we can discern three categories of persons exercising their voting rights in the Member States:

- Union citizens with residence in their country of origin, participating in municipal, national and European Parliamentary elections in their own country of citizenship;
- Migrant union citizens with residence in another Member State, participating in municipal and European Parliamentary elections in the country of residence, while voting in national parliamentary elections in their country of citizenship;

15 ‘Moreover, as persons equally worthy of respect, the individuals subject to public rule should also have an equal say in how they should be ruled. Without such political rights, individuals remain subjects.’ Andreas Follesdal, ‘Third Country Nationals as Euro-Citizens – The Case Defended’, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1744105 (1999), p. 6.

PETRA LEA LÁNCOS

- Multiple citizens with more than one Member State citizenship, participating in the national parliamentary elections in all their countries of citizenship, while voting in municipal and European Parliamentary elections in their country of residence;
- Multiple citizens with both Member State and third state citizenship, participating in the national parliamentary elections of a Member State and a third state of citizenship and – in case of domestic residence in a Member State – voting in the municipal and European Parliamentary elections in the Member State of residence.

The latter two categories seem to break with the constitutional principle of equal votes. Since European integration brought about the extension of traditional citizenship right to migrant union citizens and states are attempting to regulate the conditions for the fulfillment of citizens' duties through international treaties, Illés claims that 'the last resort for the political community of host states against the introduction of multiple citizenship could be the breach of the principle of "one man, one vote"'.¹⁶

In the following I shall assess the enforcement of the principle of equal votes in the light of the establishment of Union institutions and seek to answer the question, how well-founded the arguments against the multiple voting rights of multiple citizens actually are.

Multiple citizenship: Multiple voting and degressively proportionate representation in the European Parliament

8.3 THE PREVENTION OF MULTIPLE VOTING

According to Article 10 paragraph 3 TEU 'Every citizen shall have the right to participate in the democratic life of the Union.' Union citizenship participate in the democratic life of the Union as a political community among others through exercising their right to vote. Based on Article 39 paragraph 1 of the Charter of Fundamental Rights of the Union 'Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.' The federal structure of the Union is reflected in Article 10 paragraph 2 TEU, which reads:

Citizens are directly represented at Union level in the European Parliament. Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.

16 Illés, *op. cit.*, p. 319. Päivi Harinen et al., 'Multiple Citizenship as a Challenge for Finnish Citizenship Policy Today', in Devorah-Kalekin Fishman and Pirkko Pitkänen (Eds.), *Multiple Citizenship as a Challenge to European Nation-States*, Sense Publishers 2007. p. 124.

8 *MULTIPLE CITIZENSHIP – A BREAK WITH THE ONE MAN, ONE VOTE PRINCIPLE?*

Thus, union citizens contribute to the establishment of the democratic institutions of the Union directly by voting in the European Parliamentary elections and indirectly by participating in the national elections of their country of citizenship.

Union citizens elect the members of the European Parliament by direct universal suffrage in a free and secret ballot.¹⁷ The fact that the European Parliament is formed as a result of European Parliamentary elections organized on the national level poses interesting questions with respect to equal voting rights of union citizens. Although European Parliamentary elections have been held for over three decades, the Member States have failed to elaborate and agree upon a uniform electoral system. Instead, Member States merely codified minimum rules related to the organization of European Parliamentary elections on the national level.

The possibility of double voting may arguably be raised as regards union citizens holding multiple citizenship, since we may presume a greater inclination towards migration from the side of union multiple citizens. At the same time, the argument of the possibility of double voting may not be reasonably raised against the recognition of multiple citizenship, as the eventuality of double voting stems not from their multiple citizenship but much rather from their status of being migrants, which status however, is open for all union citizens irrespective of the number of citizenships they hold.

Although union law makes no explicit reference to equal voting rights, it is safe to say that the prohibition of double voting enshrined in Article 4 paragraph 1 of Directive 93/109/EC as regards certain detailed arrangements for the exercise of the right to stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals serves as a guarantee of equal voting rights.¹⁸ According to Article 9 of the Directive, union citizens wishing to participate in the elections outside their country of citizenship will produce documents evidencing their nationality and address in the electoral territory of the Member State of residence, as well as the locality or constituency in their home Member State on the electoral roll of which their name was last entered. Article 13 provides that the Member States shall exchange such data in order to prevent double voting.

As regards multiple citizens holding the citizenship of a Member State and that of a third state, in case they lack a place of residence in one of the Member States they shall be unable to exercise their right to vote in the EP elections, while if they possess one or more addresses in the Member States the formalities for exercising their voting rights will also be governed by Directive 93/109/EC in order to prevent instances of double voting.

¹⁷ Art. 39 Para. 2 of the Charter of Fundamental Rights of the European Union.

¹⁸ Art. 4 of Directive 93/109/EC provides that:

1. Community voters shall exercise their right to vote either in the Member State of residence or in their home Member State. No person may vote more than once at the same election.
2. No person may stand as a candidate in more than one Member State at the same election.

8.4 THE EFFECT OF THE DEGRESSIVELY PROPORTIONATE SYSTEM ON EQUAL VOTING RIGHTS

In the Member State they vote in, voters may cast their votes for a number of candidates in the European Parliament elections determined in a degressively proportionate system based on the population size of the respective Member State.¹⁹ The Lisbon Treaty limited the number of MEPs in 750 and determined the minimum (6 representatives) and maximum (96 representatives) number of MEP's per Member State. In practice, this means that the smaller Member States are overrepresented, while larger states are underrepresented in the number of MEP's: while an MEP elected in Germany represents 857,000 voters, an MEP elected in Malta represents merely 67,000 voters. This means that there is a twelvefold difference between the voting power of the voters located at the two extremities of the number of MEP's.

The so-called Lisbon ruling of the German Federal Constitutional Court examined *inter alia* the equality of the voting rights of union citizens in the ambit of European Parliament elections. According to the constitutional complaint submitted to the Bundesverfassungsgericht: 'despite the increase in the competences of the European Parliament, it does not have a democratic legitimacy until it is elected on the basis of democratic equality.' According to the German Federal Constitutional Court, democracy as a constitutional principle forms part of the eternal, irrevocable core of the German constitution.²⁰ An inseparable part of democracy as a principle is that citizens elect the representatives of the public authority in a free and secret ballot, while the right to a free and equal participation in the exercise of power is based on equal human dignity which is also part of the eternal content of the German constitution.²¹ Representative democracy has a substantial feature, namely that the majority of the will of the voters will be recognised either in the parliament or in the government.²² Although 'the new political official authority' realized in the framework of European supranational cooperation is not required to slavishly copy national institutional solutions²³ and the 'one man, one vote' principle may not be transferred to a supranational institution,²⁴ equal suffrage is a mandatory legal principle which is also stipulated in Article 3 of the additional protocol to the European Convention on Human Rights.²⁵ According to the Bundesverfassungsgericht, the European Union itself recognises

19 See in detail: Johannes Pollak et al., *Citizens' Weight of Vote in Selected Federal Systems*, Study. Directorate General for Internal Policies, 2011, p. 6.

20 BVerfG, 2 BvE 2/08 vom 30.6.2009, p. 216.

21 BVerfG, 2 BvE 2/08 vom 30.6.2009, p. 212.

22 BVerfG, 2 BvE 2/08 vom 30.6.2009, pp. 213, 215.

23 BVerfG, 2 BvE 2/08 vom 30.6.2009, p. 219.

24 BVerfG, 2 BvE 2/08 vom 30.6.2009, p. 279.

25 BVerfG, 2 BvE 2/08 vom 30.6.2009, p. 283.

8 MULTIPLE CITIZENSHIP – A BREAK WITH THE ONE MAN, ONE VOTE PRINCIPLE?

this democratic principle.²⁶ Being elected not by equal suffrage and not by uniform electoral procedure, but on the basis of contingents, the European Parliament is not a real parliament,²⁷ but much rather an assembly of the nations of the Member States²⁸ in which the majority of the votes cast by the MEP's does not guarantee the support of the majority of union citizens.²⁹ The fact that the Lisbon Treaty has introduced new forms of democratic participation may not replace equal suffrage of the members of the demos.³⁰

The European Commission and the European Parliament have taken the concerns of the Budesverfassungsgericht so seriously that they issued a study in order to refute the points of the *Lisbon* judgment. According to the main findings of the study it is not justified to force representation operating on the basis of 'one man, one vote' principle employed by the Member States on the supranational political community, since representation is not only realized through the European Parliament, but also other informal systems. With respect to representation not it is not numericality, but much rather transparency, accountability and capability that are the decisive factors.³¹ In addition, the European arena also features new actors, such as agencies and bureaus which come into contact with union citizens and form part of the democratic system.

However, this argument may be criticised on several points. On the one hand, it may not be ignored that although the European Union is not a state, it exercises powers transferred by the Member States and – parallel to fulfilling traditional tasks of the state – it seeks to establish democratic structures borrowed from the member countries. It seems to be a rather ambivalent line of arguments that although similarly to states, the European Union directly determines the rights and obligations of citizens, operates democratic institutions and on the basis of Article 10 TEU 'is based on representative democracy', it is not required to correspond to the generally accepted principles of democratic systems, including the principle of equal suffrage. This argumentation is also defeated by the fact that the relevant chapter of the TEU entitled 'Provisions on democratic principles' reads: 'In all its activities, the Union shall observe the principle of the equality of its citizens.' In addition, it is grossly misleading to point to exactly those agencies as complementary instruments of democracy which are situated beyond democratic control and totally lack democratic legitimacy. Furthermore, although the Union seeks in vain to establish other forms of representative democracy these of insignificant number as compared to their Member States equivalents, moreover, they typically end up with a low turnout. Finally, the equality of suffrage and the majority principle may not be replaced by transparency,

26 BVerfG, 2 BvE 2/08 vom 30.6.2009, p. 271.

27 BVerfG, 2 BvE 2/08 vom 30.6.2009, p. 280.

28 BVerfG, 2 BvE 2/08 vom 30.6.2009, p. 284.

29 BVerfG, 2 BvE 2/08 vom 30.6.2009, p. 280.

30 BVerfG, 2 BvE 2/08 vom 30.6.2009, pp. 295-297.

31 See in detail: Johannes Pollak et al., *Citizens' Weight of Vote in Selected Federal Systems*, Study Directorate General for Internal Policies, 2011, p. 7.

PETRA LEA LÁNCOS

accountability and performance, since the former pertains to the establishment of the European Parliament and in-put legitimacy, while the latter enhance the functioning of a democratic system and its formal, material and out-put legitimacy. It is exactly for reasons and considerations, that it is more than justified to enforce the principle of equal suffrage.

Despite all these considerations, it cannot be said that a break with the principle of equal suffrage does not pose problems. The Union legislation itself provides merely that European Parliament elections be general, direct, secret and proportional,³² the issue of equal suffrage arises only indirectly in relation to the prohibition of double voting. Nevertheless, in keeping with the approach of the German Federal Constitutional Court, the principle of equal suffrage may be deduced from the principle of democracy stipulated amongst the values enshrined in Article 2 TEU. It must be pointed out however, that Union legislation regulates the value of democracy on the same level as the distribution of the number of MEP's per Member State, thus, the latter may be interpreted as a type of *lex specialis*. On the other hand, it may be stated that it is questionable exactly on the grounds of migration, whether one can talk about 'weak' German or 'strong' Maltese votes, since here suffrage is linked not to the citizenship, but to the domicile of the union citizen eligible to vote. The point is much rather that in the European Parliament elections, a vote cast in a given *Member State* shall be 'weaker' or 'stronger' than the votes cast in the other Member States.

As a hypothetical possibility, there is the risk that if a Member State grants multiple citizenship to nationals of third countries who have strong cultural and linguistic ties to the given Member State, this may 'attenuate' the voting power of its own constituencies in the European Parliamentary elections. However, this is a real danger only if the individuals recently naturalized and thus acquiring union citizenship arrive in great numbers from third countries and continue to stay in the territory of the Member State concerned. Consequently, the Member State itself may contribute to the growth of its population and to the decline of the voting power of its citizens until the next distribution of the number of the MEP's per Member State. Finally, in the even that the recently naturalized citizens change their place of residence, this effect appears as an externality on the side of other Member States. It could occur that the naturalizing Member State successfully integrates its new citizens and – through the redistribution of the number of the representatives reflecting the increase in population due to the influx of naturalized citizens – the constituencies of the given Member State acquire increased voting power in the European Parliament.

32 Art. 14 Para. 3 TEU: The members of the European Parliament shall be elected for a term of five years by direct universal suffrage in a free and secret ballot.

8 MULTIPLE CITIZENSHIP – A BREAK WITH THE ONE MAN, ONE VOTE PRINCIPLE?

8.5 THE POSSIBILITY OF DOUBLE VOTING IN THE COUNCIL OF THE EUROPEAN UNION

As for the Council, union citizens contribute with their votes cast in the national parliament elections to the establishment of this democratic institution of the Union.

Union citizens possessing multiple citizenship may potentially contribute to the formation of the Council – the ‘senate’ of the Union – on various occasions. The Council is formed indirectly as a result of the national parliamentary elections held in the Member States. In relation to the Council, Union legislation stipulates only the number of the Council votes Member States hold and since national parliament elections contribute to the establishment of the national governments, the regulation of the election procedure falls entirely within the discretionary powers of the Member States. Contrary to the provisions of Directive 93/102/EC concerning the election of the European Parliament serving the aim of avoiding double voting,³³ national parliament elections resulting in the establishment of the Council are outside the scope of mutual controls of the Member States.

Hereinafter, I will demonstrate the question of double voting of union citizens possessing multiple citizenship on the example of the Hungarians living abroad, adding that the statements made here may be valid also in relation to multiple citizens of other Member States.

According to Article XXIII paragraph 1 of the Fundamental Law of Hungary:

Every adult Hungarian citizen shall have the right to vote and to be voted for in elections of Members of the National Assembly, local government representatives and mayors, and of Members of the European Parliament.

Therefore, those Hungarians living abroad, who obtained Hungarian citizenship and are citizens of another Member State at the same time, may cast their vote and stand as a candidate in the national elections of both their original Member State and Hungary.

According to the paragraph 4

A cardinal Act may provide that the right to vote and to be voted for, or its completeness shall be subject to residence in Hungary, and the eligibility to be voted for shall be subject to additional criteria.

³³ Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals.

PETRA LEA LÁNCOS

However, such criteria were not stipulated, so that Hungarians living abroad may take part in the elections in question also in case they have no residence in the territory of Hungary, insofar as they meet their registration obligation stipulated by law. In this respect, András Jakab draws attention to the fact that the text of the original Constitution and later, that of the Fundamental Law, as well as the Constitutional Court's case-law prescribes the *equality of suffrage*.³⁴ According to Article 2 paragraph 1 of the Fundamental Law:

Members of the National Assembly shall be elected by universal and *equal* suffrage in a direct and secret ballot, in elections which guarantee the free expression of the will of the voters, in a manner laid down in a cardinal Act.

In the light of the foregoing, the question may arise whether the fact that individuals possessing multiple citizenship of several Member States may potentially participate in the national parliamentary elections of more than one Member State, violates the requirement of equal suffrage at the EU level. With their participation in various national elections held in different Member States, multiple citizens have practically more votes to cast in the establishment of the Council than their fellow citizens who do not possess multiple citizenship. Although according to the case-law of the Court of Justice of the European Union it is contrary to the prohibition of discrimination to treat multiple citizens the same way as those possessing only one citizenship, this requirement shall manifestly not be applied to those situations, where – contrary to the principle of equal suffrage based on equal human dignity – multiple citizens may acquire a more advantageous position than other union citizens. The European Convention on Human Rights ratified by all Member States, serving as a source of inspiration for the system of fundamental rights protection in the Union and specified in the Charter of Fundamental Rights with the same content and level protection, prescribes the equality of suffrage.³⁵

However, several arguments may be raised against this concern. First of all, the principle of equal suffrage may be raised with regard to the elections under the jurisdiction of one and the same state. That is: the fact that a multiple citizen may participate in the national elections of different Member States, does not infringe the principle of equal suffrage, since the union citizen takes part in all relevant elections once, just like those compatriots who do not possess multiple citizenship. Contrary to the elections of local governments in which multiple citizens may participate only in the elections organized at their place of residence, national parliamentary elections are aimed establishing a body defining the way forward for society at large. Since multiple citizens have a link to several Member

34 Jakab András, 'A külföldön élő magyar állampolgárok választójoga egyenlőségének kérdése a választási törvény koncepciójában', *Pázmány Law Working Papers* (2011, 38), p. 2.

35 *Ibid.*, p. 3.

8 MULTIPLE CITIZENSHIP – A BREAK WITH THE ONE MAN, ONE VOTE PRINCIPLE?

States at the same time, it is justified that they participate in the parliamentary elections of all Member States of which they are a citizen. Due to the fact that – contrary to the European Parliament – the Council is not formed as a result of direct elections and its members cannot be elected, for lack of a direct election the principle of equal suffrage cannot be violated either.

Secondly, the Council acts as ‘senate’ representing Member State interests. Contrary to MEP’s in the European Parliament who directly represent the interests of the voters (union citizens) and with regard to which the prohibition of dual voting is justified,³⁶ governments established by the parties successful in national elections³⁷ enforce the interests of the Member States in an abstract way. On the basis of the typology of András Jakab, three types of upper houses may be distinguished: aristocratic upper house, corporative chambers and federal chambers which are characteristic of federal states.

The Council may be considered a federal chamber. According to Jakab ‘a federal chamber has the function of strengthening the representation of states with a low population, so that large member states cannot automatically outvote them in the lower house established on the basis of population ratios’.³⁸ Exactly this function of a federal chamber is enforced through qualified majority voting applied most frequently in the Council enabling the formation of a blocking minority.³⁹ Therefore, since the Council represents the abstract interests of the Member States and is formed indirectly through national

36 ‘The Directives regulating European Parliamentary elections also render the situation of dual citizenship uncertain: in the course of the election of MEPs everyone can only vote once, i.e. in one constituency and the union citizen can freely decide whether to vote in his or her country of citizenship or place of residence, while the issue of dual citizens, who possess the citizenship of multiple states and may therefore even cast their votes in two states is left unregulated.’ Kárpát-medencei Képviselek Fóruma (2010), p. 16. Although the Directive 93/109/EC does not regulate the EP election of dual citizens, Para. 1 of Art. 4 prohibits dual voting in general and on the ground of the procedure laid down in the Art. 13, the Member State which registered the voter in the electoral roll cooperates with the country of origin in order to avoid dual voting. Although the situation arising from multiple citizenship is not stipulated in this rule, the application of Art. 13 of the Directive together with the regulations laid down in Art. 10 provides sufficient guarantees in respect of the implementation of the rules above also in these cases:

‘(1) When he submits his application to stand as a candidate, a Community national shall produce the same supporting documents as a candidate who is a national. He shall also produce a formal declaration stating: (a) his nationality and his address in the electoral territory of the Member State of residence; (b) that he is not standing as a candidate for election to the European Parliament in any other Member State, and (c) where applicable, the locality or constituency in his home Member State on the electoral roll of which his name was last entered.’

In spite of that, according to Tóth Judit about a million and a half voters cast their votes in the European Parliament elections twice, Tóth *op. cit.*, p. 11.

37 Exactly therein lied the point of the democratic deficit of the EU prior to the date of entry into force of the Lisbon Treaty: the members of the Council have a link to the eligible voters only with a lengthy chain of legitimacy, in a multiply indirect way.

38 Jakab András, ‘Miért nincs szükségünk második kamarára?’, XX(1) *Politikatudományi Szemle* (2011), p. 9.

39 *Ibid.*

PETRA LEA LÁNCOS

elections, the requirement of equal suffrage may not arise in respect of this Union institution.⁴⁰

8.6 SUMMARY

Above, I have tried to find an answer to the question, whether multiple citizenship situations pose real challenges to the enforcement of the principle of equal suffrage within the European Union. In the course of the examination of the rules framed for the prevention of dual voting, it became clear that the enforcement of equal suffrage in the European Parliament depends primarily not on the status of multiple citizenship, but on migrant situations and the practical difficulties of applying Directive 93/109/EC. The problem of voting power distorted by the degressively proportionate system is a result of the political bargain of the Member States which – considering also the internal migration in the Union – shall probably not be significantly rewritten by the individual naturalization processes of the Member States. Finally, I examined whether the fact that multiple citizens participating in several national elections at the same time and contributing to the formation of the Council, violates the principle of equal suffrage. I arrived at the conclusion that since the Council is not formed as a result of direct elections and its purpose is to represent the abstract interests of the Member States, the principle of equal suffrage is not infringed by the participation of multiple citizens in different Member States' national parliamentary elections. On that basis, it may be stated that multiple citizenship does not pose a challenge to European democracy and the generally accepted principles of suffrage.

40 For a opposing view see: Joachim K. Blatter, 'Dual Citizenship and Democracy', *Global Governance and Democracy Working Paper Series* WP 01 (2008), p. 10.