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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**COMMENTS ON THE LAW
ON THE ELECTION OF MEMBERS
OF THE REPRESENTATIVE BODIES
OF LOCAL AND REGIONAL SELF-GOVERNMENT UNITS
OF CROATIA**

by:

**Mr Franz MATSCHER
(Member, Austria)**

General comments

1. The comments by Pieter van Dijk contain a list of the relevant documents to be taken into account when commenting on the present matter. As a general background I would like to add the study elaborated by the Venice Commission on “Electoral Law and National Minorities” (CDL-INF (2000) 4 of 25 January 2000) where the impact of electoral systems on the representation of minorities in public life, as an aspect of their protection, has been emphasised.
2. For these purposes the system governing sub-national (regional, local) elections is of the utmost importance as many policies that are relevant to minorities are within the competence of the sub-national bodies and institutions. In this respect I fully agree with the general comments by Christof Hartmann.
3. The present comments refrain from repeating the observations by Pieter van Dijk and Christof Hartmann to the extent that I am in agreement with them.
4. As a further general remark I would like to add that, even if the law under consideration does not refer expressly to minorities, it is clear that, for the reasons explained above, in areas of the state where members of the minority are living, in particular where they are concentrated, the electoral system governing regional and local elections is one of the most important factors for their representation in public life, as an aspect of their protection. Therefore I ask myself whether the system of double representation governing the elections at the State level, as provided for by the Constitutional Law on the Rights of National Minorities in Croatia should not be envisaged for the elections at the regional and the local level too. Of course, the practicability and the appropriateness of this idea would need deeper consideration.

Some specific comments

As to Articles 2, 9 and 23

5. The limitation of the right to vote for regional and local elections to Croatian citizens is not in line with the general tendency in modern Europe to grant the right to vote to foreigners having residence there for a considerable period of time (not necessarily permanent residence or domicile within the meaning of various laws). This regulation is particularly problematic in the context of present Croatia in view of the situation of the numerous refugees, especially Serbs, who have not yet acquired the new Croatian citizenship, and it does not facilitate their integration, which is one of the most burning problems of the country.
6. There is also the problem that, following a decision of the Constitutional Court of Croatia, ethnic Croats living in Bosnia and Herzegovina and having dual citizenship are allowed to vote for local government elections in Croatia. But this is not a specific problem of the Local Elections Law; it seems rather to be founded on the Constitution itself. Anywhere, the interpretation of the terms “permanent residence in the area” in Article 2 would deserve a clarification in order to avoid falsification of the results of local elections.

As to other Articles of the Law

7. Concerning various articles Pieter van Dijk raises a series of rather technical and legalistic questions. I agree with him when he says that the relevant provisions should be redrafted in order to render them more consistent, to fill up existing lacunae and to avoid possible misunderstandings.

8. The suggested reconsideration of the various issues addressed in the present opinions would be as easier as the Law of 6 April 2001 seems to be intended – at least partly (see Article 61) – to regulate the 2001 elections only.

9. When redrafting the Law the suggestions made by the Venice Commission in its opinion on the “Constitutional Law on the Rights of National Minorities in Croatia” should also be taken into consideration.