



Strasbourg, 25 May 2007

**Opinion no. 419/2007**

**CDL(2007)050\***  
Engl. only

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**COMMENTS**  
**ON THE DRAFT LAW**  
**ON VOTERS LISTS**  
**OF THE REPUBLIC OF CROATIA**

**by**

**Mr Hjörtur TORFASON (Member, Iceland)**

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*\*This document has been classified restricted at the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

## **I. Introduction**

1. *The following comments are submitted to the Secretariat of the Venice Commission in response to a request from the Government of Croatia for providing an opinion, jointly with the OSCE/ODIHR, on a proposed Law on Voter Lists of the Republic of Croatia.*

2. *The comments relate to a draft report on the subject prepared by the OSCE/ODIHR and dated 30 March 2007, entitled “Republic of Croatia, Draft Law on Voter Lists – OSCE/ODIHR Commentaries”, which will be referred to below as the “Commentaries”. The text was prepared by Mr. Daniel Finn, ODIHR External Expert.*

3. *The proposed Law (“the Draft Law”) has been furnished to the Venice Commission in an English translation (and in the original language), in the form of a draft Law Bill as prepared in December 2006 by the Central State Administration Office in Zagreb (CSAO) for presentation to the Parliament of Croatia (the Sabor), cf. Document CDL(2007)49rev dated 24 May 2007. Beside the proposed text, the Bill contains a reference to the constitutional basis for the Law (in Article 45 on the right of suffrage) and a brief assessment of the current situation in the field and the consequences ensuing from its adoption, together with brief explanations regarding its individual Articles. As required by Article 82(2) of the Croatian Constitution in respect of laws concerning the electoral system, the Law is proposed as an organic law requiring approval by a majority of all members of the Sabor.*

4. *The process of preparation of the Draft Law is briefly explained in Section I of the Commentaries. As noted in the latter (including its footnote 2), the version now furnished to the Commission is a draft of December 2006 with final changes made in connection with its presentation to the Government in mid-January before submission to the Sabor. These involved an expansion of certain Articles (notably Arts. 14 and 15) and the insertion of a few new Articles (Arts. 18, 23, 30, 32 and 42). In the version, however, the Article – by – Article explanations were not changed at the same time, so that from Article 18 onwards, these latter do not correspond numerically with the proposed law text.*

5. *It is proper to mention in passing that the preparation of the Draft Law may be said to constitute a part of an ongoing process of electoral law reform in the Republic of Croatia, which may culminate in the adoption of a comprehensive Electoral Code replacing the existing laws on presidential, parliamentary and local elections.*

## **II. General Remarks**

6. *The comments set forth below on the Draft Law will be quite brief, since the purpose and principal features of the Law are well described in the explanatory material and in the Commentaries, and most of the comments on the Law in the various Sections of the Commentaries can be fully endorsed without extensive remarks.*

7. *The electoral system background against which the Draft Law will apply is described in Section III.B and C of the Commentaries. Briefly, all citizens of Croatia have the right to vote, with their residence determining the place to which its exercise is attached. In parliamentary elections, general voting for 140 seats takes place in ten geographical constituencies according to residence, while 8 seats contested at a national level are reserved for voters claiming a national minority origin. Accordingly, ethnic affiliation is relevant to the voting right, but the voters concerned do have the option to choose instead to vote in the general constituencies. Thirdly, an extra constituency with seats determined by quota is provided for citizens residing out of the country. In local elections, residence generally governs the voting right, but provision is made for ethnic minorities being able to establish units of local self-government or to obtain special representation in the ordinary local assemblies.*

8. The current system of voter registration is referred to in Section III.A of the Commentaries. While it has been recognised that this prior system has needed certain reform and has been improved over the recent years, its structure is basically sound. It relies on the general rules and regime for civil registration, which are briefly described in Section III.D. This is appropriate, but calls for the reliability of the civil system as being of a high order. This poses certain problems in Croatia and has been the subject of recent law amendment, as referred to in the Section. There seems reason to second the suggestion made towards the end of Section III.D, i.e. to consider the possibility of efforts to acquire relevant data by active means such as investigation in order to check against the information obtained in the course of ordinary civil registration.

9. According to the Draft Law, the system of voter registration will continue to rely on the general civil registration system and will be in the hands of governmental authorities at municipal and city level, with the voter lists being based on permanent voter residence (Articles 4-5). Voters without permanent residence in the Republic are to be centrally registered in the City of Zagreb, with reference to their countries of registered residence (Article 4(3) and 5(2)). The diplomatic and consular missions of Croatia in other countries also play an essential part in the registration of these voters for the purposes of out-of-country voting (Articles 15-18).

10. The supervision and responsibility at national government level for the maintenance of voter lists continues to be in the hands of the Central State Administration Office (CSAO), which is the ministry in charge of municipal affairs and took over that section of administration from the Ministry of Justice some years ago (Article 43). During the preparation stage of the recent Law on the State Election Commission of Croatia, there was contemplation of having the monitoring of voter list maintenance transferred to the SEC, as reflected in certain prior Venice Commission and OSCE/ODIHR opinions (e.g. in Doc. CDL-AD(2006)12). This would call for a major reorganisation of SEC staff and facilities. However, that course has not been taken, and the regime under the Draft Law must be considered acceptable.

11. The major change foreseen under the Draft Law is that all voter lists are to be maintained and processed on the basis of electronic information technology, having uniform content in all places (Article 6). It is established that the necessary facilities for doing this successfully are already at hand in Croatia.

12. At the same time, the Draft Law provides for an alignment with recent legislation on the protection of personal data (mainly, a Law of 2003), by making the voter lists subject to their principles (Article 6).

13. The municipal authorities administering voter lists are each required to establish a Commission for Voter Lists consisting of 3 members, with duties of verification of the lists and other competences as related in Articles 33-35 of the Draft Law.

14. As regards voter access to and public information on the voter lists, the Draft Law affirms the principle that every citizen shall be entitled to check his registration for correctness at any time of the year (Article 13). The Draft Law also makes clear provision for the duty of the authorities maintaining the lists to announce the lists as open for inspection in advance of forthcoming elections (Article 12). Otherwise, however, the provisions of the Draft Law relating to access to information on the voter lists appear somewhat incomplete, as noted in the Commentaries. The matter is not expressly dealt with except in Article 32, in relation to numerical data on voter participation in elections.

15. In the matter of correction and adjustment of voter lists in advance of elections, the deadline for changes is set at 14 days prior to election day (Article 13 et al.). The sole recourse for correction after this deadline will be by way of a request to the pertinent Voter List

Commission, with possibility of appeal to the municipal court in an extraordinary civil proceeding (Article 35).

16. The Draft Law necessarily contains extensive provisions concerning out-of-country voting (Articles 15-18), aimed at clarification as compared with the existing Law, as discussed in the Commentaries. These apply to voters without permanent residence in Croatia and to resident voters who are residing abroad for a longer or substantial period of time (under circumstances of habitual rather than permanent residence). These are distinguished from voters who merely are or happen to be temporarily outside their place of residence on election day. This distinction represents a clarification and may be traced to a Constitutional Court decision from the year 2000, having a significance for refugees, under which a requirement of a voting certificate for such persons due to their absence was held inapplicable. For the above voters, a system of registration in advance of elections (prior or previous registration) is maintained.

17. The situation of voters having temporary absence is dealt with in Articles 19-24 of the Draft Law, under which a voting certificate system is applied to the solution of their problem. Here again, the aim is for clarification rather than a change from the existing Law. As noted in the Commentaries, however, the clarity would not seem quite sufficient in all respects.

18. The Draft Law also specifically provides for the position of voters serving in the armed forces of the Republic or on Croatian ships sailing outside the national borders, as well as persons subject to detention or confinement, enabling them to maintain registration at a place of permanent residence (Article 18). These provisions are also being extended to students confined at educational facilities.

19. With respect to the right of voting with reference to ethnic origin, the Draft Law allows for the possibility of ethnic affiliation being registered on the basis of the voter's own statement to the authorities (Article 9).

20. Among other matters, it remains to be noted that the Draft Law affirms the principle that no administrative fees should apply in connection with voter registration.

21. The text of the Draft Law is generally concise and to the point, although not quite free of ambiguities.

### **III. Conclusion**

22. In the Commentaries, especially in Section VI, certain recommendations are made with respect to such matters as systematic and non-discriminating correction of information about voter residence, a possible improvement in coordination of registration for out-of-country voting, on places of voting for absentee and minority voters, and on clearer rules relating to the use and publication of voter list information. These recommendations are to be endorsed.