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## *ACCESS TO ELECTORAL RIGHTS*

### *CROATIA*

Juraj Sajfert

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# Access to Electoral Rights

## Croatia

Juraj Sajfert

### 1. INTRODUCTION

Croatia had its first multi-party elections in April and May 1990, at the time as a federal unit of Yugoslavia. The new conservative centre-right party Croatian Democratic Union (HDZ) won the elections, removing the Communist Party from the driver's seat after 45 years. A significant amount of party funds and even some high ranking officials came from ethnic Croats living abroad who were keen on pushing the country towards independence - an aim that was clearly on the party's agenda. It did not come as a surprise that the new Croatian Constitution, proclaimed on 22 December 1990, contained a provision on the importance of special care for ethnic Croats abroad, promotion of their interests and their links with the homeland.<sup>1</sup> The rationale behind this provision was the strong presence of Croats abroad<sup>2</sup> and their potential role in the creation of a new, independent state.<sup>3</sup> Croats abroad can be divided in three groups: diaspora (economic and political migrants), native national minorities in European countries, and native Croats as one of the three nations forming the citizenry of Bosnia and Herzegovina.<sup>4</sup> The Croatian Citizenship Act was enacted on the date of entry into force of when the Decision.<sup>5</sup> Certain provisions of this law, essentially unaltered until the present day, significantly facilitated the procedure of acquisition of citizenship for ethnic Croats abroad.<sup>6</sup>

Ever since 1992 the electoral rights of Croatian citizens abroad and, in particular, the way they are represented in the Croatian Parliament has been a topical issue. On the one hand, HDZ, the party that enjoyed two long spells in power (1990- 2000 and 2003-2011), has emphasised the importance of Croats abroad and pled for their representation in the Croatian Parliament. On the other hand, centre-left and left wing parties (the Social Democratic Party (SDP) and the Croatian People's Party (HNS), the main partners in the current coalition government) have complained about an over-representation of Croats abroad in the legislative

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<sup>1</sup> Article 10 of the Constitution of the Republic of Croatia, Official Gazette (Narodne Novine) No. 56/90. This provision survived subsequent constitutional amendments and is still valid in its original form.

<sup>2</sup> Estimations of the number of ethnic Croats abroad vary between 3 million and 4.5 million (which equals the population of the Republic of Croatia). See e.g. <http://www.hia.com.hr/iseljenici/iseljenici01.html>, last visited on 6.11.2012.

<sup>3</sup> Croatia declared its independence on 8 October 1991.

<sup>4</sup> Vedran Obućina, *Sjećate se nas? Mi smo hrvatska dijaspora*, Vijenac No.468, 9.2.2012., Zagreb. See also Law on relations of the Republic of Croatia with Croats outside of the Republic of Croatia, Official Gazette 124/2011 and 16/2012.

<sup>5</sup> Both Official Gazette No.53/91.

<sup>6</sup> See Francesco Ragazzi, Igor Štiks, Country report Croatia, EUDO Citizenship Observatory, November 2009, April 2010.

body on the grounds that they do not pay taxes or contribute to the general budget in any other way. To better understand the debate, it is important to emphasise the fact that every seat allocated to Croatian citizens abroad in the Croatian Parliament has been always won exclusively by HDZ.<sup>7</sup> The system of special representation of Croatian citizens abroad through the separate voting district has not been changed since the proclamation of independence, but the number of seats allocated to that voting district has decreased over time. The Croatian Parliament<sup>8</sup> has had between 120 and 150 MPs<sup>9</sup> and the number of MPs elected abroad was reduced from twelve in 1995, a non-fix quota in 2000, 2003 and 2007 and to three MPs in 2011.

Non-citizen residents in Croatia currently have no electoral rights. This will change soon, as a result of Croatia becoming the 28th Member State of the European Union on 1 July 2013. From that date, EU citizens will be able to vote in local elections and European Parliament elections. In order to fulfil its future obligations set out in the European Treaties, in July 2010 the Croatian Parliament adopted two laws: the Act on Electoral Rights of Citizens of Other EU Member States in Regional and Local Legislative Elections and the Act on Elections of MEPs from Croatia.<sup>10</sup> The first act should enter into force on the date of Croatian accession to the EU, while the second act entered into force on 1 March 2013. In addition, the new Act on Local Elections, adopted in December 2012, *inter alia* implemented the electoral rights of EU citizens at the local level.

Unlike the vote of ethnic Croats abroad, electoral rights of non-citizen residents never became a salient issue in the public debate. GONG<sup>11</sup>, a Zagreb-based NGO with a proven track record and expertise in electoral law and policy, published an analysis of the Act on elections of MEPs from Croatia and pointed out some inconsistencies and ambiguities in the Act.<sup>12</sup> Yet, the general public has shown little interest in the topic, although this might change after the electoral rights of EU citizens enter into force.

This report will focus on the eligibility for voting and running as a candidate in different levels of elections, the (prospective) electoral rights of EU citizens and on the procedures regulating the exercise of electoral rights.

## 2. ELIGIBILITY

This section provides a summary overview of electoral rights for two categories of voters: citizen residents and citizens abroad.

### 2.1 Citizen residents

The first and broadest category of enfranchised persons is formed by Croatian citizens residing on the territory of the Republic of Croatia. All such persons over eighteen years of

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<sup>7</sup> Archives of all elections and referenda results in Croatia can be retrieved at [www.izbori.hr](http://www.izbori.hr)

<sup>8</sup> For the purposes of this report and simplification, the term “Croatian Parliament” is used to designate the House of Representatives of the Croatian Parliament between 1992 and 2001, and the single-chamber Parliament after the 2001 Constitutional Reform.

<sup>9</sup> The Constitution sets the number of MPs between 100 and 160 (See Article 71 of the Constitution).

<sup>10</sup> *Both* Official Gazette No. 92/2010. The Act on elections of MEPs from Croatia was amended in 2013 (Official Gazette No. 23/2013).

<sup>11</sup> At their website, [www.gong.hr](http://www.gong.hr), one can find useful contacts, collection of relevant legislation and election-related analysis and initiatives.

<sup>12</sup> Commentary and analysis of the Act on elections of MEPs from Croatia, GONG, July 2010, Zagreb (can be retrieved directly from GONG).

age have the right to vote and stand as a candidate in all types of elections (subject to the residence criteria on local elections).

Mentally disabled persons were however disenfranchised, but only if they were deprived of their full legal capacity. In 2011, the initiative of a pool of NGO's called Platforma 112<sup>13</sup> called for, *inter alia*, amendments to the procedure of full legal capacity deprivation<sup>14</sup> and a wider franchise for mentally disabled persons, in accordance with the UN Convention on the Rights of Persons with Disabilities. In December 2012, the Act on the Register of Voters<sup>15</sup> enfranchised this group of citizens as well.

For prisoners and persons convicted of criminal offences there are no restrictions. They enjoy full electoral rights.

Croatian citizens who are temporarily outside the country on election day enjoy full electoral rights in national elections. In order to be able to vote, they must obtain a registration certificate from their voting district or apply for preliminary registration at the Croatian diplomatic representation<sup>16</sup> in which they intend to cast their vote, at least ten days before the day of election. Since voting in person is the only available option, this right is impossible to exercise if, on the day of election, a voter travels to a country where there is no Croatian diplomatic representation, or he/she is simply too far away from it.

## 2.2 Citizens abroad

The electoral rights of Croatian citizens residing abroad has been a highly controversial issue. The past or current place of residence of citizens abroad never influenced the exercise of their electoral rights. Whether or not they should be able to stand as a candidate in national elections (both legislative and presidential) was not extensively debated<sup>17</sup>, but their right to vote went through several reforms. Many of these reforms took place after the 1995 elections in which the belief that Croatian citizens abroad were over-represented became widespread in the general public. In the 1995 national legislative elections, a mere 10,000 votes cast in the special voting district for Croatian citizens abroad (most of the votes coming from Bosnia and Herzegovina) were enough to elect twelve seats, all of which went to HDZ. On the other hand, HDZ had to obtain more than a million votes in Croatia in order to win 42 seats. The disproportionate impact of expatriates' vote on electoral outcomes was tamed in the 2000 elections, with the introduction of the so-called non-fix quota system. The underlying rationale of the system, suggested by Mirjana Kasapović, professor at the Faculty of Political Sciences in Zagreb<sup>18</sup>, was to level the weight of votes cast in the special voting district for citizens abroad and the weight of votes cast at the national level. The number of seats allocated to the special voting district would therefore depend on the number of votes cast, with a maximum of fourteen seats.<sup>19</sup> The same system was applied in the 2003 and 2007

<sup>13</sup> *The Platform of human rights organisations in Croatia: for Croatia governed by the rule of law*. Their 112 demands can be retrieved at

[http://kucaljudskihprava.hr/system/attachment/file/5/Platforma\\_112\\_za\\_Hrvatsku\\_vladavine\\_prava.pdf](http://kucaljudskihprava.hr/system/attachment/file/5/Platforma_112_za_Hrvatsku_vladavine_prava.pdf)

<sup>14</sup> This is a court procedure governed by the Family Act (Articles 159-166), Official Gazette No. 116/03, 17/04, 136/04, 107/07, 61/11.

<sup>15</sup> Official Gazette No. 144/2012.

<sup>16</sup> Usually, elections at the national level are held during Sunday in Croatia, and Saturday and Sunday in Croatian diplomatic representations abroad.

<sup>17</sup> Even though the Croatian PM Zoran Milanović told one of the opposition MPs (Davor Stier), a Croatian citizen from abroad, that he 'does not understand Croatia'. See <http://www.politikaplus.com/novost/64303/hho-milanovic-ce-dobro-zapamtiti-svoj-bezobrazluk-i-sovinisticki-ispad>.

<sup>18</sup> Mirjana Kasapović, 'Tko i kako predstavlja 'dijasporu'', *Političke analize*, No. 3/2010.

<sup>19</sup> The territory of the Republic of Croatia was split into ten voting districts, each electing 14 MPs.

elections, the number of seats allocated to the special voting district being six, four and five respectively.

However, the main problem with this system was its potential unconstitutionality. Together with eight MPs elected in the special voting district for national minorities, the election of fourteen MPs elected in the voting district for citizens abroad could create a parliamentary term with the number of MPs exceeding the constitutional limit of 160.<sup>20</sup> This issue was finally rectified for the 2011 elections when the fix quota was established and only three seats were allocated to the special voting district for citizens abroad.

Voting from abroad is easier for national presidential elections and national referendum, as the whole country is considered as a single voting district. In those elections votes from abroad are simply added to the votes of citizen residents. Finally, citizens abroad do not enjoy electoral rights in local and regional elections.

### 3. ELECTORAL RIGHTS OF EU CITIZENS

Electoral rights of EU citizens residing in Croatia will be applicable on the date of Croatian accession to the EU, in July 2013. The legislative framework is already in place.<sup>21</sup> It envisages electoral rights for EU citizens with residency in Croatia in local and regional legislative elections and EP elections.

#### 3.1 Local elections

The electoral rights of EU citizens are envisaged for both local and regional levels, but only for legislative elections. The legal basis for those electoral rights is given in the Act on Electoral Rights of Citizens of other EU Member States in Regional and Local Legislative Elections<sup>22</sup>, which implements the Council Directive 94/80/EC and was adopted in the process of harmonisation of Croatian legislation with the EU *acquis communautaire*. An EU citizen shall have the right to vote and stand as a candidate for local or regional legislative bodies if he or she is a resident<sup>23</sup> of a particular municipality or region.

EU citizens who wish to vote on local and regional elections will have to go through a one-off registration process, which will remain valid for future elections. The request for registration should be submitted at least 30 days before the elections. It should be accompanied by a statement, verified by a public notary, declaring the applicant's citizenship and address in Croatia and stating that the applicant is not deprived of the right to vote in his/her country of origin.<sup>24</sup> If EU citizens wish to run as candidates, they will be able to do so under the same conditions as Croatian citizens, subject to a similar statement as the one required for the right to vote, together with the proof of not being deprived of the right to run as a candidate in their country of origin.<sup>25</sup> Currently, no electoral rights are envisaged for EU citizens on local mayoral and regional presidential elections or local referenda.

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<sup>20</sup> See footnote 10.

<sup>21</sup> The Act on electoral rights of citizens of other EU Member States in regional and local legislative elections and the Act on elections of MEPs from Croatia, both Official Gazette 92/2010.

<sup>22</sup> The law entering into force on the date of Croatia's accession to the EU.

<sup>23</sup> Regulated by the Aliens Act (Official Gazette No. 130/2011).

<sup>24</sup> Article 3 of the Act on electoral rights of citizens of other EU Member States in regional and local legislative elections.

<sup>25</sup> Articles 6 and 7 of the Act on electoral rights of citizens of other EU Member States in regional and local legislative elections.

### 3.2 EP elections for EU citizens residing in Croatia

Similar rules apply in regards to the electoral rights of EU citizens in EP elections. In addition to the procedure and conditions described under section 3.1 (but without the requirement of the verification of their statement by a public notary), EU citizens who wish to vote in EP elections have to submit a declaration stating that they will exercise their right to vote only in Croatia. In order to run as a candidate representing Croatia, the same conditions as for Croatian citizens shall apply to EU citizens residing in Croatia, with one addition: candidates must not be deprived of the right to run as a candidate in their country of origin.

The aforementioned NGO GONG identified<sup>26</sup> a potential problem in future EP elections, namely that no mechanisms are envisaged to control the electoral rights of persons with dual (or multiple) citizenship. Accordingly, GONG suggested the establishment of a separate register for voters with dual (or multiple) citizenship.

### 3.3 EP elections for national citizens abroad

EP elections for Croatian citizens abroad do not differ substantially from national legislative elections. Similar rules on the exercise of electoral rights apply, albeit without the special representation of Croatian citizens abroad, since the whole territory of the Republic of Croatia forms one voting district. The ballots of citizens abroad are added to those which are cast in the Republic of Croatia. The distribution of votes for the EP elections is proportionate (from the lists) with a preferential voting system and a five per cent threshold. The number of seats allocated to a certain list is calculated according to the D'Hondt method.

### 3.4 Regional and other elections

In section 3.1 it was already mentioned that EU citizens will enjoy the same rights as Croatian citizens in regional and local elections. However, regional governments in Croatia enjoy very limited powers. A country of barely 4.3 million residents is split into 20 counties (županija) and the City of Zagreb. Apart from the City of Zagreb, counties have few competences and small financial capabilities.

## 4. EXERCISING ELECTORAL RIGHTS

This section of the report deals with technical aspects of electoral rights and procedures.

### 4.1. National elections

Citizen residents are automatically registered for national elections. Besides polling stations on Croatian territory, Croatian diplomatic representations throughout the world also host polling stations, usually on Sunday (the day of election) and on the Saturday preceding election day. The register of voters is regularly updated by public administration, on the basis of age, change of residence, loss of citizenship and death. The Croatian public administration maintains a register of citizens abroad (without residence in Croatia), with a designated diplomatic representation abroad where they are entitled to vote. As the register of voters is

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<sup>26</sup> See footnote 13.



available online<sup>27</sup>, it is fairly easy to check whether data is up to date and to request an update (if needed) before the elections are held. An active procedure is required from Croatian citizens who changed their residence or turned eighteen, (if these changes have not been duly noted by the administration), from those who are temporarily absent from their municipality of residence on election day, either within Croatia or abroad, and from Croatian citizens abroad (without a residence in Croatia). The first aforementioned category will be able to vote in national parliamentary, presidential and EP elections and referendum, provided they applied for the register update. The second category will have to request prior registration. The third category (Croatian citizens abroad) will have to actively register for each type of elections in which they wish to participate. Such requests have to be submitted at least ten days before the day of election. Everyone can require the electoral register to be updated by applying for prior registration or actively registering, whether in person or by writing to the competent administrative office or a diplomatic representation abroad, according to his/her place of residence. Data for Croatian citizens without residence in Croatia are kept in the central register in Zagreb.

It has to be emphasised that prior registration for voting outside one's municipality of residence is available only for national elections (legislative, presidential and referenda), and that citizens abroad are only enfranchised for national elections.

At the national level, it is possible to cast a vote at the polling station where the voter is registered, or, subject to prior registration, anywhere on the Croatian territory or in diplomatic representations abroad. This rule applies *mutatis mutandis* to citizens abroad, subject to active registration. Absentee voting, proxy voting, e-voting etc. are not envisaged for any type of elections in Croatia. In national legislative elections, the votes of persons voting outside their place of residence are incorporated into their own voting district, and not with the district where the vote is cast. For elections to the Croatian Parliament, the Croatian territory is divided into ten districts (each with fourteen seats), Croatian citizens abroad constitute the eleventh voting district (three seats), and national minorities constitute the twelfth voting district (eight seats). In practice, if a person from Slavonski Brod (fifth voting district) travels to Osijek (fourth voting district) on the election date and votes there (subject to prior registration), his/her vote will be included in the fifth voting district. The same applies for the person from Slavonski Brod temporarily in London on Election Day and voting at the Croatian embassy in the UK.

Each Croatian citizen of at least eighteen years of age who is not deprived of his/her full legal capacity is entitled to run as a candidate in all types of elections. There are no requirements concerning the length of residence, which means that all Croatian citizens abroad are allowed to run for parliamentary and presidential elections. There are no higher age thresholds for certain functions, and the place of birth does not play a role in the candidate's eligibility. It should be underlined once again that third country citizens have no electoral rights in Croatia.

The allocation of the votes of citizens residing abroad depends on the type of elections. In national presidential elections and national referenda there is only one voting district, so their votes are registered along with all other votes. In national legislative elections, citizens abroad enjoy special representation, and their separate voting district elects three MPs to the Croatian Parliament.

## 4.2. Local and regional elections

<sup>27</sup> <http://195.29.186.154/sduzu92b/index1.php>

In the Republic of Croatia, local and regional elections are understood as being the same type of elections. They are held on the same date and are regulated with the same legislation.

The registration of voters is again automatic and conducted under the same conditions as on the national level, since the same electoral register is used. The major difference is that prior registration at a polling station outside of one's place of residence is not possible. Votes can be cast only in one's place of residence, which means that voters who are temporarily outside of their municipality of residence on Election Day, either within Croatia or abroad, are unable to vote. Citizen residents are the only group that can exercise its electoral rights in all types of local and regional elections.<sup>28</sup>

The only method for casting a vote at local and regional levels is at a polling station in the district where the voter is registered, according to his/her place of residence.

In addition to the general requirements for exercising the right to stand as a candidate described in section 4.1, residence plays a role in the candidate's eligibility to run in local and regional elections. For presidential and mayoral elections, the candidate must reside in the territory of the local or regional unit where he/she is running on the date of proclamation of elections for a period of at least six months before that date. A residence requirement applies to candidates for local and regional legislative bodies as well, although by contrast with presidential and mayoral elections there is no condition regarding the length of residence.

## 5. CONCLUSION

Over the past 20 years, Croatian citizens abroad have enjoyed extensive electoral rights, whereas non-citizen residents have had virtually no access to the franchise. Due to the number and importance of Croatian citizens abroad, special care was given to their electoral rights at the national level from the very moment Croatia declared its independence. While their enfranchisement for the national referenda and national presidential elections was hardly debated, their special representation in national legislative elections was discussed in numerous public debates, academic papers and every electoral campaign. The number of seats in the Croatian Parliament allocated to Croatian citizens abroad was reduced significantly between the 1995 and 2011 elections: from twelve to three. Four different systems were used: in the 1992 elections their votes were assimilated in the single voting district; in the 1995 elections the special voting district was formed and twelve seats were allocated to it; the non-fix quota system, considered as fairer but constitutionally questionable, was introduced for the 2000 elections; the current fix quota system was applied for the first time in the 2011 elections. The representation of Croatian citizens abroad in Croatian Parliament is still likely to change. The future debate may concern the number of seats allocated to citizens abroad and to the terms of the geographical representation. More specifically, Bosnia and Herzegovina might constitute one voting district, Europe another, while the remaining seats could be reserved to the Americas, Australia or ex-Yugoslav states<sup>29</sup>.

The accuracy of the electoral register was a perpetual problem in Croatian elections. The register finally went through a significant update before the first *ad hoc* EP elections held in April 2013<sup>30</sup>. This update was possible after the adoption of the new Act on the Register of Voters and the new Residence Act, in December 2012. The first act turned the register into a

<sup>28</sup> This is bound to change when Croatia joins the EU, as described in section 3.1.

<sup>29</sup> See Mirjana Kasapović, Tko i kako predstavlja „dijasporu“, *Političke analize*, br. 3/2010, or interview with Ivo Škrabalo, *Moj model savršenih izbora*, Globus, 17.04.2009., p. 32.

<sup>30</sup> Twelve Croatian MEPs were elected in order to join EP on 1 July 2013, until the end of the current parliamentary term (2009-2014).

permanent electronic database of three groups of voters: citizen residents, citizens abroad and EU citizens. From that database, a separate *ad hoc* list of voters will be established for each elections. The second act set up stricter rules on the residence conditions, aiming at the abolition of the possibility of having a registered residence and adjoining electoral rights without actually living there. Citizens abroad now have to actively register for each round of national elections. HDZ, now in opposition, was against the new regulatory framework, claiming that it will discourage Croatian citizens abroad from voting.

Another important legislative activity of the Croatian Parliament was the Act on Local Elections<sup>31</sup>. This law laid down a uniform set of rules for local and regional mayoral/presidential and legislative elections. It also entered into force in December 2012<sup>32</sup>, i.e. before the local and regional elections held in May 2013. Only the provisions concerning EU citizens should enter into force on the date of Croatian accession to the EU.

The legislative framework for EP elections entered into force on 1 March 2013.

Croatian citizens will keep the possibility to choose where to vote in national elections, and their electoral rights could be deemed as wide. Every citizen over eighteen years of age has both the right to vote and the right to stand as candidate. There are no additional age, residence or place of birth restrictions imposed on candidates.

With all the changes listed above, Croatia is modernising its electoral law, in line with the EU *acquis communautaire*. Moreover, some of the old diseases of Croatian elections, such as the outdated electoral register, have finally found a remedy. In addition, the active registration of citizens abroad might diminish the possibility of manipulating the ballots which are kept away from observers and public scrutiny in Croatian diplomatic representations abroad.

From a technical point of view, it remains to be seen whether or not it should become possible to vote on local and regional elections at any polling station on Croatian territory. Furthermore, the time has come to reflect on the availability of contemporary means of voting, such as proxy voting or e-voting. Finally, although EU citizens will be able to vote and stand as a candidate in local, regional and EP elections, third country nationals will still not enjoy any electoral rights in the Republic of Croatia. This is another issue where the necessity for reform and expansion of rights could become imminent.

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<sup>31</sup> The term 'local elections' being used for all types of local and regional elections.

<sup>32</sup> Official Gazette No. 144/2012.

