

The Right to Vote for Citizens Living Abroad: An Interview

Ivan Koprić

Tijana Vukojičić Tomić

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1. In most European countries citizens permanently residing abroad have the right to vote. However, there is no universal European practice. Are there any distinguishable models to follow among the countries?*

No common European practice or binding standards exist considering the right to vote of the citizens living abroad, and the issue, therefore, remains rather ambiguous. It is up to each state to decide how to address such a complex problem, taking into account specific circumstances, such as the particular history of non-democratic regimes, wars, natural disasters and other situations that generate mass migrations. In general, according to the Report on out-of-country voting (CoE, Venice Commission, Study

* This is the interview given by Professor Ivan Koprić, Faculty of Law, head of the Study Centre for Public Administration and Public Finances, University of Zagreb, Croatia (e-mail: ikopric@pravo.hr) and Tijana Vukojičić Tomić, Lecturer at the Public Administration Study, Faculty of Law, University of Zagreb (e-mail: vukojicic.tijana@gmail.com), Croatia to Róbert László, election specialist and lecturer at Corvinus University of Budapest, Hungary, for web page www.valasztasierendszer.hu. (Intervju prof. dr. sc. Ivana Koprića, predstojnika Studijskog centra za javnu upravu i javne financije Pravnog fakulteta Sveučilišta u Zagrebu i Tijane Vukojičić Tomić, predavačice na studiju javne uprave Pravnog fakulteta Sveučilišta u Zagrebu Robertu László, ekspertu za izbore i predavaču na Sveučilištu Corvinus u Budimpešti, za Internetsku stranicu www.valasztasierendszer.hu)

No. 580, 2010), there are three categories of citizens residing abroad: citizens of a State that are abroad on the election day for business or personal reasons, citizens who spend a definite time in another country where they will reside for a given period for employment or educational purposes, and citizens who settle down in the host country permanently. We would add a special sub-category (that might be cross-sectional): *political* refugees who have a strong interest in the outcome of the elections in their country of origin, especially when these may decide whether they would be able to return home. In general, countries with a significant number of refugees are keener to include immigrant citizens permanently residing abroad in the voting process.

Even though the approaches of different states vary considerably, from a rather positive attitude to complete denial, a lot of European countries give the right to vote to their citizens living abroad. The models and the extent of that right differ from country to country. There are three models. The first one includes the countries that allow voting to all the categories of non-resident citizens, including those permanently residing abroad (most countries, for example Austria, Belgium, Croatia, France, Italy, Norway, etc.). The second model refers to the countries that restrict the right to vote to certain categories of citizens residing abroad (such as Bosnia and Herzegovina, Denmark, Germany, United Kingdom, etc.). The third group includes countries that do not allow citizens residing abroad to participate in out-of-country voting (such as Albania, Cyprus or Montenegro; a very restricted right to vote is granted to the members of the diplomatic corps and the army in Ireland).

2. In Croatia, the right to vote is extended to citizens living in neighbouring countries. How many people are concerned? How many of them participated in the last several elections? Did votes coming from abroad ever change the election results decisively? If so, did it generate any tensions? Were there any recent changes in the regulations?

Citizens permanently residing outside Croatia are given the right to vote in parliamentary and presidential elections, and can participate in national referenda. The first multiparty elections in Croatia were held in May 1990. In December 1990, the new Constitution was adopted. In the period 1990–2001 the Croatian Parliament consisted of the Chamber of Representatives and the Chamber of Counties. Separate elections were held for both chambers accordingly. The elections for the Chamber of Representatives were the first-order elections. Pursuant to constitutional

amendments enacted in 2000, Croatia's semi-presidential system of government was replaced by a parliamentary system, while further amendments adopted in March 2001 abolished the Chamber of Counties; hence the Croatian Parliament became unicameral. Since then, three parliamentary elections were held (2003, 2007, and 2011). The last elections, seventh in the recent Croatian history, were held on December 4, 2011.

The new arrangement of electoral districts was introduced in 1999, which influenced non-resident voting considerably. Croatia is divided into 12 electoral districts. Ten of them are geographical, each electing 14 members to the Parliament (*Hrvatski sabor*) through a proportional system with closed lists, with a 5 per cent threshold and using the D'Hondt's calculation formula. Citizens living abroad vote in the 11th district (flexible quota in the beginning; afterwards 3 seats), while the 12th is for national minorities (8 seats). Prior to the constitutional changes of 2010, a flexible quota was in use for citizens living outside Croatia, in the way that the total number of elected MPs in the 11th district depended on the number of voters. In the 2007 parliamentary elections, the total number of voters residing outside the country was 405,092 out of which 90,482 or 22.3 % participated in the elections. In the 2003 parliamentary elections, the number of voters residing outside Croatia was 396,617, out of which 17.8 % or 70,527 actually voted, while in the 2000 elections, out of total of 360,110 voters, 127,046 or 35.3 per cent non-resident citizens voted.

The issue of non-resident voting was on the public agenda before and after each mentioned election term. Parliamentary elections of 2007 drew special attention to this issue. A number of aspects that triggered off public tensions should be mentioned. The pre-election campaign was largely characterized by the contest between the two largest parties, the ruling Croatian Democratic Union (HDZ) and its main opponent, the Social Democratic Party (SDP). The SDP claimed that the *elections should be determined in Croatia only*, and therefore decided not to contest in out-of-country voting. Croatian emigrants, as well as the Croats in Bosnia and Herzegovina, have always been considered to be a conservative electorate that traditionally vote for right-wing parties. Having that in mind, the HDZ was already a step ahead. Another remark should be made concerning the number of *polling stations* established for the registered voters in countries abroad. The total number of registered voters in the 11th district was 405,092, out of which 284,068 were registered in Bosnia and Herzegovina due to the fact that Croats are one of the three constitutive nations in that country and are the largest voting community outside Croatia (an estimate of about 650,000). The number of polling stations in that coun-

try increased significantly in comparison to previous elections, from 30 in 2003 to 124 in 2007, which caused an increase in the voters' turnout as well. Other disputes and complaints were mostly dealing with the issue of *electoral campaigns* abroad being heavily financed by the actual ruling party in a non-transparent manner, mostly through the so-called Croatian Government care for Croats in Bosnia and Herzegovina. One of the problems was connected with the *voters' lists* abroad. They were neither reliable nor under any objective control. According to some estimates, the deceased, as well as other disputable cases, made up approximately 20 per cent of the lists, which might have provided an opportunity for manipulating the results. Even voters registered in Croatia were not reliable, because certain number of voters managed to register both in Bosnia and Herzegovina and in Croatia, mainly in borderline zones with Bosnia and Herzegovina. The total number of voters is larger than the number of Croatian inhabitants. *Control* over the election process outside Croatia cannot be the same as within the country, because there are not enough non-governmental organisations and activists interested in it, the media pressure is not the same as within Croatia, official bodies cannot monitor the process with same attention as within the state borders, etc. In that case, a lot of *unlawful pressures* can be made on voters at the very polling stations.

Because all five seats from the 11th district were won by the HDZ, non-resident representatives in overall seats-sharing enabled the HDZ to form the government (in coalition with certain minor parties).

Parliamentary elections held in December 2011 were won by the pre-election coalition called *Kukuriku*, led by the SDP. A fixed quota for out-of-country voting was introduced: non-resident citizens elected 3 members to Parliament, again, all candidates of the HDZ. Further significant change was a considerable reduction in the number of out-of-country polling stations, from 265 (2007) to 124 (in 52 countries). Major drop-down in voters' turnout was noted: 411,758 voters were registered, while only 21,100 or 5.1 % actually participated. Certain improvement in voters' registers was made, since a centralized register was established in order to avoid double registration. Comparing to 2007 elections, the present model of fixed quota together with improvements in the voters' registration process reduce the possibility of a grave influence that non-resident votes can have in election results.

3. What do you consider the ideal way to cast one's ballot for non-resident citizens (e.g. voting at consulates, postal voting, electronic voting etc.)?

Taking into consideration the importance of proper monitoring of the election process, along with the potential difficulties in guaranteeing that the election process is conducted correctly when methods of postal, electronic or other type of remote voting are used, we are in principle in favour of voting at the embassies or consulates. This system favours voters in large cities and is not fully in line with the doctrinal request that all the voters should have equal possibilities to exercise universal suffrage. Therefore, we would recommend special polling stations even in certain number of smaller towns abroad, but not in every village. Voters' registers should be reliable and accurate. Citizens who are abroad should register themselves prior to the election date, announcing that they are interested in election process. Croatia should ensure neutral observers and media coverage. It is also possible to introduce e-voting, yet only in cases when this type of voting is provided for resident citizens as well. In case of e-voting, each country should pay special attention to the preparations of the necessary software system and the overall control over the whole process. Full application of electronic voters' lists should be considered as well.

4. What are the crucial points to bear in mind when giving the right to vote to potentially millions of new voters, having the international experience in mind? To what would you particularly attract the attention of Hungarian decision makers?

The issue of non-resident citizens' voting is always a controversial question that provokes public debates and divides the academicians. On the one hand, some authors consider the interest that non-resident citizens have in the outcome of the election should not be ignored. On the other, some argue that the right to vote should depend on whether the individual will be governed by the decisions that the elected body makes, and therefore non-resident citizens, unaffected by those decisions, should not be given the right to vote.

Contemporary democratic systems are closer to the former concept, rather than the latter, strictly territorial concept, but with some specifications and restrictions. There are several normative arrangements. Various factors could influence the final decision, such as the history of participatory democracy or mass migrations during a certain period of time. Special attention should be devoted to the issue of possible interstate reflections, as in the case of Croatia and Bosnia and Herzegovina. The fact is that the Croats in Bosnia and Herzegovina can vote and influence political situ-

ation in both countries. Excessive granting of their political rights on the side of the Croatian legislator can be perceived as the state and loyalty problem within Bosnia and Herzegovina as an independent and sovereign state.

The extent to which the votes of citizens living abroad can affect the election results always stirs controversy and therefore should be taken into account cautiously. In order to reduce possible risks, several solutions could be considered. One is to pre-define the number of their representatives. Limitations and restrictions in terms of groups of non-resident voters who will be given the right to vote in the country of origin are advisable. In that case, fundamental question of citizenship should be tackled. Whether to restrict the right of citizenship, and therefore the right to vote, to the first and/or the second generation of emigrants? When does an emigrant actually become part of the political community in the host country? Should the strength of ties with the country of origin be taken into account? Is it correct to treat the members of large national groups living abroad, especially those who have the status of the constitutional nations in other countries, as part of domestic constituency at all? Can they be a constitutive part of two different countries at the same time? The nomination of candidates running for non-resident votes is a further issue. The nomination procedure can be regulated in different ways. Who will be given the right to nominate the candidates (political parties or citizens residing abroad), and who can actually run as a candidate? Election administration and the election monitoring process outside the country borders should be regulated with even more patience and details than within the country. The composition of election commissions, the control of legality of both voting and counting process, providing the accuracy of voters' lists, etc. are much more difficult to organize for out-of-country voting than inside the country. Manipulations are possible because of the territorial distance and organizational difficulties caused by the limited resources of state authorities, and should be prevented. Otherwise, all doctrinal arguments in favour of elections outside the country can be discarded. Still, the question remains: is it fair that non-resident citizens, who pay taxes in other countries, influence the election results in the country of their origin?