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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**JOINT OPINION
ON THE DRAFT LAW ON VOTERS LISTS
OF CROATIA**

**by
the Venice Commission
and
the OSCE Office for Democratic Institutions and Human Rights
(OSCE/ODIHR)**

**adopted by the Venice Commission
at its 71st Plenary Session
(Venice, 1-2 June 2007)**

on the basis of comments by

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TABLE OF CONTENTS

I.	INTRODUCTION.....	3
II.	EXECUTIVE SUMMARY.....	3
III.	BACKGROUND.....	4
	A. CURRENT VOTER REGISTRATION SYSTEM	4
	B. VOTING RULES.....	5
	1. <i>Presidential and Parliamentary Elections</i>	6
	2. <i>Parliamentary Elections</i>	6
	3. <i>Local Elections</i>	7
	C. VOTING RULES AND REGISTRATION SYSTEM.....	7
	1. <i>Presidential and Parliamentary Elections</i>	8
	D. VOTER REGISTRATION AND CIVIL REGISTRATION	9
IV.	ANALYSIS AND COMMENTARY.....	9
	A. PURPOSES	9
	B. MAIN PROVISIONS	10
	1. <i>Voter Registration, Correction and Deletion</i>	10
	2. <i>Information on Ethnicity</i>	10
	3. <i>Out-of-Country Voting</i>).....	11
	4. <i>Other Temporary Registration</i>	13
	5. <i>Special Circumstances</i>	13
	6. <i>Personal Data Protection</i>	13
VI.	RECOMMENDATIONS.....	14

I. INTRODUCTION

1. *In the framework of their cooperation on the reform of the electoral legislation the authorities of Croatia requested the OSCE/ODIHR and the Venice Commission to provide an opinion on the Law on Voter Lists of the Republic of Croatia (Doc. CDL(2007)044rev).*
2. *The Central State Administration Office developed a Bill on Voter Lists ("the Draft Law"), which the Croatian Government has submitted for consideration by the Parliament (Sabor). While the Draft Law would not make fundamental changes to the method of voter registration, it would lead to important administrative and procedural changes that could ultimately affect the rights of voters.*
3. *A 2004 Roundtable on Electoral Legislation and Procedures organized by the OSCE Mission, OSCE/ODIHR and the Venice Commission of the Council of Europe also reflected a consensus that new legislation was required to address outstanding voter registration issues. In 2005, the then Chairman of the State Election Commission (SEC) also called for amendment of the Law on Voter Lists.¹*
4. *The OSCE/ODIHR and Venice Commission, as well as the European Union, participated in a workshop in December 2006 sponsored by the OSCE Mission in Zagreb and the Central State Administration Office (CSAO), with active participation by civil society, to consider an earlier version of the Draft Law. The participants have continued their consultations on the proposal, including a second draft circulated later in December and the Final Draft submitted to Parliament in January 2007. The Final Draft is a considerably improved document which eliminates many of the ambiguities and inconsistencies contained in earlier versions.²*
5. *The present joint OSCE/ODIHR and Venice Commission opinion is based on the report prepared by Mr Daniel Finn, ODIHR External Expert of 30 March 2007³ and comments drafted by Mr Hjörtur Torfason,⁴ Member of the Venice Commission (Iceland).*
6. *The Venice Commission discussed the issue of the Bill of Voter Lists at its 71st Plenary session (Venice, 1- 2 June 2007) and asked the secretariat of the Venice Commission and OSCE/ODIHR to finalise the joint opinion and to transmit it to the authorities of Croatia.*

II. EXECUTIVE SUMMARY

7. The Draft Law on Voter Lists would not result in fundamental changes in the overall methodology for maintaining voter lists, which are maintained at the municipal and city level based on civil registration records.
8. The Draft Law would introduce a number of changes to the existing practice that could be summarised as follows:
 - 1) the procedures and techniques used to compile voter lists would be clarified and updated;
 - 2) the computerization of voter registration records that has already occurred will be taken into account;

¹ Letter from SEC Chairman I. Crnic to Prime Minister I. Sanader, *op. cit.*

² It must be noted, however, that despite major differences in the drafting, organization and numbering of provisions in the Final Draft, there have been no changes to the accompanying "Explanation", at least in the translation. (Specifically, all article numbers from Article 25 forward no longer correspond to the provisions of the Draft Law).

³ Republic of Croatia. Draft Law on voter lists. Warsaw, 30 March 2007.

⁴ Doc. CDL(2007)050.

- 3) all information collected for voter lists will be retained and processed using information technology (not written notices and card files);
- 4) the use of “voting certificates” from local authorities by voters who would be outside their areas of residence on election days, will be minimised by establishing a system of temporary registration;
- 5) the individuals’ ability to confirm their registration, decide whether certain personal information should be recorded, and protect their individual data will be extended;
- 6) citizens will have access to voter lists on a continuing basis;
- 7) voters will be able to have their ethnicity recorded based on their own desire.

9. The Draft Law applies constitutional and statutory protections for personal data to voter list operations. Voters’ personal identification numbers would not be included on printed voter lists, and information on ethnicity would be included only if a particular election required the use of such information.

10. Voter registration based on other civil records makes it subject to possible deficiencies in those records, particularly with respect to migrants who have not informed the authorities about their new places, including countries, of residence. (In the Republic of Croatia, the effect of emigration has been compounded by the large number of refugees who left the country during its war for independence).

11. Another challenge for voter registration is the right of Croatian citizens who live or are travelling abroad to cast ballots in presidential and parliamentary elections – a right which is implemented through out-of-country voting at Croatian diplomatic and consular facilities as well as certain other sites. The Draft Law would create a more systematic basis for prior registration⁵ of citizens permanently or otherwise residing or travelling abroad.

12. Similarly, the Draft Law provides for prior registration of voters with registered residence in the Republic of Croatia but who reside abroad “for a longer period of time”. (The distinction between voters who are only temporarily abroad and others, such as refugees, who have lived abroad for a longer period was recognized by the Constitutional Court; during the 2000 national elections, it rejected the need for voting certificates by the latter).

13. Recommendations are made in the final section of this opinion for systematic and non-discriminatory correction of residential information about voters; improved coordination of voter registration for out-of-country voting; place of voting for absentee and minority voters; and additional rules to govern the use and publication of voter list information.

III. BACKGROUND

A. CURRENT VOTER REGISTRATION SYSTEM

14. The voter registration in the Republic of Croatia is “passive” and does not require individual action, except when citizens need to report possible change of residence address (please, see point 40) or other personal data. The registration of citizens as voters is a ministerial responsibility of the State, carried out on the basis of personal information collected by State agencies during the performance of their other duties.

⁵ The translation of the Draft Law refers to this procedure as “previous” registration, but for reasons of clarity and English usage, it will be referred to in this opinion as “prior” registration, except when the context indicates otherwise.

15. Overall responsibility for supervising voter registration activities and the compilation of voter lists was assigned to the Ministry of Justice and Administration by the 1992 Law on Lists of Voters.⁶ Due to a recent governmental reorganization, that responsibility is now assigned to the Central State Administration Office.⁷

16. Under the current law, the primary responsibility for compiling voter lists (voter lists) lies with municipal administrative bodies,⁸ which are now under the general direction and supervision of the Central State Administration Office (For voters who do not reside in-country, these responsibilities are exercised by the Zagreb City administration.)⁹ For voters who are temporarily living or residing abroad, they are performed by the relevant Croatian “diplomatic-consular missions and foreign offices”.¹⁰

17. Inclusion of voters on the voter lists is currently based on “information from records of Croatian citizenship and residence, other public documents or other credible proof”.¹¹ The main sources of such information are from municipal registrars and police departments – which maintain records on citizenship, personal identification (ID) and residence – but also may involve other government bodies such as municipal courts (*e.g.*, with respect to adjudications of incompetence).¹²

18. Citizens have the right to request anytime that they be added to the voter list in their area of residence.¹³ In addition, once an election is announced, the voter list must be made available by the authorities for inspection by citizens. The period for inspection begins no later than three days after the announcement of elections, and continues until 14 days before elections.¹⁴ During this period, citizens also have the right to request corrections to the voter list.¹⁵

19. Municipalities are required to form commissions to consider complaints about the voter list. These voter lists Commissions are composed of three members, with the president and deputy president being seconded from the Municipal Assembly. A citizen may appeal a determination by the Commission to the municipal court. After the resolution of complaints and appeals, the voter list Commission is responsible for finalising the it.¹⁶

B. VOTING RULES

20. The voter registration system is made more complex by the different voting rules for different types of elections, and even within a single election:

⁶ Law on Voter Lists, Art. 34.

⁷ A proposal to transfer responsibility for supervision of voter list-related functions to the State Election Commission, was not included in the recently-enacted Law on the SEC, *op. cit.*

⁸ *Id.*, Arts. 4 (1), 7 & 11.

⁹ *Id.*, Art. 4 (2).

¹⁰ *Id.*, Art. 4 (3).

¹¹ *Id.*, Art. 15.

¹² *Id.*, Art. 16.

¹³ *Id.*, Art. 13.

¹⁴ *Id.*, Art. 22.

¹⁵ *Id.*, Art. 23.

¹⁶ *Id.*, Arts. 27-29.

1. *Presidential and Parliamentary Elections*

21. The Croatian Constitution provides that the Government “shall ensure suffrage to its citizens who are abroad at the time of the elections, so that they may vote in the countries in which they are or in any other way specified by law.”¹⁷

22. In addition to the usual grounds for citizenship, citizenship of the Republic of Croatia may be based on “origin”. Mainly, Croatian origin includes the children of Croatian parents;¹⁸ but other “members of the Croatian people” have a right to be naturalised.¹⁹

23. Individuals who acquired Croatian citizenship under previous law continue to retain their status.²⁰ In addition, citizenship can be granted pursuant to international agreements.²¹

2. *Parliamentary Elections*

24. There are three different methods of casting votes in parliamentary elections.²²

a. *Geographical Constituencies*

25. In the parliament (Sabor), 140 members are elected through proportional representation contests in ten geographical constituencies, which are supposed to be roughly equivalent in the number of registered voters residing there.²³ Voting in these constituencies is open to voters who are registered as having permanent residence there.

b. *National Minority Representation*

26. Eight additional members of the Sabor are elected in individual candidate (first-past-the-post) elections, open for voting by persons who claim national minority origin (Such voters may vote instead in the regular elections in the geographical constituencies).²⁴

c. *Non-Resident Voters*

27. An additional number of members are elected to the Sabor from an extra constituency (the 11th) comprised of citizens (sometimes referred to as the “diaspora”) who do not reside in the Republic of Croatia.²⁵ These citizens may cast ballots through out-of-country voting. The

¹⁷ Constitution, Art. 45 (2).

¹⁸ Law on Croatian Citizenship, Arts. 3-5. (Under the same provision, children with a single Croatian parent are considered to have Croatian origin, provided the child is registered for citizenship).

¹⁹ This includes if they consider themselves Croatian citizens and demonstrate that they are attached to the legal system, customs and culture of the country. (Other persons can also seek naturalisation, but they must also have resided in the country five years, be proficient in the Croatian language and Latin script, and agree to renounce their existing foreign citizenship.) *Id.*, Art. 16.

²⁰ *Id.*, Art. 30 (1).

²¹ *Id.*, Art. 3.

²² See generally Parliamentary Election Law, *op. cit.*

²³ The boundaries of these constituencies do not reflect any regional division but generally follow established administrative/territorial boundaries.

²⁴ For the purpose of electing the special national minority representatives, the 22 constitutionally-recognised minorities are divided into six groups, with Serbs electing three minority representatives and the other groups of nationalities one each. No minimum number of votes is necessary in order to be elected. *Id.*, Art. 16. (The national minority elections are all conducted in an additional constituency, referred to as number 12).

²⁵ Law on Constituencies, *op. cit.*, Art. 12.

number of members elected in this way is based on the electoral quota – *viz.*, by how many times the number of votes cast in this constituency exceeds the average number of votes needed to obtain a mandate in one of the geographical constituencies.²⁶

3. Local Elections

a. General

28. To participate in local elections, voters must personally cast a ballot.²⁷ Under the Voter List Law, however, voters can obtain a “voting certificate” to transfer their local registration temporarily to enable them to vote in another location.²⁸ There appears to be nothing in the current Voter list Law to prevent voters in one locality from obtaining a certificate enabling them to vote in another.

29. A Government proposal to amend the Local Election Law prior to the 2005 local elections, to require that citizens registered as residing in a particular locality must also actually reside there in order to vote, was withdrawn prior to adoption of a package of amendments to this law. (During the elections, a few thousand ethnic Serb voters were transported by bus to the localities of their registered residence in Croatia, so that they could cast ballots there).²⁹

b. National Minority Representatives

30. Amendments to the Local Election Law enacted in 2003³⁰ gave national minorities in areas where they are concentrated the right under certain circumstances to seek the formation of National Minority Councils in units of local self government. The members of such councils are elected in special candidate elections open to minority voters.³¹ (In other qualified areas, in which such councils have not been established, special representation may be provided for minorities by granting mandates in the local assembly to those minority candidates who obtain the most votes in the regular elections).³²

C. VOTING RULES AND REGISTRATION SYSTEM

31. Due to the different voting rules for specific elections, the voter lists for them must be organised differently, use distinct procedures, be maintained at different locations, and contain different information. The complex relationship between the voting rules and VR system is illustrated by what follows:

²⁶ In the 2003 parliamentary elections, four mandates were awarded based on the number of votes cast in constituency number 11. See OSCE/ODIHR EOM Final Report on the 2003 Parliamentary Elections, *op. cit.*

²⁷ Local Elections Law, 2005, *op. cit.*, Art. 39. See OSCE/ODIHR, “Existing Commitments ...”, *op. cit.*, Part One, Para 5.5: “Residence in the state may be required for the exercise of the right to vote. To vote in local or regional elections, a reasonable period of residence in the area may be required.” Also Para 5.7: Secure mechanisms should be implemented to permit absentee voting by persons who are temporarily away from their area of residence, especially if such persons are residing internally. The absence of permanent residence should not prevent an otherwise qualified person from being registered as a voter.” (references omitted).

²⁸ Law on Voter Lists, Arts. 30-31.

²⁹ See OSCE Mission to Croatia, Spot Report on 2005 Local Elections, *op. cit.*

³⁰ Act on Amendments to the Act on Election of Members of Representatives Bodies of the Units of Local and Regional Self-Government, *op. cit.*

³¹ *Id.*, Art. 5 (new Part VIII of Local Election Law).

³² *Id.*, Art. 3.

1. *Presidential and Parliamentary Elections*

- a. Non-Residents

32. Currently, the Voter Lists Law requires that the voter list for voters who do not have residence in Croatia be maintained by the authorities in the City of Zagreb. This voter list is divided into separate volumes for the various countries in which these voters reside,³³ which is subsequently delivered to the relevant voting committee for their country of residence.³⁴ For parliamentary elections these voters can cast votes only in the special 11th constituency for non-resident citizens.

- b. Temporary Non-Residents and Absentees

33. For other voters located abroad, who are residing or travelling there temporarily, the voter list is compiled in the diplomatic-consular missions and foreign offices of Croatia in which the voters would vote.³⁵ When registered in this manner, these voters are recorded as being residents of the place of their residence in Croatia prior to departure from the country.³⁶

34. Currently, temporary non-residents and absentees from Croatia should obtain a “voting certificate” from the authorities at their place of residence in Croatia. Those who would be abroad for only a short period can obtain a temporary certificate applicable only to a single election for which they would be absent.

35. As recently as the 2000 parliamentary elections, voters residing abroad temporarily were required to obtain voting certificates in order to have access to out-of-country voting facilities. The need for these citizens abroad, particularly refugees, to obtain voting certificates in order to have access to out-of-country voting facilities created substantial obstacles to their voting in national elections despite their constitutional right to do so.³⁷

36. During the parliamentary elections of 2000 and 2003, the State Election Commission (SEC) adopted “mandatory instructions” that voters who presented certain evidence (of Croatian citizenship, personal identity and residence abroad) would be permitted to vote at out-of-country voting sites without presenting a voting certificate.³⁸ While desirable in itself, on its face the waiver of the voter certificate requirement appeared to be contrary to the provisions of the Voter List Law.

37. This result is explainable by a ruling of the Constitutional Court during the 2000 elections.³⁹ In that case, brought by a group of ethnic Serb voters residing abroad, the Court decided that the voter certificate requirement could be upheld only for persons with temporary, not “habitual”, or “longer-term”, residence abroad (This made it possible for longer-term residents abroad to use out-of-country voting facilities; but many refugees nonetheless would have lacked the necessary citizenship documents or other current evidence of eligibility in order to obtain

³³ *Id.*, Art. 13.

³⁴ *Id.*, Art. 14 (3).

³⁵ Law on Voter Lists, Art. 4.

³⁶ *Id.*, Art. 14 (4).

³⁷ See, e.g., OSCE/ODIHR, Final Report on the 2003 Parliamentary Elections, *op. cit.*, p. 9.

³⁸ In 2003 those instructions, in turn, were reflected in the “reminders” on polling station procedures circulated by the SEC. In the relevant reminder, the SEC distinguished between permanent residents abroad – whose names would be added to the voter list at the site – and others who are staying for a longer period abroad but continue to have residence in Croatia – who would merely be given a ballot. See *id.*

³⁹ Case of F. Stanic *et al.*, *op. cit.*

ballots).

D. VOTER REGISTRATION AND CIVIL REGISTRATION

38. Many Eastern European countries have experienced considerable emigration during the transitional period. Often such countries have found it difficult to update their voter lists to delete the names of citizens who are no longer resident. This situation is compounded by the tendency of many emigrants not to update their civil registration (*e.g.*, personal identification, residential and foreign address information).

39. In fact, compliance with civil registration requirements is essential to the proper functioning of a passive voter registration system. Over time, the failure of citizens to update their civil registration can create great discrepancies in voter lists.

40. In the Republic of Croatia, three laws related to civil registration are pertinent: These are the Law on Permanent and Temporary Residents of Citizens, the Law on the Identity Card, and the Law on Travel Documents of Croatian Citizens.⁴⁰ Under the Residence law, citizens are obliged to register any change of address (Art. 6); and under the ID Card (Art. 5) and Travel Document (Art. 39) laws these documents become invalid if a citizen's personal data have changed.

41. In spring 2005, the Government proposed amendments to the Law on Residential Registration that would have authorised the competent State administration bodies to delete individuals from the register of permanent residents if they establish that a registered permanent resident does not actually reside at the registered address.⁴¹ According to information provided by the OSCE Mission to Croatia, the Government ultimately limited its proposal so that the authorities would delete voters from voter lists only if the individuals had: (1) submitted false information; (2) permanent residence in another country; or (3) permanently moved out of the Republic of Croatia. Deletion would not have occurred, however, for citizens who retained the status of refugees/returnees/displaced persons.

42. The Draft Law reflects an intention to continue to rely, to the extent possible, on official civil registration data to compile and update voter lists. Nonetheless, in specific circumstances such as conflicting data or lack thereof, an effort could be made to acquire relevant data through more active means (such as investigations), in order to check or supplement that which has been provided by individuals either voluntarily or as required by law.

IV. ANALYSIS AND COMMENTARY

A. PURPOSES

43. The purposes of the Draft Law, and an explanation of its provisions, are set forth in the legislative proposal. Some of the main items include:

- 1) Inconsistencies between the provisions of the existing Voter List Law and new electoral procedures have necessitated special instructions by the SEC or additional instructions by other competent bodies.
- 2) The adoption of the Law on the Protection of Personal Data in 2003 created new standards and procedures in this area.

⁴⁰ *Op. Cit.*

⁴¹ Final Proposal to the Law on Amendments to the Law on Residence, *op. cit.*

- 3) The application of information technology (IT) to voter list operations has superseded provisions of the old law that permitted the use of card files, and requires more detailed legislative provisions.
- 4) The Draft Law would make clearer that the relevant authorities are required to permit inspection of voter lists between elections, as well as when an election has been announced.
- 5) Provision would be made for citizens to make a statement of ethnic affiliation and for that information to be maintained in the VR database for inclusion in the voter lists for relevant elections.
- 6) The provisions regarding voter registration for out-of-country voting should be reworked.
- 7) Further specification would be made about the manner of registration for voters outside their place of residence during various kinds of elections, providing for temporary registration (including at out-of-country voting facilities) so that voters would not have to obtain voting certificates from their local authorities in order to vote elsewhere.
- 8) More detailed procedures would be included for de-registration of voters, and for their temporary registration (voting certificates).

B. MAIN PROVISIONS

1. Voter Registration, Correction and Deletion

44. The Draft Law (Article 8) indicates that, "Registration into the voter list shall be carried out on the basis of data from the citizenship records, records of travelling documents and records on permanent residence. The Draft Law is specific on the rights of citizens to check their voter registration anytime – not just during an electoral period (Article 13). Citizens would continue to be entitled to request registration, or supplementation or correction of the voter list (Article 13).

45. A similar issue arises from the provisions on additions and deletions of entries from the voter list in the current law, and how that would be performed under the Draft Law. The current Voter list Law states (Article 18), "Corrections and addition to the list of voters are performed immediately after the information for correction or addition is received." The corresponding provision of the Draft Law (Article 10) indicates instead that the competent authorities "shall be obliged to make immediate entries into, [including] erasures from the voter list on the basis of information and decisions" of the relevant bodies.

2. Information on Ethnicity

46. The Draft Law Explanation indicates that information on the ethnicity of citizens had been recorded for decades. It is also said, however, that by the end of 2002 that information, contained in residential registration records, had been deleted. As a result, the information transmitted to the competent authorities for inclusion in voter lists no longer contains information about ethnicity.⁴²

47. Various issues have been observed in past elections with respect to the use of information on the ethnicity of voters. Such information in voter registers was often found to be incomplete or incorrect. During the 2003 parliamentary elections, separate voter list extracts were prepared containing the names of voters belonging to the groups of recognised national minorities who

⁴² Explanatory notes to Article 9 of the Draft Law.

are entitled to elect special minority representatives. (In the event, some voters expressed concern about being listed in separate extracts, and in any event many of them chose to vote instead in the regular elections). Meanwhile, any voter could request a ballot for the special elections instead of a regular one.

48. The Draft Law (Article 7) provides for the inclusion of information on voters' ethnicity in voter lists. If that information is not already included, then it may be added upon the request of the voter, based on the voter's making a statement to the competent authority (Article 9).

49. The Draft Law (Article 29) also provides that excerpts from voter lists would not contain citizens' personal ID number, while data on voter ethnicity should be stated only for "elections that are conducted on the basis of ethnic affiliation".

3. *Out-of-Country Voting*

50. One of the main objectives of the Draft Law is to clarify the provisions related to registration for Out-of-Country Voting, and to specify a new procedure for prior registration for out-of-country voting. The current Voter list Law already provides for the compilation of voter lists in out-of-country voting centers (Article 4). But that provision did not clearly indicate whether registration in the voter list could be made in advance of election day.⁴³

51. The Draft Law contains a section, "Prior Registration of Voters for Out-of-Country Voting" (Articles 15-18). Under the Draft Law, prior registration for out-of-country voting could occur anytime until the last day for requests to be submitted concerning the voter list (Article 16), which is 14 days before an election. The Final Draft makes it clear that such registration must be conducted at the relevant facilities (Article 15).

52. Such registration is referred to in the Draft Law as "temporary" (Article 16). But it remains unclear from this section of the Draft Law whether or to what extent such registration could or would continue in effect beyond a single election. In a later section, on the voter lists for out-of-country voting, however, there is a provision, (Article 37), which refers to voters being included in a voter list maintained at a facility abroad based on their "previous registration in the same diplomatic or consular office".

53. It would be the obligation of the facility responsible for conducting out-of-country voting to transmit applications for temporary registration to the competent authorities in the areas of residence of voters who are temporarily living or travelling abroad (Article 17).⁴⁴ For this reason, individuals who obtain prior registration at a facility abroad would not be required to obtain a voting certificate (Article 17).

54. The new system of prior registration for out-of-country voting appears to be quite reasonable, and would help obviate the need for citizens wishing to cast ballots through out-of-country voting to obtain voting certificates from the local authorities at their place of residence. But it should be kept in mind that normally the only individuals who would require voting

⁴³ The article was applicable to a wide range of official facilities, including "diplomatic-consular missions and foreign offices of the Republic of Croatia abroad". The prior registration provisions related to out-of-country voting in the Draft Law, by contrast, specifically include only "[d]iplomatic missions or consular offices of the Republic of Croatia", although the scope of their work in this regard relates to the "specific consular area" for which they are responsible (Article 15). It is unclear, therefore, whether the elimination of the phrase "foreign offices" from the current Voter list Law is intended to preclude actual out-of-country voting in facilities other than diplomatic or consular facilities, or merely to assign the responsibilities for conducting the VR procedure to the relevant diplomatic/consular facility.

⁴⁴ Article 17 of the Draft Law, "A note about previous registration shall be entered into voters' lists". (This would presumably occur at the locality at which a voter temporarily residing or travelling abroad would normally be registered).

certificates from their localities of residence in Croatia would be those who are only temporarily living or travelling abroad.

55. Voters without permanent residence in the Republic of Croatia are supposed to be registered into the Central Register of Voter Lists in the City of Zagreb. The system for registration of these voters was not clearly described in law; but in any event they have not been required to obtain a voting certificate from the authorities in Zagreb. Under the Draft Law, it can be inferred that the diplomatic and consular officials conducting registration for out-of-country voting would be responsible for coordinating it with the Zagreb authorities (Article 17).⁴⁵

56. The Draft Law (Articles 36-38) contains provisions for “The List for Voting in Diplomatic Missions or Consular Offices of the Republic of Croatia”, under which (Article 36) Croatian diplomatic missions and consular offices would compile the voter lists for out-of-country voting for use in presidential and parliamentary elections, based on “previous registration into voter lists in the Republic of Croatia.”

57. Voters with permanent residence in the Republic of Croatia who reside or travel abroad would be entered into the voter lists for out-of-country voting upon their personal request (Article 37). In the case of the latter voters, their names would be included in the relevant voter lists if they had previously registered there, or submitted a voting certificate issued by authorities in the Republic of Croatia (Article 33). It remains unclear, however, if such voters must only have been registered “previously” at the location in question, or also would have to complete the procedure for prior registration there in connection with the particular election.

58. Another issue in this regard is the relationship of the categories of voters in question – those with no permanent residence in Croatia *versus* those who are temporarily residing abroad – with the distinction made by the Constitutional Court (see further discussion in Background section) between those who are temporarily staying or travelling abroad, and others who “habitually” reside abroad or have longer-term residence there (Among this group were refugees and others who may continue to be registered as voters at various locations in Croatia, but who are not actually maintaining residence there).

59. It seems a clearer legislative decision should be made with respect to several important aspects of voter registration for out-of-country voting: Where the voter lists for out-of-country voting should primarily be compiled and maintained (by the City of Zagreb or the relevant diplomatic/consular facilities); and whether prior registration for out-of-country voting may continue in effect between elections, especially as pertains voters only temporarily living or travelling abroad.

60. In any case, it would be necessary to have central coordination of this function rather than allowing separate lists to be compiled on an autonomous basis by diplomatic and consular missions. That would create a possibility of errors occurring in voter lists that are maintained so remotely.

61. Finally, while this is not a comment on voter registration as such, it may be added that the practical accessibility of out-of-country voting facilities has been very different according to the type of voter involved. The large number of Croatian citizens (mainly ethnic Croats) in Bosnia-Herzegovina (BiH) have good access to out-of-country voting sites in a variety of facilities, while those in Serbia and Montenegro (mainly ethnic Serbs) have had limited access since sites were established only in cities with Croatian diplomatic or consular facilities (Other Croatian citizens abroad, including in the *diaspora*, have differing access to diplomatic and consular offices,

⁴⁵ The Draft Law, Article 17.1, indicates that in requiring submission of voter information by OCV administrators to the places of applicants’ permanent residence would include the place of their “entry into the voter list”, which in the case of permanent residents abroad would be the City of Zagreb.

depending on the countries where they reside).⁴⁶

4. *Other Temporary Registration*

62. Another section of the Draft Law, on Temporary Registration into Voter Lists Outside the Place of Permanent Residence, (Articles 19 – 24) would set up a system for citizens temporarily away from their home areas in the Republic of Croatia but still within the country, to enable them to cast ballots in other localities, if the type of election permits that (Article 19). This would obviate their need to obtain voting certificates from the authorities at their registered places of residence; but their temporary registration elsewhere would not be maintained beyond a single election, and their permanent voter or residential registrations would not be affected.

63. Notwithstanding these provisions, and similar provisions for out-of-country voting, voting certificates would continue to be used in certain cases – *e.g.*, for voters who do not obtain prior or temporary registration in time to be entered on the voter list, or in other situations. Under Article 39, such certificates could be issued by any competent registration authority which had registered a voter, including diplomatic/consular facilities as well as local authorities.

5. *Special Circumstances*

64. Special provisions continue to apply for the temporary registration of voters in the armed forces, crews of vessels, and detention (Article 14). In the Draft, this provision has been extended also to include students residing at educational facilities. Timely submission of data on all these voters by the relevant administrators would be required, so that the necessary voter lists can be prepared in time for distribution by the relevant election commissions.

65. As far as the issue whether the voter lists would be updated for second-round or repeat elections, this has been addressed in the Draft by providing that the confirmed voter lists for an election would be used for the entire election called, as well as any repeat elections (Article 28).

6. *Personal Data Protection*

66. Under the Draft Law, the CSAO branch in charge of general administration affairs would be responsible for supervision of the implementation of the law (Article 43). The competent bodies (in the counties and in the City of Zagreb) would be considered “keepers of personal data collection”, subject to regulation of personal data protection (Article 5). The Voter Lists would be kept electronically. During the preparation stage of the recent Law on the State Election Commission of Croatia, it was proposed to transfer the monitoring of voter list maintenance to the SEC, as suggested in 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.

67. Personal data protection laws and regulations would apply to the keeping of data (Article 6) and to voter lists provided to competent electoral commissions (Article 31). Personal ID numbers of voters would be retained in the voter lists database (Article 7), where they can be used for the coordination of information; but ID numbers would not be included in voter list excerpts (Article 29).

⁴⁶ See, *e.g.*, OSCE/ODIHR Final Report on 2003 Parliamentary Elections, *op. cit.*

68. It would remain unclear, under the Draft Law, to what extent citizens or electoral participants (including political parties nominating candidates for election) would have access to voter lists, in what form, and for what purposes. 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.

VI. RECOMMENDATIONS

69. A systematic and non-discriminatory method should be devised to correct voter registration records with respect to citizens who have permanently changed their addresses or are no longer permanent residents of Croatia. Such a method should be developed only after extensive consultations with civil society and public discussion.

70. The relevant articles (nos. 15-18 and 36-38) of the Draft Law related to prior registration and voter registration for out-of-country voting should be further reviewed for consistency. A review of the relevant articles, in translation, continues to reveal ambiguities in their application to citizens who permanently reside abroad, others who reside abroad for a longer period, and temporary residents or travellers abroad.

71. In particular, it should be considered whether diplomatic and consular facilities responsible for organising out-of-country voting should maintain a voter list for Croatian citizens who are permanent residents of a foreign State within their diplomatic/consular area, or whether this voter list should be maintained centrally.

72. The relevant articles of the Draft Law related to registration for out-of-country voting have been expanded to address the issue of voters with "habitual" or longer-term residence abroad (including refugees), who in accordance with the 2000 Constitutional Court decision should not have to renew their registration for each national election – *e.g.*, by obtaining voting certificates. The Government should determine whether the voter registration of such persons should continue to be retained by local authorities, or centrally.

73. Consideration should be given to including more explicit statutory provisions – or, alternatively, giving the custodian of personal data contained in voter lists (*viz.*, the Central State Administration Office and corresponding bodies at the city and municipal level) specific authority to promulgate regulations – to address with greater specificity the disclosure of voter registration information to citizens and others (including political parties during elections, and academic or other researchers at other times).

74. Changes in the provisions in the Final Draft Law (Articles 9 and 29) could be interpreted to prevent voters from seeking to change their registered ethnic identification, or delete it entirely; and cause the names of minority voters to be placed in separate voter list extracts for election day. These modifications should be reconsidered.

75. In the past, absentee and minority voters were sometimes required to vote only at designated polling stations, usually at municipal centres. Article 30 of the Draft Law would allow non-resident voters to be assigned to designated polling stations. To the extent possible, absentee voters should be permitted to cast ballots in a convenient location; and minority voters should under no circumstances be limited to voting only at special or designated stations.