



**THE CONSTITUTIONAL COURT OF
THE REPUBLIC OF CROATIA**

No. U-X-6472/2010

Zagreb, 8 December 2010

The Constitutional Court of the Republic of Croatia, composed of Jasna Omejec, President of the Court, and Judges Mato Arlović, Marko Babić, Snježana Babić, Slavica Banić, Mario Jelušić, Davor Krapac, Ivan Matija, Aldo Radolović, Duška Šarin, Miroslav Šeparović and Nevenka Šernhorst, on the grounds of its authority to monitor the execution of constitutionality and legality provided in Article 128 indent 5 of the Constitution of the Republic of Croatia and Article 104 of the Constitutional Act on the Constitutional Court of the Republic of Croatia (*Narodne novine*, nos. 99/99, 29/02 and 49/02 – consolidated wording), at its session held on 8 December 2010 issued the

NOTIFICATION

**ON THE UNEQUAL WEIGHT OF VOTES IN THE CONSTITUENCIES
DEFINED BY ARTICLES 2 TO 11 OF THE
ACT ON CONSTITUENCIES FOR THE ELECTION OF MEMBERS OF THE
HOUSE OF REPRESENTATIVES OF THE CROATIAN NATIONAL PARLIAMENT
(*NARODNE NOVINE*, NO. 116/99)**

1. At its session of 8 December 2010 the Constitutional Court decided on whether there were grounds for a number of proposals to institute proceedings to review the conformity with the Constitution of the Election of Members of the Croatian Parliament Act (*Narodne novine*, nos. 116/99, 109/00, 53/03, 69/03 – consolidated wording, 167/03, 44/06, 19/07 and 20/09), Act on Constituencies for the Election of Members of the House of Representatives of the Croatian National Parliament (*Narodne novine*, no. 116/99; hereinafter: Constituencies Act), Electoral Registers Act (*Narodne novine*, no. 19/07) and the Financing of Political Parties, Independent Lists and Candidates Act (*Narodne novine*, no. 1/07).

During its deliberations it became apparent that there was a need to notify the Croatian Parliament about certain problems concerning the application of the Constituencies Act at the forthcoming elections for Members of the Croatian Parliament. These elections must be held no later than 60 days after the expiry of the term of the Croatian Parliament, or its dissolution (Article 73 para. 1 of the Constitution, designated as Article 74 in the consolidated wording of the Constitution, *Narodne novine*, no. 85/10), i.e. no later than 11 March 2012.

I. DIFFERENCES IN THE NUMBER OF VOTERS IN CONSTITUENCIES

2. In some of the proposals the proponents indicated unlawful differences in the number of voters in the constituencies in Article 35 of the Election of Members of the Croatian Parliament Act. This article reads as follows:

“Article 35

140 Members of Parliament shall be elected in the manner that the territory of the Republic of Croatia shall be divided in ten constituencies, and within each constituency 14 Members shall be elected on the basis of lists.”

Article 35 of the Election of Members of the Croatian Parliament Act refers to the constituencies that will in this notification be called “general constituencies”.

In this context the Constitutional Court recalls that the Republic of Croatia has a proportional electoral system and that its territory is divided in 10 large multi-seat constituencies (general constituencies). Fourteen MPs are elected in each of the general constituencies, on the basis of closed lists of candidates. This proportional electoral system requires the prior determination of the territories and boundaries of the general constituencies for electoral purposes. The territories and boundaries of the administrative-territorial units (counties, towns and municipalities) are not completely suitable for this purpose, since they are inhabited by different numbers of voters so their votes would not have the same weight. In the Republic of Croatia determining constituencies is connected with legislative procedure, because the territories of the constituencies for the election of Members of the Croatian Parliament are defined by a separate law (the Constituency Act).

Accordingly, although the electoral system is proportional, in the Republic of Croatia the general constituencies play an important role in the entire electoral system for Members of the Croatian Parliament. Thus both the legality and the general democratic character of the elections depend on the equal distribution of the voters in the general constituencies (the equality of votes directly depends on this distribution). Moreover, the assessment about whether the entire elections were constitutional could hinge on this issue: they would not be in conformity with the Constitution if an excessive difference in the number of voters per general constituency could directly and immediately affect the election results, i.e. if it led to different election results with all the other elements of the electoral system being or remaining equal.

3. Article 36 para. 1 of the Elections of Members of the Croatian Parliament Act reads as follows:

“Article 36

The constituencies shall be determined by the Act on Constituencies for the Election of Members of the Croatian Parliament, in such a way that the number of voters in the constituencies must not differ by more than +/- 5%.

(...)”

The Constitutional Court recalls that the Constituency Act, which Article 36 para. 1 of the Election of Members of the Croatian Parliament Act refers to, was passed on 29 October 1999 and has to date not been amended. Accordingly, in the past eleven

(11) years the Constituency Act was applied at three parliamentary elections (3 January 2000, 23 November 2003 and 25 November 2007).

4. As indicated by data issued by the State Electoral Commission of the Republic of Croatia, there were already excessive differences in the number of voters in some general constituencies at the parliamentary elections held on 25 November 2007. At these elections the general constituencies had the following number of voters:

**Elections for Members of the Croatian Parliament held on
25 November 2007**

1st CONSTITUENCY:

number of voters who cast their ballot at polling stations **361.236**

2nd CONSTITUENCY

number of voters who cast their ballot at polling stations **399.648**

3rd CONSTITUENCY

number of voters who cast their ballot at polling stations **366.005**

4th CONSTITUENCY

number of voters who cast their ballot at polling stations **335.091**

5th CONSTITUENCY

number of voters who cast their ballot at polling stations **372.163**

6th CONSTITUENCY

number of voters who cast their ballot at polling stations **356.575**

7th CONSTITUENCY

number of voters who cast their ballot at polling stations **403.812**

8th CONSTITUENCY

number of voters who cast their ballot at polling stations **385.594**

9th CONSTITUENCY

number of voters who cast their ballot at polling stations **428.590**

10th CONSTITUENCY

number of voters who cast their ballot at polling stations **416.017**

5. On 12 November 2010 the Constitutional Court requested data about the electoral register in each constituency from the Ministry of Public Administration of the Republic of Croatia. In its notification class: 013-01/10-01/22, entry no.: 515-03-01-02/1-10-2, of 11 November 2010, the Ministry of Public Administration replied that it does not have the requested data.

Despite the non-existence of recent data about the number of voters in the general constituencies, it is reasonable to conclude that – if Articles 2 to 11 of the

Constituency Act are not brought up to date with the real voter status on the territory of the Republic of Croatia - the differences among them in the number of voters could become constitutionally unacceptable at the forthcoming elections for Members of the Croatian Parliament.

This conclusion is based on the official data of the State Electoral Commission about the number of voters in the general constituencies at the parliamentary elections held on 25 November 2007 (point 4 of this notification), but also on the indisputable fact that differences among the constituencies in number of voters develop gradually, with the passage of time. This is a natural development caused by migration and other changes in the structure of voters.

In other words, constituencies that are once determined undergo changes by the nature of things. "It is especially important that the division into constituencies cannot be regulated once and for all. Migration processes demand that constituencies should be constantly adapted to changing relations, by geographically changing their boundaries or by changing their number of seats." (Nohlen, Dieter: *Izbornopravno i stranački sustav* (Electoral Law and the Party System), Biblioteka alternative, Školska knjiga, Zagreb, 1992, 48). Thus it is necessary to keep watch over changes in the number of voters in the general constituencies. If necessary, their territories and boundaries must periodically, at a suitable time before the next parliamentary elections are held, be brought into harmony with the real status of the voters in them.

The Constitutional Court notes that the domestic legal system has no statutory rules about the special procedures and the bodies competent to monitor and compile reports, on a continuous and permanent basis, to the competent bodies about the periodical need to harmonise the territories and boundaries of the general constituencies, as defined in the Constituency Act.

6. Starting from the objective need to bring the territories and boundaries of the general constituencies, defined in the Constituency Act, into harmony with changes in the number of voters and with other demographic, population and similar changes which, with the passage of time, spoil the principle of the equal weight of votes, in this notification to the Croatian Parliament the Constitutional Court shows that it is necessary to change and amend the Constituency Act without delay, but also for this Act to determine the competent bodies and the rules for the delimitation procedure, i.e. the procedure for defining and harmonising constituency territories and boundaries.

In this context the Constitutional Court notes that delimitation requires pre-determined delimitation standards and includes procedural delimitation rules, the most important of which are: rules on the deadlines and competencies for monitoring and proposing delimitation, rules on the supervisory bodies and their supervisory authority in the procedure of planning constituency territories (i.e. in the procedure of "drawing the boundaries" of the constituencies), rules about the participation of the public in delimitation, and rules about the competencies and procedure of supervision over the direct application in the field of the "constituency map" accepted in the Constituency Act.

These requirements emerge from generally accepted legal standards inherent to democratic elections, the constitutional foundation of the Republic of Croatia (Article 1 para. 3 of the Constitution), and also the democratic multiparty system, a highest value of the constitutional order of the Republic of Croatia (Article 3 of the Constitution). These requirements are of a general nature and refer to the specific electoral systems that are in force in the Republic of Croatia today, but also to any electoral system – on the national or local level – on which the Croatian Parliament might decide in future, if this system calls for the determination of separate electoral constituencies.

II. RESPECTING THE TERRITORIES OF ADMINISTRATIVE-TERRITORIAL UNITS

7. Besides the demand for the equal number of voters in each constituency (with a permitted difference of +/- 5%), the Election of Members of the Croatian Parliament Act also requires compliance with another democratic legal standard in the procedure of constituency delimitation. This is the demand to respect, to the greatest possible measure, the administrative boundaries of administrative-territorial units (counties, towns and municipalities). Article 36 para. 2 of the Election of Members of the Croatian Parliament Act reads as follows:

“Article 36

(...)

When defining constituencies, account shall as much as possible be taken of the territories of counties, towns and municipalities in the Republic of Croatia, determined by law.”

This requirement emerges from the approach that the administrative-territorial units in every State are also an expression of the region’s geographical characteristics.

The Constituency Act lays down:

“Article 2

The 1st constituency covers the north-western part of the Zagrebačka County and part of the centre and west of the City of Zagreb, as follows:

- the north-western part of the Zagrebačka County – the towns and municipalities: Bistra, Brdovec, Dubravica, Jakovlje, Luka, Marija Gorica, Pušća, Zaprešić,

- part of the centre and west of the City of Zagreb: Voćarska, Petrova, Ribnjak, Hrvatskih narodnih vladara, Antona Bauera, Matko Laginja, Pavao Šubić, Kralj Zvonimir, Petar Krešimir IV., Knez Mislav, Eugen Kvaternik, Maksimirska naselja, Ružmarinka, Peščenica, Šestine, Mlinovi, Gračani, Markuševac, Vidovec, Remete, Bukovec, Kozjak, Maksimir, Dobri Dol, Dinko Šimunović, Mašićeva, Dotršćina, Ban Keglević, Petar Zrinski, Stjepan Radić, Kraljevac, Ivan Kukuljević Sakcinski, Tuškanac, Gornji Grad, Nova Ves, August Cesarec, Zrinjevac, Cvjetni trg, Andrija Medulić, Ante Topić Mimara, Petar Svačić, August Šenoa, Gupčeva Zvijezda, Medveščak, Šalata, Samoborček, Podsused, Gornji Stenjevec, Perjavica-Borčec, Gornje Vrapče, Vrapče-centar, Vrapče-jug, Gornja Kustošija, Kustošija-centar, Sveti Duh, Medvedgrad, Šestinski Dol, Jelenovac, Matija Gubec, Rudeš, Ante Starčević, Ljubljanička, Ciglenica, Pongračevo, Nikola Tesla, Stara Trešnjevka, S.S. Kranjčević, Antun Mihanović, Bartol Kašić, Horvati-Srednjaci, Knežija, Trnjanska Savica, Martinovka, Poljane, Miramare, Cvjetnica, Marin Držić, Trnje, Cvjetno naselje,

Veslačko naselje, Savski kuti, Staro Trnje, Hrvatskog književnika Mile Budaka, Sigečica.

Article 3

The 2nd constituency covers the eastern part of the Zagrebačka County, the Koprivničko-križevačka County, Bjelovarsko-bilogorska County and the eastern part of the City of Zagreb, as follows:

- the eastern part of the Zagrebačka County – the towns and municipalities: Bedenica, Brckovljani, Dubrava, Dugo Selo, Farkaševac, Gradec, Preseka, Rakovec, Sveti Ivan Zelina, Vrbovec,
- the entire territory of the Koprivničko-križevačka County,
- the entire territory of the Bjelovarsko-bilogorska County,
- the eastern part of the City of Zagreb – settlements in the Sesvete area: Adamovec, Belovar, Blaguša, Budenec, Cerje-Sesvete, Dobrodol, Drenčec, Dubec, Dumovec, Đurđekovec, Gajec, Gajišće, Glavnica Donja, Glavnica Gornja, Glavničica, Goranec, Jelkovec, Jesenovec, Kašina, Kašinska Sopnica, Kobiljak, Kučilovina, Kućanec, Luka Sesvete, Lužan, Markovo Polje, Moravče, Novo Brestje, Paruževina, Planina Donja, Planina Gornja, Popovec, Prekvršje, Prepuštovec, Sesvete-Centar, Sesevetska Sela, Sesevetska Selnica, Sesevetska Sopnica, Soblinec, Staro Brestje, Šašinovec, Šija Vrh, Šimunčevac, Vuger Selo, Vugrovec Donji, Vugrovec Gornji, Vurnovec, Žerjavinec, and settlements in part of the Dubrava area: Trnovčica, Studentski Grad and Poljanice, Granešina, Dankovec, Miroševac, Oporovec, Granešinski Novaki, Zeleni Brijeg, Čulinec, Stari Retkovec, Klaka, Dubrava-središte, Gornja Dubrava, Ivan Mažuranić, Novi Retkovec, Donja Dubrava, 30. svibnja 1990., Čučerje, Branovec-Jalšovec, Novoselec.

Article 4

The 3rd constituency covers the Krapinsko-zagorje County, Varaždinska County and Međimurska County, as follows:

- the entire territory of the Krapinsko-zagorje County,
- the entire territory of the Varaždinska County,
- the entire territory of the Međimurska County.

Article 5

The 4th constituency covers the Virovitičko-podravaska County and the Osječko-baranjska County, as follows:

- the entire territory of the Virovitičko-podravaska County,
- the entire territory of the Osječko-baranjska County.

Article 6

The 5th constituency covers the Požeško-slavonska County, Brodsko-posavska County and Vukovarsko-srijemska County, as follows:

- the entire territory of the Požeško-slavonska County,
- the entire territory of the Brodsko-posavska County,
- the entire territory of the Vukovarsko-srijemska County.

Article 7

The 6th constituency covers the south-eastern part of the Zagrebačka County, the Sisačko-moslavačka County and the south-eastern part of the City of Zagreb, as follows:

- the south-eastern part of the Zagrebačka county – the towns and municipalities: Ivanić Grad, Kloštar Ivanić, Kravarsko, Križ, Orle, Pokupsko, Rugvica, Velika Gorica,
- the entire territory of the Sisačko-moslavačka County,

- the south-eastern part of the City of Zagreb: Volovčica, Folnegovićevo naselje, Donje Svetice, Bruno Bušić, Borongaj-Lugovi, Vukomerec, Ferenščica, Savica-Šanci, Žitnjak, Kozari Bok, Resnik, Kozari Putovi, Petruševac, Ivanja Reka, Trnava, Resnički Gaj, Kanal, Zapruđe, Utrine, Travno, Sopot, Siget, Sloboština, Dugave, Središće.

Article 8

The 7th constituency covers the south-western part of the Zagrebačka County, the Karlovačka County, the eastern part of the Primorsko-goranska County and the southern part of the City of Zagreb, as follows:

- the south-western part of the Zagrebačka County – the towns and municipalities: Jastrebarsko, Klinča Sela, Krašić, Pisarovina, Samobor, Stupnik, Sveta Nedjelja, Žumberak,
- the entire territory of the Karlovačka County,
- the eastern part of the Primorsko-goranska County - the towns and municipalities: Bakar, Brod Moravice, Čabar, Čavle, Delnice, Fužine, Jelenje, Kastav, Klana, Lokve, Mrkopalj, Novi Vinodolski, Ravna Gora, Skrad, Vinodolska općina, Viškovo, Vrbovsko,
- the western and south-western parts of the City of Zagreb: Gajnice, Stenjevec, Malešnica, Špansko, Prečko, Vrbani, Jarun, Gajevo, Trnsko-Krešimir Rakić, Kajzerica, Savski Gaj, Remetinec, Blato, Jakuševac, Hrelić, Sveta Klara, Botinec, Brebernica, Brezovica, Buzin, Demerje, Desprim, Donji Čehi, Donji Dragonožec, Donji Trpuci, Drežnik Brezovički, Goli Breg, Gornji Čehi, Gornji Dragonožec, Gornji Trpuci, Grančari, Havičić Selo, Horvati, Hrašće Turopoljsko, Hrvatski Leskovac, Hudi Bitek, Ježdovec, Kupinečki Kraljevec, Lipnica, Lučko, Mala Mlaka, Odra, Odranski Obrež, Starjak, Strmec, Veliko Polje, Zadvorsko.

Article 9

The 8th constituency covers the territory of the Istarska County and the western part of the Primorsko-goranska County, as follows:

- the entire territory of the Istarska County,
- the western part of the Primorsko-goranska County – the towns and municipalities: Baška, Cres, Crikvenica, Dobrinj, Kostrena, Kraljevica, Krk, Lovran, Mali Lošinj, Malinska - Dubašnica, Matulji, Mošćenička Draga, Omišalj, Opatija, Punat, Rab, Rijeka, Vrbnik.

Article 10

The 9th constituency covers the Ličko-senjska County, Zadarska County, Šibensko-kninska County and the northern part of the Splitsko-dalmatinska County, as follows:

- the entire territory of the Ličko-senjska County,
- the entire territory of the Zadarska County,
- the entire territory of the Šibensko-kninska County,
- the northern part of the Splitsko-dalmatinska County – the towns and municipalities: Dicmo, Dugopolje, Hrvace, Kaštela, Klis, Lećevica, Marina, Muć, Okrug, Otok, Prgomet, Primorski Dolac, Seget, Sinj, Trilj, Trogir, Vrljika.

Article 11

The 10th constituency covers the southern part of the Splitsko-dalmatinska County and the Dubrovačko-neretvanska County, as follows:

- the southern part of the Splitsko-dalmatinska County – the towns and municipalities: Baška Voda, Bol, Brela, Cista Provo, Dugi Rat, Gradac, Hvar, Imotski, Jelsa, Komiža, Lokvičići, Lovreč, Makarska, Milna, Nerežišća, Omiš, Podbablje, Podgora, Podstrana, Postira, Proložac, Pučišća, Runovići, Selca, Solin, Split, Stari

Grad, Sućuraj, Supetar, Sutivan, Šestanovac, Šolta, Tučepi, Vis, Vrgorac, Zadvarje, Zagvozd, Zmijavci,
- the entire territory of the Dubrovačko-neretvanska County.”

8. In the forthcoming amendments of the Constituency Act more attention should be paid to geographical mapping standards, as laid down in Article 36 para. 2 of the Elections of Members of the Croatian Parliament Act. These concern the delimitation stage in which the constituency boundaries are “drawn”, and include demands for these boundaries to coincide wherever possible with the administrative boundaries of administrative-territorial units (but taking into account, by the nature of things, also the natural boundaries created by dominant topographical characteristics, such as mountain passes, rivers or islands). On the other hand, also important for the proper implementation of delimitation are standards concerning the geometrical shape of constituencies, which should not be “unnatural” or irregular. These standards require the continuity of a constituency’s boundaries and its compact territory. In other words, the edge parts of every constituency should as much as possible form a single and unbroken whole, without marring the primary standard: the equal weight of votes in each of the constituencies.

The Constitutional Court has the duty to note that even if the equal weight of votes in constituencies is achieved, not respecting the above principles could, under certain conditions, lead to their illegality because of the requirement in Article 36 para. 2 of the Election of Members of the Croatian Parliament Act. Therefore the Constitutional Court has the duty to inform the Croatian Parliament about this potential illegality.

9. The Constitutional Court recalls that at its sitting of 13 July 2006 the Croatian Parliament passed the new Territories of Counties, Towns and Municipalities in the Republic of Croatia Act (*Narodne novine*, nos. 86/06, 125/06 - correction, 16/07 - correction, 95/08 and 46/10), and the Constitutional Court in its decision no.: U-I-3226/2006 of 9 July 2008 (*Narodne novine*, no. 95/08) repealed Article 4 point 3 of this Act in the part reading “Prekrižje Plešivičko”.

Besides the reasons explained in points 2 to 8 of this notification and the very name of the Act on Constituencies for the Election of Members of the House of Representatives of the Croatian National Parliament, the above also shows that it is necessary to amend Articles 2 to 11 of the Constituency Act without delay, because this act is grounded on the Territories of Counties, Towns and Municipalities Act (*Narodne novine*, nos. 10/97, 124/97, 50/98, 68/98, 22/99 and 42/99) which is no longer in force.

10. The publication of this notification in *Narodne novine* is grounded on Article 29 para. 2 of the Constitutional Act on the Constitutional Court of the Republic of Croatia.

PRESIDENT
Jasna Omejec, LLD, m. p.