THE CONSTITUTIONAL COURT OF THE REPUBLIC OF CROATIA

Nos. U-I-3789/2003
U-I-359/2006
U-I-1203/2006
U-I-3606/2007
U-I-3080/2007
U-I-4593/2007
U-I-5025/2008
U-I-5376/2008
U-I-5544/2008
U-I-543/2010
U-I-972/2010

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 Bagić, Slavica Banić, Mario Jelušić, Davor Krapac, Ivan Matija, Aldo Radolović, Duška Šarin, Miroslav Šeparović and Nevenka Šernhorst, ruling on the proposals to institute proceedings to review the conformity of a law with the Constitution, at its session held on 8 December 2010, rendered the following

R U L I N G

I. The proposals to institute proceedings to review the conformity with the Constitution of Article 2 para. 2, Article 7 para. 1, Article 10 para. 1 points 1, 2 and 3, Article 18 para. 1, Article 20, Article 30, Article 38 and Article 80 para. 2 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) have not been accepted.

II. The proposal to institute proceedings to review the conformity with the Constitution of Article 2 of the Election of Members of the Croatian Parliament (Amendments) Act (*Narodne novine*, no. 19/07) has not been accepted.

III. The proposals to institute proceedings to review the conformity with the Constitution of Articles 4, 9, 20, 29, 31, 32, 35, 43, 44, 56, 58, 60, 61, 68, 69 and 95 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) have been rejected.

IV. Proceedings instituted on the proposals to institute proceedings to review the conformity with the Constitution of Articles 34, 53, 54, 55 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) have been discontinued.

V. This ruling shall be published in the official gazette of the Republic of Croatia *Narodne novine*.

S t a t e m e n t o f r e a s o n s

I. THE PROCEEDINGS BEFORE THE CONSTITUTIONAL COURT

1. The Constitutional Court has to date received eleven proposals to review the conformity 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, hereinafter: the Parliamentary Elections Act) with certain provisions of the Constitution.

The following proponents submitted proposals to institute proceedings to review the conformity with the Constitution of particular provisions of the Parliamentary Elections Act, given in points I to IV of the pronouncement of this ruling:

- The Croatian Helsinki Committee for Human Rights, represented by Božidar Novak, president of the Media Council, and Geza Stantić, spokesperson (U-I-3789/2003),
- Branko Šilobod from Sv. Martin pod Okićem (U-I-359/2006),
- Đivo Bašić from Dubrovnik (U-I-1203/2006),
- VIZUM vizija, znanje, izum, Development, Export and Employment Association from Zagreb (hereinafter: the VIZUM Association), represented by Zdravko Kovač, president of the Association (U-I-3606/2007),
- Marija Pirija from Zagreb (U-I-4593/2007),
- Franjo Zubović from Fažana (U-I-5544/2008),
- Ivan Šušnjar from Zagreb (U-I-543/2010),
- Franjo Vranjković from Gladbeck, Republic of Germany (U-I-972/2010),
- Juraj Fofonjka from Orahovica (U-I-3080/2007),
- Jerko Ivanković Lijanović from Široki Brijeg, Bosnia and Herzegovina (U-I-5025/2008)
- Marko Rakar, Marko Trzun, Aleksandar Hatzivelkos and Tonči Majica, all from Zagreb (U-I-5376/2008).

2. While the cases were under consideration the Court decided to pass one ruling on all the proposals filed.

3. Because of the great number of articles of the Parliamentary Elections Act which the proponents disputed on various grounds, the statement of reasons for the ruling has been divided in three sections. The first gives the reasons why the Constitutional Court did not accept proposals to institute proceedings to review the conformity with the Constitution of the Parliamentary Elections Act, and its amendments (points I and II of the pronouncement of the ruling). The second section explains the reasons why the Constitutional Court rejected proposals to institute proceedings to review the Conformity with the Constitution of the Parliamentary

Elections Act (point III of the pronouncement of the ruling). The third section explains the reasons why the Constitutional Court discontinued proceedings instituted on proposals to institute proceedings to review the conformity with the Constitution of the Parliamentary Elections Act (point IV of the pronouncement of the ruling).

Within the above sections the reasons are classified according to the alphabetical order of the numerical identifiers of the impugned articles of the Parliamentary Elections Act. In the cases when several articles of the Parliamentary Elections Act are reviewed together, they are classified according to the alphabetical order of the numerical identifiers of the first article in the group. The Constitutional Court notes that all the proponents used the numbers of the impugned articles as they appear in the consolidated wording of the Parliamentary Elections Act published in *Narodne novine,* no. 69/03. In this ruling the Constitutional Court will use the numbers of the articles according to the original text of the Parliamentary Elections Act published in *Narodne novine,* no. 116/99, and will give in parentheses the numbers of the articles used by the proponents according to the consolidated wording of the Parliamentary Elections Act.

4. The Constitutional Court notes that in the consolidated wording of the Constitution (*Narodne novine*, no. 85/10), which was published after the Amendments to the Constitution of the Republic of Croatia (*Narodne novine*, no. 76/10) were passed, the Committee for the Constitution, Rules of Procedure and Political System of the Croatian Parliament changed the numbers of the articles of the Constitution. In the statement of reasons of this ruling these numbers shall be given in parentheses after the numbers of the articles that the Constitutional Court used before the publication of the consolidated wording of the Constitution in *Narodne novine*, no. 76/10.

5. Before the consideration of these proposals began, Constitutional Court Judge Antun Palarić exempt himself from deliberations and voting on the grounds of Article 27 para. 6 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; hereinafter: the Constitutional Act).

II. POINTS I AND II OF THE PRONOUNCEMENT OF THE RULING

1) Article 2 para. 2 of the Parliamentary Elections Act

6. The VIZUM Association and Đivo Bašić disputed the conformity of Article 2 para. 2 of the Parliamentary Elections Act with Article 1 para. 3 of the Constitution.

The impugned Article 2 para. 2 of the Parliamentary Elections Act reads as follows:

> “Article 2
>
> (...)
>
> The mandate of the members shall not be imperative and they cannot be recalled.”

6.1. The proponents deem that voters should be able to recall their representatives in cases when the representatives, in the voters’ opinion, do not perform well or at all, or in cases when they commit a criminal offence, are in a conflict of interest,

embezzle money etc. Thus the proponent Đivo Bašić considers that it should be possible to recall a member in the cases of a criminal offence, conflict of interests, embezzlement, setting-up business deals and the like. The VIZUM Association states that the words "shall have no imperative" (mandate) in Article 74 (75) of the Constitution are imprecise and that "those who elected MPs must be able to recall them if they do not act for their benefit etc. A non-imperative mandate is a failure, since now MPs get mixed up in dishonourable activities because there is no recall or major sanctions."

The proposals are not well founded.

6.2. The relevant provisions of the Constitution read as follows:

"Article 1

(...)

The people shall exercise this power through the election of representatives and through direct decision-making."

"Article 74 (75)

Members of the Croatian Parliament shall have no imperative mandate.

(...)."

The above constitutional provisions provide that in the Republic of Croatia the people exercise power by electing their representatives and through direct decision-making. The elected representatives of the people (the Members of the Croatian Parliament) do not have an imperative mandate. They have a representative mandate.

The Constitution has introduced in the Republic of Croatia a system of representative government as the basic form of exercising the people's sovereignty. In constitutional law the system of representative government is expressed through the representative mandate, and the legal nature of the representative mandate derives from the theory of the people's indivisible sovereignty. The representative mandate denotes a relationship between the voters and their representatives in which the representatives are in their activities independent of the stands of the voters who elected them, so therefore the voters cannot recall them. Elected representatives are the holders of a collective mandate which they acquired when they were elected. They represent the entire people, not (only) the voters who elected them or the constituency in which they were elected.

Contrary to the representative mandate, the imperative mandate is based on "the institution of the mandate in Roman Law as a contract in which one party (the mandate giver) empowers the other party (the mandate holder) to act in its name", and it "presumes the voters' right to give binding instructions to their representatives and the representatives' duty to comply with them" (Smerdel - Sokol, *Ustavno pravo* /Constitutional Law/, Faculty of Law in Zagreb, Zagreb, 2006, 216). One of the elements of the imperative mandate is recall.

Since the elected representatives of the people (the Members of the Croatian Parliament) do not have an imperative but a representative mandate (Article 74 of the Constitution), they are not legally bound in their work and decision-making in the

Croatian Parliament. The recall of MPs, which the proponents support, is inherent to the imperative not to the representative mandate.

Finally, the Constitutional Court notes that the constitutional nature of an MP's representative mandate should not be challenged because the MP could commit a dishonourable act or criminal offence. For dishonourable acts that are not criminal, MPs carry political responsibility that may result in them not being re-elected in the next elections. In the case of an alleged crime, the Constitutional Court recalls that the Constitution allows the detention and criminal prosecution of an MP and that a final court verdict of guilty, under certain circumstances, leads to the loss of his/her seat as MP.

Article 2 para. 2 of the Parliamentary Elections Act is therefore not in breach of Article 1 para. 3 of the Constitution.

2) Articles 7 para. 1, 18 (17) para. 1, 20 (19) and 38 (35) of the Parliamentary Elections Act

7. The Constitutional Court reviewed the conformity with the Constitution of Article 7 para. 1, Article 18 (17) para. 1, Article 20 (19) and Article 38 (35) of the Parliamentary Elections Act together because of the reasons why the proponents dispute their conformity with the Constitution, which basically challenge the accepted electoral system for the Croatian Parliament as a whole.

Branko Šilobod, the VIZUM Association, Ivan Šušnjar and Franjo Vranjković dispute the conformity of Article 7 para. 1, Article 18 (17) para. 1, Article 20 (19) and Article 38 (35) of the Parliamentary Elections Act with Article 1 para. 3 and Article 45 of the Constitution.

7.1. The impugned articles of the Parliamentary Elections Act read as follows:

> "Article 7
>
> Voters who have residence in the Republic of Croatia shall vote at the polling stations on the territory of the Republic of Croatia according to their place of residence.
>
> (...)."

> "Article 18
>
> Political parties, voters and national minority associations shall have the right to nominate candidates for the representatives of national minorities and their deputies.
>
> (...)."

> "NOMINATION
>
> Article 20
>
> All the political parties registered in the Republic of Croatia on the day when the resolution on calling elections is published in the official gazette *Narodne novine* shall have the right to propose party lists for the election of Members of Parliament.
>
> One political party independently, or two or more political parties (a coalition list), may propose a list for the election of Members of Parliament."

"Article 38

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."

7.2. Branko Šilobod challenges the constitutionality of Article 18 (17) para. 1 and Article 20 (19) of the Parliamentary Elections Act. The proponent deems those provisions in breach of Article 1 para. 3 of the Constitution, stating that they prescribe intermediaries in the form of political parties and their lists, which do not show the individuals who will be elected. In the proponent's opinion, the people must elect their representatives as individual persons with a name and surname, not a party list.

The VIZUM Association deems that Articles 7 para. 1 and 38 (35) of the Parliamentary Elections Act contravene the Constitution. It states that the right to elect only the list candidates is an unconstitutional restriction of the election right because a voter's preferred representative is often not on the domicile list. In the proponent's opinion, electing representatives in the other nine constituencies also would give better-quality members. Furthermore, in the proponent's view the representatives of the Croatian Pensioners' Party do not have equal electoral rights in elections for the Croatian Parliament in comparison with members of other political parties, because they can due to their age not be elected more than twice on an average.

Ivan Šušnjar and Franjo Vranjković challenge the constitutionality of Article 38 (35) of the Parliamentary Elections Act. Their proposals are identical in content. The proponents say that the division into 10 constituencies, each of which elects 14 representatives regardless of how many voters cast their ballots in a particular constituency, is a violation of Articles 45 and 71 of the Constitution, which guarantee equal and universal suffrage. In their opinion, the effect of each individual vote of each individual Croatian citizen who cast a ballot is not universal and equal nor is it fair, and that a law may not generate, and then also "effectuate", more valuable and less valuables votes. They consider that the legislator has the duty to ensure an electoral model that will prevent the discrimination of some votes in relation to others during voting, and that each vote of each individual Croatian citizen must have the same value. They say that the Parliamentary Elections Act discriminates between Croatian citizens in constituencies with a higher voter turnout and Croatian citizens in constituencies with a lower voter turnout.

The proposals are not well founded.

7.3. The relevant provisions of the Constitution read as follows:

"Article 1

(...)

The people shall exercise this power through the election of representatives and through direct decision-making.

"Article 45

Croatian citizens who have reached the age of eighteen years (voters) shall have universal and equal suffrage in elections for the Croatian Parliament, the

President of the Republic of Croatia, the European Parliament and in proceedings on deciding at a state referendum, in accordance with the law.
(...)"

"Article 71 (72)
The Croatian Parliament shall have no less than 100 and no more than 160 members, elected on the basis of direct universal and equal suffrage by secret ballot."

"Article 72 (73) paragraph 2
(...)
The number of members of the Croatian Parliament, and the conditions and procedures for their election, shall be regulated by law."

Examining the proponents' objections, the Constitutional Court started from the fact that the Constitution does not require a particular electoral system for parliamentary elections nor does it contain any rules connected with the electoral system. The writers of the Constitution empowered the legislator to define and regulate this issue. In accordance with the powers provided in Article 2 para. 4 indent 1 ("The Croatian Parliament … shall, independently and in accordance with the Constitution and law, decide: - on the regulation of economic, legal and political relations in the Republic of Croatia") and Article 72 (73) para. 2 of the Constitution, the Croatian Parliament enacted a law in which it defined the number of MPs to be elected to the Croatian Parliament and the conditions and procedure for their election.

The Croatian legislator chose the system of proportional representation, i.e. the proportional electoral system, for the election of Members of the Croatian Parliament. In this electoral system elections are based on lists of candidates put forward by statutory proponents. Under the Parliamentary Elections Act, these are political parties (that were registered in the Republic of Croatia on the day when the resolution on calling elections were published in the official gazette *Narodne novine*) and voters (Croatian citizens who have reached 18 years, except those who have been deprived of the capacity to exercise rights by a legally effective court decision) on the basis of validly gathered voter signatures. Each authorised proponent makes a list with the same number of candidates as the number of members to be elected to the representative body in a particular constituency. The lists for the election of Members of the Croatian Parliament have 14 candidates, which is the number of Members elected in each of the general constituencies (Article 35 of the Parliamentary Elections Act).

Unlike the proportional electoral system, in majority electoral system individuals are elected (individual candidates). In the relative majority system the candidate who got most votes is elected, and in the absolute majority system the candidate who got 50 per cent of the votes plus one more vote of the voters registered in the electoral register or the absolute majority of votes of the voters who cast their ballot.

When they say that the people should elect their representatives as individuals, not as a list of candidates on which it is only possible to "encircle" political parties, the proponents are challenging the proportional electoral system as such or the impossibility of voters electing the particular candidates they prefer from the lists of candidates. In this context the Constitutional Court must note that it is possible for voters to achieve the individuality of the elected candidates in the proportional

electoral system based on lists of candidates also, but the Croatian legislator has to date not opted for this rule. On the other hand, the option chosen by the legislator as such is not suitable for constitutional review. Finally, the characteristics of the electoral system which the legislator opted for (the proportional electoral system with closed lists of candidates) does not in any way affect the legal nature of the elections themselves: they are direct even when the voter does not directly vote for an individual candidate determined by name.

Furthermore, the proponents who deem that the territory of the Republic of Croatia should be one constituency, not divided into 10 constituencies, are in fact disputing the rule about constituency size (they support 140 representatives being elected in one large uninominal constituency, not 14 representatives in each of 10 large plurinominal constituencies).

Only the Croatian Parliament has the power to decide on the electoral system for MPs and prescribe the rules within the electoral system chosen (which include determining the number and the size of the constituencies). The legislator's choice cannot in itself be subject to constitutional review in proceedings before the Constitutional Court, unless a particular legislative solution infringes on the constitutionally guaranteed universal and equal suffrage and on the other constitutional values and principles connected to the realisation of representative rule and the democratic multiparty system.

Starting from the above, and bearing in mind that most of the proponents prefer a different parliamentary electoral system, the Constitutional Court finds their proposals unfounded. It reiterates that the existence of different solutions for regulating election laws in the Republic of Croatia still does not mean that the impugned solutions are not in accordance with the Constitution, provided that the solutions accepted by the legislator remained within constitutionally acceptable boundaries.

In conclusion, the impugned articles of the Parliamentary Elections Act, which start from the rules of the proportional electoral system, conform to the constitutional principles of direct elections and universal and equal suffrage enshrined in the Constitution.

3) Article 10 paragraph 1 points 1, 2 and 3 of the Parliamentary Elections Act

8. Franjo Zubović disputes the conformity of Article 10 para. 1 points 1, 2 and 3 of the Parliamentary Elections Act with Articles 30, 45 para. 1 and 72 (73) para. 1 of the Constitution. The disputed parts of Article 10 para. 1 of the Parliamentary Elections Act read as follows:

> "Article 10
>
> An MP's term shall cease earlier than the period he/she was elected for:
>
> 1. if he/she resigns,
> 2. if he/she is divested of business capacity by a legally effective court decision,
> 3. if he/she is sentenced to an unconditional prison term of more than 6 months by a legally effective court sentence,
>
> (...)."

8.1. The proponent deems that the impugned provisions contravene Article 72 (73) para. 1 of the Constitution, because this article does not provide for any case of a term ending before the expiry of four years.

With reference to point 1 of paragraph 1 of Article 10 of the Parliamentary Elections Act, the proponent states that an elected MP has no one to hand in his resignation to, unless to the voters who voted for his election to the Croatian Parliament. Furthermore, handing in a resignation to the Croatian Parliament has no legal meaning, as the Croatian Parliament does not have the power to relieve MPs of their seats since it was not the Croatian Parliament who gave them the seats.

With reference to point 2 of paragraph 1 of Article 10 of the Parliamentary Elections Act, the proponent points out that in this case it is the court that makes the decision about the loss of the seat. More specifically, the decision does not even depend on the court but on the opinion of the medical expert about the MP's mental state. Therefore it is, in fact, the forensic medical expert who decides about the MP's loss of seat and annuls the decision made by the voters at the elections.

With reference to points 2 and 3 of paragraph 1 of Article 10 of the Parliamentary Elections Act, the proponent deems that it is the court that decides on the loss of seat on the grounds of its "free judicial conviction" and that the court indirectly annuls the voters' decision about who will be an MP.

The proponent also deems that the impugned points 2 and 3 of paragraph 1 of Article 10 of the Parliamentary Elections Act contravene Article 45 para. 1 of the Constitution on general and equal suffrage. The Constitution does not allow any restrictions in the execution of suffrage on any grounds – prior conviction, addiction to alcohol, level of intelligence and the like. Contrary to that, under the impugned provisions an MP cannot be a person who has been divested of business capacity or one who has been sentenced to an unconditional prison term of more than six months.

The impugned point 3 of para. 1 of Article 10 of the Parliamentary Elections Act is also in breach of Article 30 of the Constitution, because – in his opinion – divesting someone of his parliamentary seat introduces the additional punishment of loss of the right to be an MP. For this to be effected the criminal offence need not necessarily be especially serious or dishonourable (as required by Article 30 of the Constitution); the seat is lost for any offence leading to an unconditional prison sentence of more than six months. Besides, in the proponent's opinion Article 30 of the Constitution provides for the loss of "certain rights", while the "… impugned provision of the act lays down the loss of all rights to acting as an MP".

The proponent deems that the impugned legal provisions also contravene Article 3 of the Constitution, because there is no equality between an MP sentenced to an unconditional prison term after he has held his seat for one day, and an MP who has been sentenced when he has only one day in Parliament left. In the proponent's opinion, MPs are completely uncertain about how long the effects of loosing their seat will last; they do not even know whether they will come into effect, because all this depends on the will of judges. Besides, MPs sentenced to a prison term of less than six months are not equal with those sentenced to a prison term of more than six months.

Finally, the proponent points out that if the legally effective sentence is later quashed under an extraordinary legal remedy, the punishment of the loss of parliamentary seat still remains although there is no more punishment for a criminal offence. Therefore the proponent deems that point 3 of paragraph 1 of Article 10 of the Parliamentary Elections Act also contravenes Article 31 para. 1 of the Constitution.

The proposal is not well founded.

8.2. The relevant Articles 30, 45 para. 1 and 72 para. 1 of the Constitution read as follows:

> "Article 30
>
> The sentence for a serious and exceptionally dishonourable criminal offence may, in conformity with law, have as a consequence the loss of acquired rights or a ban on acquiring, for a specific period of time, certain rights relating to the conduct of specific affairs, if this is required for the protection of the legal order."

> "Article 45
>
> All citizens of the Republic of Croatia who have reached the age of eighteen years shall have universal and equal suffrage in elections for the Croatian Parliament, the President of the Republic of Croatia and the European Parliament and in proceedings on deciding on a state referendum, in accordance with the law.
>
> (...)"

> "Article 72
>
> Members of the Croatian Parliament shall be elected for a term of four years.
>
> (...)"

It seems that all the proponent's reasons for disputing the constitutionality of Article 10 para. 1 points 1, 2 and 3 of the Parliamentary Elections Act are based on the constitutional provision that Members of the Croatian Parliament are elected for a term of four years (Article 72 para. 1 of the Constitution). From this provision the proponent concludes that there must be no case in the legal order of the Republic of Croatia when the term of an elected Member of the Croatian Parliament may end before the expiry of four years, which is the term of MPs under the Constitution.

The Constitutional Court notes that the legislator, in elaborating the rules for the election of Croatian MPs, did not act contrary to Article 72 para. 1 of the Constitution by foreseeing the possibility that an MP's term might end even before the expiry of the time for which he was elected: if the MP resigns, if a legally effective court decision has divested him of business capacity or if a legally effective sentence has sentenced him to an unconditional prison term longer than six months.

The Constitutional Court also finds groundless the proponent's allegation that point 3 of paragraph 1 of Article 10 of the Parliamentary Elections Act contravenes Article 30 of the Constitution, because an MP's loss of seat has introduced the additional punishment of the loss of a person's right to act as (remain) an MP. The proponent starts from the wrong assumption that an MP's seat is an MP's "acquired right", within the meaning of Article 30 of the Constitution, because of which, in his opinion, only a sentence for a serious and especially dishonourable criminal offence may result in the loss of the acquired rights (not also a sentence for any act for which an unconditional prison sentence of more than six months was pronounced, as provided

for in the impugned legal provision). An MP's seat is not an MP's "acquired right", so point 3 of paragraph 1 of Article 10 of the Parliamentary Elections Act cannot be connected with Article 30 of the Constitution.

The Constitutional Court did not specially examine the proponent's other reasons for challenging the loss of an MP's seat before the expiry of the time for which the MP was elected (for example: that the MP does not have anyone to hand in his resignation to, because he can only hand it in to his voters; that the court or the forensic expert in fact decide on the loss of seat and thus annul the decision of the voters) because these reasons (like those above), in the view of the Constitutional Court, are based on the proponent's wrong approach to the Constitution.

In this context the Constitutional Court recalls that the Constitution is a single whole. It cannot be approached by pulling one provision out from the entirety of the relations that it constitutes and then interpreting it separately and mechanically, independently of all the other values that are enshrined in the Constitution. If it is viewed as unity, the Constitution reflects some all-encompassing principles and basic decisions in connection with which all its individual provisions must be interpreted. Thus no constitutional provision may by pulled out of context and interpreted independently. In other words, each particular constitutional provision must always be interpreted in accordance with the highest values of the constitutional order which are the grounds for interpreting the Constitution itself. These are: freedom, equal rights, national equality and equality of the sexes, love of peace, social justice, respect for human rights, inviolability of ownership, conservation of nature and the environment, the rule of law, and the democratic multiparty system (Article 3 of the Constitution).

In this case, in the view of the Constitutional Court, the proponent did not consider Article 72 para. 1 of the Constitution (in connection with Article 10 para. 1 points 1, 2 and 3 of the Parliamentary Elections Act) in the light of the principle of the rule of law and the democratic multiparty system, as the highest values of the constitutional order of the Republic of Croatia. Therefore the Constitutional Court finds his objections not well founded.

4) Article 30 (28) of the Parliamentary Elections Act

9. The Croatian Helsinki Committee for Human Rights disputes the conformity of Article 30 (28) of the Parliamentary Elections Act with Articles 16 and 38 para. 2 of the Constitution. Article 30 (28) of the Parliamentary Elections Act reads as follows:

> "Article 30
>
> In order to realize the equality of all the political parties that declared lists and equal possibilities for these political parties to present their programmes and election promotion, the Parliament shall, within 15 days from the entry into force of the Election of Members of the Croatian National Parliament (Amendments) Act (*Narodne novine*, no. 53/03), adopt Rules on the Proceeding of Electronic Media with National Concession in the Republic of Croatia during the Election Campaign.
>
> The Rules in paragraph 1 of this Article shall determine the forms and time of airing the election promotion of political parties, ways of presenting the programmes of political parties and the candidates on party and independent lists, candidates for national minority representatives, party officials, and the rules for airing debates between list holders.

> The Rules in paragraph 1 of this Article shall also set down the total airing time of all the programmes (telops, video clips, rally recordings, special programmes and similar) that the majority political party and coalition, and the opposition parties or coalitions, may buy in the same duration in the electronic media with national concession in the Republic of Croatia, taking into account that equal time shall be provided for a particular list participating at the elections."

9.1. The proponent notes that the impugned Article 30 (28) of the Parliamentary Elections Act was put into effect during preparations for the parliamentary elections in November 2003, because the Croatian Parliament had adopted the Rules on the Proceeding of Electronic Media with National Concession in the Republic of Croatia During the Election Campaign (*Narodne novine*, no. 165/03). In the proponent's view, in the execution of this article the Croatian Parliament "… in the Rules … entered into determining the duration, structure and framework contents of programmes and into other important issues which belong to the domain of editorial autonomy. … On the grounds of Article 28, the Parliament regulated a large portion of the programme."

The proponent deems that the impugned provisions, on the grounds of which "… Parliament, as a state body, entered into directly deciding on issues from the autonomous editorial domain, contravene … the principle of the 'freedom of the press and other media' enshrined in the Constitution of the Republic of Croatia in Article 38/2." In the proponent's opinion, the freedom of the press serves for the free formation of public opinion and is therefore a basic human right, and "… if the formation of public opinion is to be free – the media as a whole must be protected from direct State control or influence, and especially from State or any other kind of interference from the side into the creation of programmes."

The proponent further states:

> "The provisions of Article 28 of the Elections Act, whereby the legislator suspended the independence and autonomy of the above media by direct regulation, are at variance not only with the accepted understanding of the freedom of the media, but also with the corresponding provisions of the media acts in our country. Therefore they should be understood as an exceptional restriction of this constitutional right at the time of the elections.
>
> (...)
>
> The provisions of Article 28 establish the obvious supremacy of political parties and entities equalled with them at the cost of voter rights and interests and media freedom, so not only do they not protect the legal order, they prejudice it. Therefore they do not comply with the condition in Article 16/1 of the Constitution.
>
> Furthermore, the restrictions are very considerable and very intensive. … However, judging from previous experience in multiparty elections in Croatia, the media … did not considerably threaten just and fair election promotion … If the independent media do not threaten the democratic nature of the election, there is no real reason to restrict the freedom of the media at all, and especially not to restrict it intensively and to a great measure. The provisions of Article 28 can, therefore, by no means be considered proportional, as required by Article 16/2 of the Constitution.
>
> (...)
>
> Repealing Article 28 would not prejudice the legal order and the quality of media contribution to elections on the practical level, either … Croatian laws contain … a good system of standard and relatively precise provisions about the public media's rights and obligations in the realisation of their basic democratic functions.

> Besides, in the Croatian media themselves and among journalists … there is a traditional ambition to balanced, fair and impartial informing … The particular obligations of particular types of media … could be regulated by the interpretation of the corresponding media acts, which … contain sufficient provisions for this purpose."

Furthermore, the proponent states that "in a very widely held professional opinion, it is not just or politically productive to equalise the right to promotion of unequal election competitors".

The proposal is not well founded.

9.2. Articles 16 para. 1 and 38 para. 2 of the Constitution, to which the proponent refers, read as follows:

> "Article 16
>
> Freedoms and rights may only be restricted by law in order to protect freedoms and rights of others, public order, public morality and health.
>
> (...)"

> "Article 38
>
> (...)
>
> Freedom of expression shall specifically include freedom of the press and other media of communication, freedom of speech and public expression, and free establishment of all institutions of public communication."

In essence, the proponent considers that Article 30 (28) of the Parliamentary Elections Act is superfluous and requests the review of its conformity with the Constitution on the grounds that it is unnecessary.

The Constitutional Court notes that in its ruling no. U-II-3432/2003 of 11 July 2007 (published on: *www.usud.hr*) it did not accept the proposal to institute proceedings to review the conformity with the Constitution and law of Chapter II Section b points 1 and 2 of the Rules on the Proceeding of Electronic Media with National Concession in the Republic of Croatia (*Narodne novine*, no. 165/03). In this ruling the Court stated:

> "7. ... The Constitutional Court must also state the following:
>
> The entirety of the Rules and all their provisions are much too detailed in elaborating the obligations of all the electronic media in the presentation of parties and candidates in the elections for Members of the Croatian Parliament. The entire way in which Croatian Radio Television, as the public television, and other companies (private) follow the election campaign has no point from the aspect of the interests of the election participants and the viewers of the programmes, because in duration, structure of set questions and presentations of the candidates these programmes basically defy their purpose.
>
> However, the issue of whether there is any point for such a detailed and complicated elaboration of how to follow the election campaign is not subject to the review of constitutionality and legality."

With respect to the proponent's objections, the Constitutional Court can only repeat its views expressed in ruling no. U-II-3432/2003. The reason for the legislator's regulation of particular questions in the field of electoral law is not in the jurisdiction of

the Constitutional Court until a particular legislative solution disproportionately encroaches upon the constitutionally guaranteed general and equal suffrage of Croatian voters and upon other constitutional values and principles connected with the realisation of representative government and the democratic multiparty system.

Therefore the Constitutional Court, although it does not deny the validity of the proponent's views in principle, cannot assess his proposal as well-founded because it does not challenge the constitutionality of Article 30 (28) of the Parliamentary Elections Act, but the purpose of the legislator's policies in the field of electoral law (in this case, in the narrower field connected to the role of the national electronic media during the election campaign), whose effects do not disproportionately prejudice any constitutional value aimed at protecting and promoting the rights of voters and democratic electoral processes.

5) Article 80 (68) para. 2 of the Parliamentary Elections Act

10. Marija Pirija from Zagreb disputes the conformity of Article 80 (68) para. 2 of the Parliamentary Elections Act with Article 45 of the Constitution. Article 80 (68) para. 2 of the Parliamentary Elections Act reads as follows:

"Article 80

(...)

In the diplomatic-consular missions voting shall last for two days and shall end on the same day as the voting in the Republic of Croatia."

10.1. In the proponent's view the citizens of the Republic of Croatia who are foreign residents are in a privileged position (they are favoured) because they are able to vote during two days, unlike the citizens of the Republic of Croatia who vote in Croatia. In her opinion Croatian citizens who do not reside in Croatia but permanently reside abroad should not vote for members of the Croatian Parliament (and by analogy for the President of the Republic of Croatia) because the wording "who are abroad" in Article 45 of the Constitution only refers to persons who are abroad temporarily.

The proposal is not well founded.

10.2. The relevant Articles 14 para. 2 and 45 para. 4 of the Constitution read as follows:

"Article 14

(...)

All shall be equal before the law."

"Article 45

(...)

In elections for the Croatian Parliament, the President of the Republic of Croatia and the European Parliament and in proceedings of deciding at the state referendum, the Republic of Croatia shall also ensure suffrage to its citizens who are residents of the Republic of Croatia and who are abroad at the time of the elections, by allowing them to vote in the diplomatic-consular missions of the Republic of Croatia in the foreign country in which they are located or in some other way specified by law."

Challenging Article 80 (68) of the Parliamentary Elections Act, the proponent deems that it introduces inequality among voters who are residents of the Republic of Croatia and those who are foreign residents, since the latter may vote for two days in diplomatic-consular missions, unlike voters in Croatia who vote on one day.

The content of Article 80 (68) of the Parliamentary Elections Act shows that it is a legal-technical provision. Its justification lies in the fact that there are few diplomatic-consular missions in which voting is organised in comparison with the number of polling stations in the Republic of Croatia, and that therefore these are also often far from the voters' places of residence. Enabling voters who reside abroad to vote in diplomatic-consular missions during two days, so that they can cast their ballot despite the smaller number of polling stations, their possible distance and other justified reasons, does not place those voters in a privileged position and discriminate Croatian citizens who vote for one day only in Croatia. The Constitutional Court finds the impugned provision is in conformity with Article 14 para. 2 and Article 45 para. 45 of the Constitution.

The Constitutional Court notes, however, that the fact that the existing legislative solution is acceptable in constitutional law does not by any means suggest that the legislator has the obligation to enable voters who are foreign residents to vote at elections for two days. This is a matter for the legislator's assessment, as is also the legal existence of this measure.

6) Article 2 of the Parliamentary Elections (Amendments) Act

11. Juraj Fofonjka from Orahovica disputes the conformity of Article 2 of the Parliamentary Elections (Amendments) Act. Article 2 of the Parliamentary Elections (Amendments) Act reads as follows:

> "Article 2
>
> In Article 32 paragraph 1 shall be amended and shall read as follows:
>
> 'Parliamentary political parties, proponents of independent lists, independent members and the representatives of national minorities who had MPs in the Croatian Parliament on the day when its term expired, or when it was dissolved during its term before elections are held, and which are participating at the elections, have the right to compensation of expenses for election promotion in a one-year amount determined for the year in which the elections are held in accordance with the law regulating the financing of political parties, independent lists and candidates.'
>
> Paragraph 2 shall be followed by the added paragraphs 3 and 4, which read as follows:
>
> 'Political parties, the proponents of independent lists and candidates for the representatives of national minorities who do not comply with the conditions in paragraph 1 of this Article, and who are participating at the elections, have the right to compensation of expenses for election promotion if they win more than 5% of the valid votes in their constituency at the election.
>
> The compensation in paragraph 3 of this Article shall be paid within 30 days from the day of the proclamation of official election results, on the grounds of a decision of the Government of the Republic of Croatia.'"

11.1. In the proponent's view, Article 2 of the Parliamentary Elections (Amendments) Act introduces two categories of participants at the elections: those who had MPs in

the Croatian Parliament on the day when its term ended and those who did not. In his opinion, the expenses for election promotion should be equally regulated without favouring or discriminating anyone. He deems that one of the rights of equal suffrage, guaranteed in Article 45 of the Constitution, is the right for all the participants in the elections to have the right to compensation of expenses for election promotion under the same preconditions and requirements.

The proposal is not well founded.

11.2. The relevant Article 45 para. 1 of the Constitution reads as follows:

> "Article 45
>
> All citizens of the Republic of Croatia who have reached the age of eighteen years shall have universal and equal suffrage in elections for the Croatian Parliament, President of the Republic of Croatia and the European Parliament and in proceedings of deciding on the state referendum, in accordance with the law."

It is the view of the Constitutional Court that "equal suffrage" means that the legislator must ensure, through the electoral system, that all Croatian citizens with voting rights have one or several votes (depending on the will of the legislator and the accepted electoral system), but that all Croatian citizens must always have the same number of votes.

Therefore, equal suffrage in Article 45 of the Constitution does not include the equality of political parties in relation to compensation of the expenses for election promotion, so the Constitutional Court finds that the impugned article cannot be examined from the aspect of Article 45 of the Constitution. Namely, the legislator is empowered to decide whether and how and according to what standards it will compensate parties for the expenses of election promotion.

12. On the grounds of Article 43 para. 1 of the Constitutional Act, the Court has decided as in the pronouncement of points I and II of the ruling.

III. POINT III OF THE PRONOUNCEMENT OF THE RULING

7) Articles 43 (40) and 44 (41) of the Parliamentary Elections Act

13. Ivan Šušnjar and Franjo Vranjković dispute the conformity of Articles 43 (40) and 44 (41) of the Parliamentary Elections Act with the Constitution, whereas Jerko Ivanković Lijanović disputes the conformity of only Article 44 (41) with the Constitution (this proponent in fact disputes Articles 38 (35), 40 (37), 43 (40), 44 (41) and 45 (42), but the contents of his proposal show that he disputes only Article 44 (41) of the Parliamentary Elections Act), as do Marko Rakar, Marko Trzun, Aleksandar Hatzivelkos and Tonči Majica, who deem that Article 44 (41) contravenes Article 71 of the Constitution. Articles 43 (40) and 44 (41) of the Parliamentary Elections Act read as follows:

> "Article 43
>
> Voters who do not have residence in the Republic of Croatia shall elect MPs on the basis of lists with 14 candidates in a special constituency."

"Article 44

The number of MPs elected in the special constituency by the voters who do not have residence in the Republic of Croatia shall be determined in the following manner:

The total number of valid votes in the ten constituencies in the Republic of Croatia shall be divided by 140, which is the total number of MPs elected in these constituencies. The result obtained (the quotient) shall be used to divide the number of valid votes in the special constituency. The result achieved in this way is the number of MPs elected in the special constituency. If the result is not a whole number, it shall be rounded to the whole number up from 0.5 and down from under 0.5."

13.1. The proponents Ivan Šušnjar and Franjo Vranjković consider that Articles 43 (40) and 44 (41) of the Parliamentary Elections Act introduce negative discrimination over the 11th constituency. "... for this constituency to delegate the maximum number of 14 MPs the turnout in it must be the same or greater than the average turnout in Croatia, while the citizens who are the residents of some other constituency need not comply with this condition. What is more, they can have a much lower turnout … and despite this small turnout they will win the right to seats for all the 14 representatives of their constituency…"

In the opinion of the proponent Lijanović, "the impugned legal provisions" bring Croatian citizens who are not residents of the Republic of Croatia into an unequal position in comparison with the other citizens of the Republic of Croatia "… because only for them is the number of seats conditional on the number of valid votes in the first ten constituencies, while for the other constituencies (including also the 12th constituency) there are no such or any other conditions." The proponent substantiates this inequality by statistical data from the elections of 2003 and 2007. For example, in 2007 the number of valid votes in the 4th constituency was 208,716, it elected 14 MPs which is 23,935 voters per seat. In the 11th constituency there were 89,653 valid votes, and by using the calculation from Article 41 of the Parliamentary Elections Act it elected 5 MPs, which is 80,990 voters per seat.

Marko Rakar, Marko Trzun, Aleksandar Hatzivelkos and Tonči Majica consider that Article 44 (41) contravenes Article 71 of the Constitution because the number of seats in the special constituency depends on the number of valid votes in ten constituencies; the number of seats depends on the will of voters outside this constituency, but the number of seats in the ten constituencies, which is fixed, does not depend on the number of votes in the special constituency. The votes do not have an equal value, i.e. voters from the special constituency are placed in an unequal position in relation to other voters so this is a violation of the principle of equal suffrage in Article 71 of the Constitution.

They deem that there has also been a violation of Article 71 of the Constitution which determines the largest number of MPs, because "starting from the positive assumption that everyone will vote and that all the votes will be valid", the calculation in Article 44 (41) of the Parliamentary Elections Act gives the number of 163 seats. They also deem that there has been a violation of Articles 3 and 14 para. 2 of the Constitution ("There can be no equality of citizens before the law … when this equality and will is exposed to unforeseeable circumstances…").

There are no preconditions for deciding on the substance of the matter.

13.2. On the grounds of Article 145 of the Constitution, the Croatian Parliament at its session held on 16 June 2010 passed the Decision on Promulgating the Amendments of the Constitution of the Republic of Croatia, which was – together with the Amendments of the Constitution – published in *Narodne novine*, no. 76 of 18 June 2010 (hereinafter: Constitutional Amendments/10).

In the Constitutional Amendments/10, Article 45 of the Constitution was amended and it fixes the number of MPs that voters who are not residents of the Republic of Croatia may elect. Article 45 para. 2 of the Constitution reads as follows:

"Article 45

(...)

In elections for the Croatian Parliament, voters who do not have residence in the Republic of Croatia have the right to elect three MPs, in accordance with the law.

(...)"

Since the Constitution, after the 2010 amendments, fixes in Article 45 the number of MPs that voters without residence in the Republic of Croatia have the right to elect, the Constitutional Court finds that in this case the preconditions have ceased to exist for it to act on the proposal to institute proceedings to review the conformity with the Constitution of the provisions of the Parliamentary Elections Act that prescribe how and how many MPs in the Croatian Parliament are elected by voters who are not residents of the Republic of Croatia. In this way preconditions for deciding on the substance of the matter have ceased to exist.

8) Articles 4, 9, 20 (19), 29 (27), 31 (29), 32 (30), 35 (33), 56 (48), 58 (50), 60 (52), 61 (53), 68 (56), 69 (57) and 95 (82) of the Parliamentary Elections Act

14. The proponent Đivo Bašić also disputes Articles 4, 9, 20 (19), 29 (27), 31 (29), 32 (30), 35 (33), 56 (48), 58 (50), 60 (52), 61 (53), 68 (56), 69 (57) and 95 (82) of the Parliamentary Elections Act.

However, the proponent does not explain his proposal but edits the wording of the Parliamentary Elections Act, proposing the omission of "superfluous" words and supplementing legal provisions.

In the view of the Constitutional Court, these reasons are not suitable for consideration in proceedings of the abstract review of the conformity of an act with the Constitution.

The Constitutional Court is not empowered to edit the wording of laws in the way proposed by the proponent.

15. Article 32 of the Constitutional Act lays down:

"Article 32

The Constitutional Court shall by its ruling reject a request, a proposal or a constitutional complaint if it is not competent to decide upon it or if they were late and

on all other occasions when there are no conditions to decide on the substance of the matter."

Since the preconditions to decide on the substance of the matter concerning the proposals to review the conformity with the Constitution of Articles 43 (40) and 44 (41) of the Parliamentary Elections Act have ceased to exist, and since the Constitutional Court does not have the competence to decide concerning the proposal of the proponent Đivo Bašić, on the grounds of Article 32 of the Constitutional Act the Court has ruled as in point III of the pronouncement of this ruling.

IV. POINT IV OF THE PRONOUNCEMENT OF THE RULING

9) Articles 34, 53, 54, 55 of the Parliamentary Elections Act

16. The VIZUM Association and Đivo Bašić disputed the conformity with the Constitution of Articles 34, 53, 54 and 55 of the Parliamentary Elections Act.

The preconditions for conducting proceedings before the Constitutional Court have ceased to exist.

16.1. At its sitting held on 9 February 2007 the Croatian Parliament passed the Parliamentary Elections (Amendments) Act (*Narodne novine*, no. 19/07). Article 3 of this act reads as follows:

"Article 3
Articles 34, 53, 54 and 55 shall be deleted."

17. Article 61 of the Constitutional Act provides that the Constitutional Court shall end proceedings in cases when the requirements for conducting proceedings cease to exist.

Since the impugned Articles 34, 53, 54 and 55 have been deleted, the Constitutional Court finds that in this case the requirements for conducting proceedings of the Constitutional Court have ceased to exist.

On the grounds of Article 61 of the Constitutional Act the Court has ruled as in point IV of the ruling.

18. The publication of this ruling in *Narodne novine* is grounded on Article 29 of the Constitutional Act.

PRESIDENT
Jasna Omejec, LLD, m. p.