

The Constitutional Court of the Republic of Croatia, composed of Jasna Omejec, Chief Justice, and Justices Mato Arlović, Marko Babić, Snježana Bačić, Slavica Banić, Mario Jelušić, Davor Krapac, Ivan Matija, Aldo Radolović, Duška Šarin, Miroslav Šeparović and Nevenka Šernhorst, pursuant to its authority to review compliance with constitutionality and legality as provided for the fifth indent of Article 128 of the Constitution of the Republic of Croatia and Article 104 of the Constitutional Act on the Constitutional Court of the Republic of Croatia (as published in *Narodne novine* /the official journal of the Republic of Croatia/, no. 99/99, 29/02 and 49/02 – consolidated version) has, at its session of 8 December 2010, issued the following

NOTIFICATION

ON THE UNEQUAL WEIGHT OF VOTES IN THE CONSTITUENCIES DEFINED BY ARTICLES 2 THROUGH 11 OF THE CROATIAN PARLIAMENTARY ELECTION CONSTITUENCY ACT (as published in *Narodne novine*, no. 116/99)

1. At its session of 8 December 2010, the Constitutional Court was to decide as to whether or not there were any grounds for a number of applications to institute proceedings for the constitutional review of the Croatian Parliamentary Elections Act (as published in *Narodne novine*, no. 116/99, 109/00, 53/03, 69/03 – consolidated version, 167/03, 44/06, 19/07 and 20/09), the Croatian Parliamentary Election Constituency Act (as published in *Narodne novine*, no. 116/99; hereinafter: the Constituency Act), the Electoral Rolls Act (as published in *Narodne novine*, no. 19/07) and the Political Party, Independent Slate and Candidate Financing Act (as published *Narodne novine*, no. 1/07).

During its deliberations, it became apparent that there was a need for the Court to notify the Croatian Parliament about certain problems concerning application of the Constituency Act in the forthcoming elections for members of the Croatian Parliament. Said elections are to be held not later than 60 days after the expiry of the term of the Croatian Parliament, or its dissolution (Article 73(1) of the Constitution, designated as Article 74 in the consolidated version of the Constitution, as published in *Narodne novine*, no. 85/10), i.e. not later than 11 March 2012.

I. DIFFERENCES IN THE NUMBER OF VOTERS IN CONSTITUENCIES

2. In some of the applications, the applicants have pointed out unlawful differences in the number of voters in the constituencies specified in Article 35 of the Croatian Parliamentary Elections Act. This article reads as follows:

“Article 35

“140 deputies shall be elected to Parliament by dividing the territory of the Republic of Croatia into ten constituencies, with 14 deputies being elected from each constituency, on the basis of slates.”

Article 35 of the Croatian Parliamentary Elections Act refers to the constituencies that will, for the purposes of 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 into ten large multi-seat constituencies (general constituencies). In each of the general constituencies, fourteen deputies are elected on the basis of closed slates. Such a proportional electoral system requires prior definition 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 that purpose because they are inhabited by different numbers of voters. Consequently, their votes would not have the same weight. In the Republic of Croatia, the definition of constituencies is associated with the legislative procedure because the territories of the constituencies for the election of deputies to the Croatian Parliament are defined by a separate law (the Constituency Act).

Accordingly, while the electoral system is proportional, in the Republic of Croatia the general constituencies play an important role in the system of the election of deputies to the Croatian Parliament. Thus, both the legality and the general democratic character of elections as a whole depend on an equal distribution of voters in the general constituencies (i.e. equality in the weight of votes directly depends on such a distribution). Furthermore, the outcome of the constitutional review of elections as a whole may hinge upon that 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 other elements of the electoral system being or remaining equal.

3. Article 36(1) of the Croatian Parliamentary Elections Act reads as follows:

“Article 36

“The constituencies shall be defined by the Croatian Parliamentary Election Constituency Act on in such a manner that the number of voters in the constituencies must not differ by more than +/- 5%.

“(…)”

The Constitutional Court recalls that the Constituency Act, to which Article 36(1) of the Croatian Parliamentary Elections Act refers, was passed on 29 October 1999 and has not been amended to date. Accordingly, over the past eleven (11) years, the Constituency Act has been applied to three parliamentary elections (3 January 2000, 23 November 2003 and 25 November 2007).

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

The elections for deputies to the Croatian Parliament, held on  
25 November 2007

CONSTITUENCY I:

Number of voters who cast their ballots at polling stations: 361,236

## CONSTITUENCY II

Number of voters who cast their ballots at polling stations: 399,648

## CONSTITUENCY III

Number of voters who cast their ballots at polling stations: 366,005

## CONSTITUENCY VI

Number of voters who cast their ballots at polling stations 335,091

## CONSTITUENCY V

Number of voters who cast their ballots at polling stations: 372,163

## CONSTITUENCY VI

Number of voters who cast their ballots at polling stations: 356,575

## CONSTITUENCY VII

Number of voters who cast their ballots at polling stations: 403,812

## CONSTITUENCY VIII

Number of voters who cast their ballots at polling stations: 385,594

## CONSTITUENCY IX

Number of voters who cast their ballots at polling stations: 428,590

## CONSTITUENCY X

Number of voters who cast their ballots at polling stations: 416,017

5. On 1 November 2010, the Constitutional Court asked the Ministry of Public Administration of the Republic of Croatia to provide it with data about the electoral registers in each of the constituencies. In its notification (Class: 013-01/10-01/22, Ref. No.: 515-03-01-02/1-10-2) of 11 November 2010, the Ministry of Public Administration replied that it did not have the requested data.

Despite the non-existence of any recent data about the number of voters in the general constituencies, it is reasonable to conclude that – if Articles 2 through 11 of the Constituency Act remain inconsistent with the actual distribution of voters in the territory of the Republic of Croatia - the differences among the constituencies in terms of the number of voters might become constitutionally unacceptable at the forthcoming elections for deputies to the Croatian Parliament.

The foregoing conclusion is rooted in the official data of the National Elections about the

number of voters in each of the general constituencies in the parliamentary elections held on 25 November 2007 (paragraph 4 of this Notification), but also on the indisputable fact that differences among the constituencies in terms of the number of voters develop gradually over time. This is a natural development caused by migration and other changes in the distribution of voters.

In other words, constituencies, as once defined, undergo subsequent changes by their very nature. “It is particularly important that the division into constituencies cannot be regulated once and for all. Migration processes demand that constituencies should be constantly adjusted to changing circumstances, by geographically changing their boundaries or by changing their number of seats.” (Dieter Nohlen: *Izbornopravno i stranački sustav* /Electoral Law and the Party System/, Zagreb: Biblioteka alternative/Školska knjiga, 1992, p. 48). Thus, it is always necessary to keep track of any changes in the number of voters in the general constituencies. If required, their territories and boundaries must periodically, at a suitable time before the next parliamentary elections are held, be aligned with the actual number of voters within their areas.

The Constitutional Court notes that the Croatian legal framework contains no statutory rules on any special procedures or bodies responsible for continuous and permanent monitoring and preparing reports for the relevant authorities on the need to periodically adjust the territories and boundaries of the general constituencies, as defined in the Constituency Act.

6. Relying on the objective need to bring the territories and boundaries of the general constituencies, as defined in the Constituency Act, in harmony with changes in the number of voters and with other demographic, population and similar shifts which may, over time, undermine the principle of equality in the weight of votes, the Constitutional Court, in this Notification to the Croatian Parliament, highlights the necessity to amend the Constituency Act without delay, as well as the need for this Act to specify the responsible bodies and rules for the delimitation procedure, i.e. the procedure for defining and adjusting constituency territories and boundaries.

In this context, the Constitutional Court recalls that the delimitation procedure requires pre-determined delimitation criteria and implies procedural delimitation rules, the most important of which are those on the time-limits and responsibilities for monitoring and proposing delimitation; on supervisory bodies and their supervisory authority in the procedure of planning constituency territories (i.e. in the procedure of “drawing the boundaries” of constituencies); on the participation of the public in delimitation; and on the responsibilities and procedure for supervising the on-site application of the “constituency map” laid down by the Constituency Act.

The foregoing requirements ensue from the generally accepted legal standards inherent to democratic elections, the constitutional foundations of the Republic of Croatia (Article 1(3) of the Constitution), as well as the democratic multiparty system as 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 pertain to the specific electoral systems that are presently in force in the Republic of Croatia, but also to any electoral system – be it on the national or local level – for which the Croatian Parliament may opt in the future, if such a system calls for the definition of separate constituencies for the purposes of any elections.

## II. RESPECTING THE TERRITORIES OF ADMINISTRATIVE-TERRITORIAL UNITS

7. In addition to the requirement of equality in number of voters in each constituency (allowing for a difference of +/- 5%), the Croatian Parliamentary Election Constituency Act requires compliance with yet another democratic legal standard in the constituency delimitation procedure. This is the requirement to respect, to the greatest extent possible, the administrative boundaries of administrative-territorial units (counties, towns and municipalities). Article 36(2) of the Croatian Parliamentary Election Constituency Act reads as follows:

“Article 36

(...)

“When defining constituencies, maximum consideration shall be given to the territories of counties, towns and municipalities in the Republic of Croatia, as determined by law.”

This requirement ensues from the precept that administrative-territorial units in every country also reflect the geographical characteristics of any such region.

The Constituency Act lays down the following:

“Article 2

“Constituency I shall encompass the north-west area of Zagreb County and the central and western areas of the City of Zagreb, in particular:

“- north-west Zagreb County, including the following towns and municipalities: Bistra, Brdovec, Dubravica, Jakovlje, Luka, Marija Gorica, Pušča, and Zaprešić; and

“- the central and western areas of the City of Zagreb, including the following streets, squares and districts: 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, Dotrščina, 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-centre, Vrapče-south, Gornja Kustošija, Kustošija-centre, 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, and Sigečica.

“Article 3

“Constituency II shall encompass east Zagreb County, as well as Koprivnica-Križevci County, Bjelovar-Bilogora County and eastern areas of the City of Zagreb, in particular:

“- the east Zagreb County, including the following towns and municipalities: Bedenica, Brckovljani, Dubrava, Dugo Selo, Farkaševac, Gradec, Preseka, Rakovec, Sveti Ivan Zelina, and Vrbovec;

“- the territory of Koprivnica-Križevci County in its entirety;

“- the territory of Bjelovar-Bilogora County in its entirety;

“- the eastern areas of the City of Zagreb, including the following communities within the territory of Sesvete: 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-centre, Sesevska Sela, Sesevska Selnica, Sesevska Sopnica, Soblinec, Staro Brestje, Šašinovec, Šija Vrh, Šimunčevac, Vuger Selo, Vugrovec Donji, Vugrovec Gornji, Vurnovec, and Žerjavinec; and the following communities forming a part of the district of Dubrava: Trnovčica, Studentski Grad, Poljanice; Granešina, Dankovec, Miroševac, Oporovec, Granešinski Novaki, Zeleni Brijeg, Čulinec, Stari Retkovec, Klaka, Dubrava-centre, Gornja Dubrava, Ivan Mažuranić, Novi Retkovec, Donja Dubrava, 30. svibnja 1990., Čučerje, Branovec-Jalšovec, and Novoselec.

“Article 4

“Constituency III shall encompass Krapina-Zagorje County, Varaždin County and Međimurje County, in particular:

“- the territory of Krapina-Zagorje County in its entirety;

“- the territory of Varaždin County in its entirety; and

“- the territory of Međimurje County in its entirety.

“Article 5

“Constituency IV shall encompass Virovitica-Podravina County and Osijek-Baranja County, in particular:

“- the territory of Virovitica-Podravina County in its entirety; and

“- the territory of Osijek-Baranja County in its entirety.

“Article 6

“Constituency V shall encompass Požega-Slavonia County, Slavonski Brod-Posavina County and Vukovar-Srijem County, in particular:

- the territory of Požega-Slavonia County in its entirety;

“- the territory of Slavonski Brod-Posavina County in its entirety; and

“- the territory of Vukovar-Srijem County in its entirety.

#### “Article 7

“Constituency VI shall encompass south-east Zagreb County as well as Sisak-Moslavina County and the south-east areas of the City of Zagreb, in particular:

“- south-east Zagreb County, including the following towns and municipalities: Ivanić Grad, Kloštar Ivanić, Kravarsko, Križ, Orle, Pokupsko, Rugvica, and Velika Gorica;

“- the territory of Sisak-Moslavina County in its entirety; and

“- the south-east areas of the City of Zagreb, including the following streets and districts: 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, Slobošтина, Dugave, and Središće

#### “Article 8

“Constituency VII shall encompass south-west Zagreb County as well as Karlovačka County, east Primorje-Gorski Kotar County and the southern areas of the City of Zagreb, in particular:

“- south-west Zagreb County, including the following towns and municipalities: Jastrebarsko, Klinča Sela, Krašić, Pisarovina, Samobor, Stupnik, Sveta Nedjelja, and Žumberak;

“- the territory of Karlovac County in its entirety;

“- east Primorje-Gorski Kotar County, including the following towns and municipalities: Bakar, Brod Moravice, Čabar, Čavle, Delnice, Fužine, Jelenje, Kastav, Klana, Lokve, Mrkopalj, Novi Vinodolski, Ravna Gora, Skrad, Vinodolska općina, Viškovo, and Vrbovsko; and

“- the western, south-western and southern areas of the City of Zagreb, including the following districts and communities: Gajnice, Stenjevec, Malešnica, Špansko, Prečko, Vrbani, Jarun, Gajevo, Trnsko-Krešimir Rakić, Kajzerica, Savski Gaj, Remetinec, Blato, Jakuševac, Hreljić, 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, Havidjić Selo, Horvati, Hrašće Turopoljsko, Hrvatski Leskovac, Hudi Bitek, Ježdovec, Kupinečki Kraljevec, Lipnica, Lučko, Mala Mlaka, Odra, Odranski Obrež, Starjak, Strmec, Veliko Polje, and Zadvorsko.

#### “Article 9

“Constituency VIII shall encompass Istria County and west Primorje-Gorski Kotar County, in particular:

“- the territory of Istria County in its entirety; and

“- west Primorje-Gorski Kotar County, including the following towns and municipalities: Baška, Cres, Crikvenica, Dobrinj, Kostrena, Kraljevica, Krk, Lovran, Mali Lošinj, Malinska-Dubašnica, Matulji, Mošćenička Draga, Omišalj, Opatija, Punat, Rab, Rijeka, and Vrbnik.

“Article 10

“Constituency IX shall encompass Lika-Senj County, Zadar County, Šibenik-Knin County and north Split-Dalmatia County, in particular:

“- the territory of Lika-Senj County in its entirety;

“- the territory of Zadar County in its entirety;

“- the territory of Šibenik-Knin County in its entirety; and

“- north Split-Dalmatia County, including the following towns and municipalities: Dirmo, Dugopolje, Hrvace, Kaštela, Klis, Lećevica, Marina, Muć, Okrug, Otok, Prgomet, Primorski Dolac, Seget, Sinj, Trilj, Trogir, and Vrlika.

“Article 11

“Constituency X shall encompass south Split-Dalmatia County as well as Dubrovnik-Neretva County, in particular:

“- south Split Dalmatia County, including the following 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, Zad-varje, Zagvozd, and Zmijavci; and

“- the territory of Dubrovnik-Neretva County in its entirety.”

8. In the forthcoming amendments to the Constituency Act, more attention should be accorded to so-called geographical mapping criteria, as laid down in Article 36(2) of the Croatian Parliamentary Election Constituency Act. These criteria are focused on the stage of the delimitation procedure where constituency boundaries are “drawn”, and imply the requirement that such boundaries should, wherever possible, coincide with the administrative boundaries of administrative-territorial units (taking also into account, by the very nature of things, the natural boundaries created by dominant topographical features, such as mountain passes, rivers or islands). On the other hand, equally important for the proper implementation of the delimitation procedure are the criteria related to the geometric shape of constituencies, which should never be “unnatural” or distorted. These criteria pertain to the continuity of a constituency’s boundaries and the compactness its territory. In other words, the borderline areas of each constituency should, as much as possible, form an integral and unbroken whole, without undermining the primary criterion: the equal weight of votes in each of the constituencies.

The Constitutional Court should note that, even if the equal weight of votes is achieved throughout all constituencies, the failure to comply with the above requirements could, under certain circumstances, lead to their unlawfulness because of the requirement set forth in



Article 36(2) of the Croatian Parliamentary Election Constituency Act. Therefore, the Constitutional Court is due to notify the Croatian Parliament of this potential unlawfulness.

9. The Constitutional Court recalls that the Croatian Parliament, at its session of 13 July 2006, passed a new Republic of Croatia County, Town and Municipality Territories Act (as published in *Narodne novine*, no. 86/06, 125/06 - correction, 16/07 - correction, 95/08 and 46/10), and that the Constitutional Court, in its Decision no. U-I-3226/2006 of 9 July 2008 (as published in *Narodne novine*, no. 95/08), repealed Article 4(iii) of the said Act or, more specifically, the words “Prekrižje Plešivičko”.

In addition to the reasons explained in sections 2 through 8 of this Notification and the very title of the Croatian Parliamentary Election Constituency Act, the foregoing facts also indicate the necessity to amend Articles 2 through 11 of the Constituency Act without any delay because their wording has been formulated on the basis of the Act on the Territories of Counties, Towns and Municipalities (as published in *Narodne novine*, no. 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(2) of the Constitutional Act on the Constitutional Court of the Republic of Croatia.

Number: U-X-6472/2010

Zagreb, 8 December 2010

CONSTITUTIONAL COURT OF THE REPUBLIC OF CROATIA

Jasna Omejec, LL D (*m.p.*)  
Chief Justice