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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

COMMENTS

**ON THE FINAL PROPOSAL OF THE DRAFT LAW
ON DIRECT ELECTION OF THE COUNTY HEADS,
THE MAYOR OF THE CITY OF ZAGREB, MAYORS,
AND THE MUNICIPALITY HEADS
OF THE REPUBLIC OF CROATIA**

by

Mr Owen MASTERS (Expert, United Kingdom)

I. Introduction

On 3 February 2006 the Venice Commission received a request from the Central State Administration Office of the Republic of Croatia to assist the authorities in working on the draft law on the direct election of county prefects, the mayor of the city of Zagreb, mayors and the municipality heads of the Republic of Croatia. This co-operation included an exchange of views between the authorities and the Commission's expert Mr O. Masters, who travelled to Zagreb from 15 to 16 March 2006.

Following the visit of Mr Masters to Croatia, the Law on the direct election of county prefects, the mayor of the city of Zagreb, mayors and the municipality heads of the Republic of Croatia (CDL(2006)082rev) was amended reflecting some of the comments and suggestions made by Mr O. Masters. However, it would be advisable to introduce further amendments in order to bring this law in line with international standards.

These [draft] comments have been endorsed by the Venice Commission at its ... Plenary Session (Venice, ...).

II. Comments on concrete provisions of the law.

The Draft Law would be improved by the following changes:

Article 21

The competent electoral commission shall, upon the receipt of the candidacy, check whether the candidacy fully complies with the provisions of this Law and the mandatory instructions of the State Electoral commission.

If the competent electoral commission estimates that the candidacy has not been submitted in compliance with the provisions set forth in Paragraph 1 of this Article, it will request from the submitter to eliminate the observed defects within 48 hours.

The competent electoral commission may also set a shorter deadline for the elimination of defects on the part of the party submitting the candidacy if the deadline for nominations expires in less than 48 hours.

There should be provision for checking the authenticity of the signatures. This could be random checking of 10% of signatures on the nomination form. If errors or invalid signatures are found, then all signatures should be checked.

Article 26

Local public media shall enable all candidates participating in the election to present and explain their election program, and a free conduct of the electoral campaign, under equal conditions.

This article requires strengthening with a reference to Private Media. The first paragraph could be amended as follows: 'Local Public Media, and Private Media (where Private Media participates in election coverage), shall enable all candidates'.

This article also should contain guarantees to a Right of Reply for all candidates, who believe inaccurate information has been broadcast. This right of reply must be given before Election Day.

No reference has been made to equality of opportunity for political advertising. Where broadcast time is available for purchase, it should be offered at the same rate, time, and equal conditions for all candidates.

Article 28

Candidates who win a minimum of ten per cent of votes of the total number of voters who turned out at elections shall be entitled to reimbursement of electoral campaign costs.

The reimbursement of costs of the electoral campaign shall be paid from the budget of the local or regional self-government unit.

The reimbursement of campaign costs should be defined. There should be a limit, but its amount must be reasonable and realistic, in order to provide equality of opportunity. An example could be that each candidate would receive a given figure for each registered voter. The actual amount per voter has to be determined in accordance with Article 29.

Article 46

Voting shall take place at polling stations in the territory of a municipality, city and the City of Zagreb.

A polling station may not be located in a religious building, a building owned, leased or permanently used by a political party, and in the premises in which alcoholic drinks are served and consumed.

This article should also state, that a Polling Station must be located in a place which is accessible to persons who are disabled.

Article 50

Voting shall be conducted personally by ballot at the polling station.

The ballot shall be printed by a national printing-house under the direct supervision of the State Electoral Commission, and it shall carry a serial number.

If printed, detachable counterfoils of ballots should not contain the serial number printed on the ballot.

Article 60

A voter who, due to a physical handicap or because he is illiterate, cannot vote independently, may come to the polling station accompanied by a literate person who shall vote in his name, according to his authority and instruction.

A voter, who, due to severe illness, physical disability or general incapacity, cannot come to the polling station, shall inform the voting committee about it. The president of the voting committee shall appoint two members of the committee or deputy members who shall visit the voter and enable him to vote.

The voter must be ensured of the secrecy of ballot.

The voting of the voter in terms of the provisions of Paragraph 1 and 2 of this Article shall be separately recorded in the minutes on the work of the voting committee.

A literate person voting on behalf of a voter who is handicapped or illiterate, shall only be able to vote for one handicapped or illiterate person.

The number of ballots required for those voters who are unable to visit the Polling Station, and who requested that they vote at home, should only be sufficient for those who have requested the right to vote at home. A small extra number of ballots can be taken, these only to be used in the event of a voter spoiling the ballot. The actual number of ballots taken from the Polling Station, must be recorded in the minutes when leaving, and returning to the Polling Station.

Article 62

When the voting committee establishes the result of voting at a polling station, the following shall be recorded in the minutes on its work:

- *the number of voters according to the voters' list, that is, an extract from the voters' list,*
- *voter turnout according to the list, or with a certificate,*
- *the number of voters who voted outside the polling station,*
- *the number of voters who voted at the polling station with the assistance of another person,*
- *the total number of voters who voted,*
- *how many votes each candidate has won, and*
- *the number of invalid ballots.*

The Polling Station minutes should include the number of ballots received, and the number of unused ballots. The number of spoilt ballots, in addition to invalid ballots should also be recorded in the minutes.

Article 65

The minutes on the work and any other election material shall immediately be submitted by the voting committee to the electoral commission of the municipality, city, or the City of Zagreb, not later than within 12 hours after the closing of the polling stations.

The minutes of the Polling Station work should also be posted at the Polling Station

Article 69

When the electoral commission has established the voting results it shall immediately announce:

- *the number of voters registered in the voters' list of the local or regional self-government unit,*
- *how many votes each candidate has won,*
- *how many invalid ballots there were,*
- *first and last name of the candidate who has been elected head of municipality, a mayor, a county prefect or the Mayor of the City of Zagreb,*
- *first and last name of the deputy candidate who has been elected deputy head of municipality, a mayor, a county prefect or the Mayor of the City of Zagreb.*

Election results shall be immediately announced in the local media, on the local radio and in the newspapers, as well as on the notice board of the local or regional self-government unit.

An additional point would be, that the results should be given for each Polling Station. This will ensure there is transparency with the whole process, in that results are broken down to the level of each Polling Station.

Article 77

An observer shall have the right to monitor the entire election process, voting, the work of the electoral bodies, and shall have the right of insight into all election materials.

In the course of monitoring, the observer shall comply with the provisions of this Law, as well as with any written and oral instructions of the State Electoral commission, electoral commissions in the local and regional self-government units and voting committees.

Electoral bodies shall enable all observers equally and without limitations to monitor and observe their work.

The third paragraph should include the provision for Election Observers to monitor the process of those voting at home.

Article 89

If the competent electoral commission, while deciding about the complaint, finds that irregularities have occurred which most significantly impact the election results, it will annul the activities in the procedure and order the activities to be repeated within a deadline which must ensure the holding of elections on the day for which they are called.

If the possibility to repeat the annulled activities referred to in the previous paragraph does not exist, or if the irregularities refer to the voting procedure, and they had a significant impact on the election result, the competent electoral commission shall annul the elections, and determine a deadline within which repeated elections are to be held.

The second paragraph should be amended to include '...', and determine a deadline within 30 days within which repeated elections are to be held'.

Appendix

**Visit by Owen Masters - Expert for the Venice Commission to the Central State
Administration Office of the Republic of Croatia
15th/16th March 2006**

Introduction

The purpose of this visit was to define a relationship between directly elected local and regional officials in Croatia (County Prefects, Mayors, Municipal Prefects), and the representative bodies (County Assemblies, City and Municipal Councils). For the purpose of this report, the above will only be referred to as Mayors, and Representative Bodies. The visit was at the request of the Zagreb office of the Organisation for Security and Cooperation in Europe (OSCE), who made the necessary arrangements for meetings, interpretation, and transport.

On the 14th October 2005, a draft Law on Amendments to the Law on Local and Regional Self-Government, was placed before the Croatian Parliament, and these amendments formed the basis of meetings between Owen Masters, and the Central State Administration Office (CSAO), of the Republic of Croatia.

Day 1

The meeting between Owen Masters and the CSAO, commenced with a welcome to Owen Masters from Mr. Antun Palaric State Secretary. Others present at the meeting included, Mr Pavao Maticic Deputy State Secretary, Ms. Miroslava Nina Miskovic the Head of the Department for the Supervision of Local and Regional Self-Government, Ms. Katerina Serdar, and four legal assistants from the CSAO. Also present were Ms. Dinka Zivalj, National Political Affairs Officer OSCE, and Mr. Eric Galmot, Head of Political Affairs Unit of the OSCE.

Mr. Palaric then explained the current position with the draft law, and requested as much information as possible on the relationships between elected mayors, and representative bodies. He pointed out that the first reading of the new draft law, would be introduced into Parliament in early April.

Owen Masters explained, that many more countries in Europe are introducing the concept of directly elected mayors, and while this is a step forward in devolving more power to the citizen, it was important not to devalue the role of the representative body. Grassroots democracy requires that the representative body should retain many powers. This would be in the form of creating legislation, policy, and the scrutiny of the actions of the mayor in carrying out that policy. In addition, the representative body should have the power to recommend suspension of the mayor, or even the mayors recall. In drafting a law on this issue the law should be clear that the above sanctions on the mayor, can only be enacted when it is clear, that the mayor has acted in contravention of the policy, or indeed the law. Furthermore the law should clearly define when these sanctions can be imposed. It may be advisable for a mechanism to be available, whereby a central body can adjudicate in the case of a call for suspension or recall of the mayor. This could be the CSAO, or the Constitutional Court. Care must be taken to ensure that action by the representative body against the mayor, is not being pursued for political reasons.

There should be a right of appeal, enabling a mayor the opportunity to appeal against a call for suspension, or dismissal.

Due to other meetings, Mr. Palaric and Mr. Eric Galmot left the meeting, when further in depth discussions took place. These included the appointment of staff, and Owen Masters advised that staff should be appointed by the mayor, from suitably qualified personnel either within the municipality, or currently employed in another municipality. It is accepted that staff should be appointed on ability, and not on politics. Qualified professional staff, should be able to work with mayors or representative bodies, irrespective of politics.

The afternoon discussion centred on the ending of the mayors mandate. In normal situations the mayor and the representative body would be elected for the same term, and at the same time. Consideration was given to other circumstances which would bring an end to the mandate of the mayor. These would be:

- * Resignation of the mayor
- * Death
- * Sentenced to 1 month or more in prison
- * No longer resident of municipality, or a citizen of the Republic of Croatia
- * At the request of the representative body in accordance with the Law

The day ended with Owen Masters being given a revised draft of amendments to the Local and Regional Self-Government Act, on which he was asked to comment the following day.

Day 2

All those present from the previous day attended, with the exception of Mr. Palaric. The CSAO delegation was headed by Mr. Maticic, and Ms.Miskovic. Early discussion centred on the revised draft amendments, and Owen Masters suggested some changes to Articles 4,5,7, and 8.

The meeting then considered ownership of municipal property, and Owen Masters said the mayor should have the responsibility of managing real estate, but not the ownership. Property ownership should remain with the municipality. Other areas discussed, were the relationship of the mayor with citizens, and the mayors relationship with the representative body.

Owen Masters pointed out that the mayor has a prime responsibility to liaise with the citizens on actions taken, particularly on budgets, and strategic planning. He pointed out that in some countries, citizens can petition for the removal of a mayor through the representative body, if 20% of registered electors sign such a petition.

The mayors relationship with the representative body is crucial to the smooth running of the municipality. Owen Masters then outlined the many joint initiatives of the mayor and the representative body.

These included the role of the mayor within the representative body, in being able to address the representative body, and to introduce legislation. The mayor has a duty to propose and seek approval of his annual budget to the representative body. At this point, consideration was given to the rejection of the budget by the representative body, it was suggested that in the short term, the previous years budget figures should be used, until the mayor and representative body are able to agree a new budget.

In the relationship with central bodies, the mayor is responsible for submitting any legislation passed by the representative body within 14 days, to the State Administration.

If such legislation is lawful, then there is nothing further to be done, If it is found to be against the law, then this legislation is suspended.

At the end of the two days of meetings, Mr. Maticic thanked Owen Masters for this contribution, which he said was most helpful. Ms. Palaric also expressed her appreciation, and asked if further examples could be provided from other countries, on the relationship between elected mayors, and the representative body.

Conclusion

Since returning to the United Kingdom Owen Masters has continued to assist in this programme, and provided the CSAO through the OSCE, examples of the relationship between elected mayors and representative bodies in Norway, Germany, Austria, and the United Kingdom. (These are included in attachments with this report).

Finally Owen Masters would like to place on record, his appreciation for the efficient manner in which his visit was organised by Ms Dinka Zivalj of the OSCE.

Owen Masters
21st April 2006