

Summary of the argumentation on the referendum on the change of the electoral system

From 13 to 27 May 2018, civic initiative The People Decide **collected signatures of more than 10% of voters, to call a referendum for a more just electoral system and, pursuant to the Constitution of the Republic of Croatia (Art. 87.3), asks the Croatian Parliament to call a referendum, in autumn, September 2018 at the latest.**

The Constitution of the Republic of Croatia (Art. 87.3) provides that the Croatian Parliament shall call a referendum if so requested by 10% of the total number of voters in Croatia (375,000 voters). Croatia has one of the most rigorous referendum laws in the EU, which states that 375,000 voters' signatures have to be collected in only two weeks and only in locations permitted by the local municipality or owner.

The changes to the electoral system are contained in the two referendum questions.

In the first referendum question, the essence of the change of Art 72 of the Croatian Constitution, for which 405,342 citizens asked for a referendum to be called, pertains to the constitutionalization of the fundamental principles of the electoral system and encompasses:

- The constitutional definition of the electoral system for the election of representatives to the Croatian Parliament, except representatives of national minorities, as a proportional electoral system;
- The right for voters to use three preferential votes without a 10% threshold to decide on the order of the candidates' entry into the Croatian Parliament;
- The principles of defining constituencies for the election of representatives, distribution of mandates between constituencies and the minimum size of a constituency with regard to the number of representatives elected in them;
- Electoral threshold [of 4%], i.e. prohibitive clause;
- The way voters can vote, namely at the polls, by post or electronically.

We would like to point out that the majority of EU member states (16 out of 28) are moving in the direction of regulating the fundamental principles of the electoral system, in order to achieve its stability (which is also the recommendation of the Venice Commission), credibility of the election procedure, and to prevent electoral engineering (changes to the electoral system by the ruling party or coalition).

Contrary to what Prime Minister Plenković is claiming, **that the electoral system “should not be subject to a referendum”, over the recent years a series of referendums were held in Europe on important constitutional issues of the electoral system (in France in 2000, Ireland 2013, Italy 2016, United Kingdom 2011 and 2016).**

The fundamental principles of the electoral system, which are proposed by this national referendum, already exist in the institutions and electoral systems of EU member states:

1. Electoral threshold [of 4%]. The Constitution of Slovenia stipulates an electoral threshold of 4%, as do the constitutions of Sweden (with the additional electoral threshold of 12% on the level of electoral districts) and Norway, whereas a 5% electoral threshold is stipulated in the constitution of Iceland. The Venice Commission holds that the appropriate electoral threshold is between 4 and 5%.

2. The size of constituencies and equality of vote. Civic initiative The People Decide proposes for Art. 72 of the Croatian Constitution to be supplemented by the following paragraph: “Each constituency in the Republic of Croatia shall elect a minimum of 15 representatives. Constituencies shall not divide legally established territories of the City of Zagreb and of the counties of the Republic of Croatia. The number of representative seats shall be distributed among the constituencies based on the ratio between the number of voters in each constituency and the total number of voters in the Republic of Croatia.” A range of constitutions (of Switzerland, Sweden, Spain, Portugal, Norway, Latvia, Ireland, Denmark, Austria) contain **provisions aimed at guaranteeing the principle of equality of vote of every voter by defining the criteria with regard to shaping the constituencies** (compliance with regional or provincial borders) and by electing the number of representatives in them corresponding proportionally to the number of voters, but also according to other criteria.

3. Reduction in the number of representatives. With the acceptance of this decision at the referendum, the Croatian Parliament would have, **instead of the current maximum 160, no more than 120 representatives**, which is a reduction **by 25%**. The same percentage is proposed for the reduction in the number of representatives of national minorities, **from eight to six**. Given the fact that in **1990 the House of Representatives was able to function with 127 representatives, we consider the proposed reduction to be rational and prudent**. Besides financial savings, there is a whole series of benefits such as decreased fragmentation of the Parliament due to a reduced number of parliamentary clubs. At this moment, for instance, French president Macron is also proposing the number of representatives to be reduced by about one third (about 30%) by 2022 - approximately 404 representatives in the National Assembly instead of the current 577, and 244 senators instead of the current 348.

4. Preferential voting is increasingly being incorporated into the electoral systems of countries using the proportional electoral system, in order to enable citizens to have a more direct influence on the election of representatives. **The existing system of preferential voting in the Republic of Croatia applied in the elections for the European Parliament and for the Croatian Parliament has had a very modest effect**, because citizens have only one preferential vote, and there is also the condition that the candidate must obtain at least 10% of preferential votes out of the total number of votes for the given candidates list. **With such restrictive provisions, citizens can have only very limited influence on the election of representatives to the Croatian Parliament**, and the majority of elected representatives still owe their election to their position on the candidates list (the State Electoral Commission submits in its report following the 2016 elections that 66 representatives were elected based on preferential votes). The fact is that citizens have accepted the institute of preferential voting and that they apply it when voting (two thirds of voters in the last parliamentary elections of 2016 used preferential voting), which definitely contributed to their signing for the referendum initiative.

5. Postal and electronic voting. The last provision being proposed is for the voters to be able to vote at the polls, by post and electronically. The objective is to provide for a greater turnout and greater involvement of the younger population. With regard to postal voting, there is experience in a number of countries. Electronic voting is applied in one country on the national level for parliamentary elections (Estonia), whereas in a number of countries it is applied experimentally or on lower local levels.

With regard to the second referendum question, 407,469 citizens have given their signature **to call for a referendum on adding**, after Article 72 of the Constitution, Article 72.a which would read: “Representatives of national minorities shall decide on all matters within the competence of the

Croatian Parliament, except on motions of confidence in the Government and on the adoption of the state budget.”

The proposed referendum question is justified because mandate of representatives elected in the 10 constituencies differ from the mandate of representatives of national minorities.

The fundamental differences/specificities of the mandate of representatives of national minorities consist in the fact that it does not represent a constitutional but rather a legal category, that these representatives are elected by a number of votes that is several times smaller than the number for the representatives elected in the ten constituencies, and that the way they are elected is completely different from the way in which all other representatives in the Croatian Parliament are elected.

The mandate of representatives of national minorities does not represent a constitutional, but rather a legal category

This claim is corroborated by the fact that members of national minorities had had the right to elect their representatives in the Croatian Parliament even before the constitutional changes of 2000 made this provision an integral part of the text of the Constitution. This right stemmed from legal provisions. Thus in the current constitutional and legal system of the Republic of Croatia, mandates of the representatives of national minorities are a legal category, which was also confirmed by the Constitutional Court in its decision of 29 July 2011. The legal basis for those mandates are provisions of the Constitutional Act on the Rights of National Minorities (Article 7, para 1, item 8, and Article 19, paras 1 and 2), and provisions of the Act on Election of Representatives to the Croatian Parliament (Articles 16 and 17), guaranteeing election in a special constituency. **The Constitution of the Republic of Croatia does not contain any provision(s) on the mandate of representatives of national minorities in the Croatian Parliament. This mandate is, therefore, provided for by the norms of organic laws which do not have the power of a constitutional norm.** The fact that the act regulating the rights of national minorities bears the name constitutional and that it was adopted by a two-third majority of votes of all representatives in the Croatian Parliament is not relevant to its legal nature, because this is a *falsa nominatio* with regard to which there is also corresponding practice of the Croatian Constitutional Court. One can conclude that the mandate of representatives of national minorities and the mandate of representatives elected in the ten constituencies do not have a completely identical constitutional and legal foundation due to the different hierarchical levels of organic and constitutional norms.

Representatives of national minorities are elected by a number of votes that is several times smaller than in the case of representatives elected in the ten general constituencies, and the way in which they are elected is completely different from the way all other representatives in the Croatian Parliament are elected

The manifold difference in the number of votes is a consequence of the way elections are regulated in the Act on Election of Representatives to the Croatian Parliament. However, this kind of election, regardless of being in line with electoral law, has certain implications with regard to the equality of the right to vote as one of the highest values of the constitutional order of the Republic of Croatia, and consequently, the equality of the right to vote as one of the fundamental principles of the electoral system which is a structural feature of the Croatian Constitution. The specific way of electing is manifested in several different elements.

1. Representatives of national minorities are elected by a majority, whereas all other representatives by a proportional electoral system.
2. When it comes to the election of representatives of national minorities, the whole Republic of Croatia is a single constituency, whereas in the case of others who are elected in the ten constituencies this is not so.
3. The number of mandates in that special constituency does not depend whatsoever on the number of votes but is always the same.

It should definitely also be noted that **two thirds of the members of national minorities do not vote for their special representatives** but rather for the lists in general constituencies. Specifically, according to the report by the State Electoral Commission from September 2016 on the conducted parliamentary elections, 82,656 voters voted for candidates in general constituencies, and only 37,957, i.e. 31.5% of voters – members of national minorities, voted in the special, 12th constituency.

The restriction prevents politicization of the mandates of national minorities’ representatives

A restriction to the mandate of national minorities’ representatives does not terminate their representation in the Croatian Parliament, nor does this measure affect the number of such representatives. In that regard there can be no talk of reduced rights. The proposed restriction prevents the politicization of those mandates. A restriction of the mandates of national minorities’ representatives at the referendum could not be considered an abuse by the majority for the purpose of violating or reducing the rights of national minorities. The acceptance of the referendum initiative also does not encroach on the specific way in which national minorities’ representatives are elected, but rather for the first time in the Republic of Croatia constitutionalizes their mandate.

Limitation of the mandate of national minorities’ representatives is proportionate to its purpose

The proposed referendum question restricts to the least possible degree the mandate of national minorities’ representatives. It should be explained that voting on the motion of confidence in the Government of the Republic of Croatia is organically associated with voting on the adoption of the state budget, because failure to adopt the budget within the constitutional period results in a call for parliamentary elections. With the exception of these two topics, the representatives of national minorities in the Croatian Parliament would have a mandate completely identical to that of all other representatives, despite the considerable differences in the mandate explained above. In that part, civic initiative The People Decide holds that such a restriction is rational and objectively grounded.

The aim to be achieved with the proposed referendum question consists in a constitutionally and legally more acceptable relationship between the highest values (national equality and equal recognition) of the constitutional order of the Republic of Croatia and avoidance of the national minorities’ representatives’ responsibility for the formation of the Government of the Republic of Croatia. Nowhere in the world, not even in those countries that have a system of guaranteed seats, do representatives of national minorities get into parliament to decide on motions of confidence in the government. This decision is made solely by the representatives elected by the majority people and in whose election members of national minorities can participate completely equally, together with all other citizens.

Yours sincerely,

Organization Committee of the Civic Initiative The People Decide