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ACCESS TO ELECTORAL RIGHTS

SLOVENIA

Matej Accetto

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Access to Electoral Rights

Slovenia

Matej Accetto

1. Introduction

In Slovenia, the electoral system is regulated by a number of laws. A *lex generalis*, to an extent, is the National Assembly Elections Act, regulating the national legislative elections but also detailing many features of electoral proceedings that are mirrored or directly referenced in other electoral laws. These other electoral laws include the Election of the President of the Republic Act, the Local Elections Act, the Election of Slovenian Members to the European Parliament Act, the Referendum and Popular Initiative Act, to some extent also the National Council Act, and the Voting Rights Register Act. In terms of its electoral diversity, Slovenia regularly organises all types of elections but not on all the possible levels. While there are popular votes on the national and local level, there are, at least at this time and in the foreseeable future, no regional or provincial elections taking place in Slovenia.

Painting the scenery of election laws in Slovenia in broad strokes, it is a mix of the good and the less good, with the qualification partly depending on the viewpoint one assumes. From the standpoint of a liberal, open electoral system, one will presumably welcome the relatively broad conception of electoral rights, with the active and passive franchise generally extended to all Slovenian nationals over the age of eighteen, with no disenfranchisement of prisoners and a carefully measured disenfranchisement of mentally disabled persons; the generous and not particularly onerous conditions for enfranchisement of Slovenian nationals living abroad, including descendants of earlier emigrants; the accommodation of certain recognised national minorities in terms of providing them with accentuated rights of representation; and the increasing endeavours to integrate foreign residents into the political life of the community.

On the other hand, there are unresolved and sometimes controversial issues, usually stemming from the wider political debate, which often inevitably spill over into the realm of electoral rights. There are some who challenge the allegedly overzealous ‘courting’ of the diaspora, including the lax conditions for inclusion in the electoral register and the wistful manner in which some 50,000 ballots are dispatched to addresses around the globe at every election, most of them never to be returned (in 2011 elections, 10,778 ballots were received from abroad). More distressingly, the unfortunate and slowly resolving issue of the ‘erased’, who have been stripped of their permanent residence status following the dissolution of former Yugoslavia, still echoes in the electoral system to the extent that a recognised residence status is necessary to obtain certain types of electoral rights. The same insistence on permanent residence was also recognised by Slovenia as unwittingly discriminatory towards EU citizens wishing to exercise their electoral rights in local elections, leading to a very

recent amendment to the Local Elections Act which thereby relaxed conditions for EU citizens' franchise. On the other hand, while not exactly abused beyond measure, there is a growing concern about the accessibility and impact of referenda on legislative activity, which has already led to calls to limit their use.

The following sections provide a more detailed overview of this electoral scenery and how particular electoral rules pertain to the most relevant categories of voters.

2. Eligibility: Who has electoral rights under national law?

In principle, Slovenia has embraced a broad, inclusive concept of suffrage, with few conditions imposed on citizen residents as regards both active and passive electoral rights, with national electoral rights fully extended to non-resident citizens and local electoral rights largely extended to foreign residents.

In addition to general electoral rights, however, there are additional provisions at both national and local levels that concern ethnic minorities. In national legislative elections, alongside the general election, the members of the Italian and Hungarian national communities also participate in special elections to elect their representatives in the National Assembly (who must then give their consent to any general act that concerns the exercise of the constitutional rights or exclusively the position of their national community). In local elections, where applicable, both the Italian and Hungarian communities, but also the Roma community, have the right to elect their representatives in the municipal council. In each case, electoral rights extend to those members of the respective communities who satisfy the general conditions of franchise.

2.1. Citizen residents

A general provision, as enshrined in Article 43 of the Constitution, grants the rights to vote and be elected to every citizen of Slovenia who has attained the age of eighteen years. Elsewhere, the Constitution contains a few provisions concerning the exercise of passive electoral rights, but out of those only Article 82(2) – which provides that legislation on national legislative elections may determine who may not be elected a Member of the National Assembly – can be deemed to have a material effect on electoral rights as such. Nevertheless, electoral legislation provides for an additional exception for mentally disabled persons, as described below.

2.1.1. Age

The age threshold for all types of elections is eighteen years, which holds true for both the right to vote and the right to be elected, and for all types of elections.

2.1.2. Mental disabilities

Mentally disabled persons can be disenfranchised, but the conditions and the procedure for disenfranchisement have changed following a constitutional review of the electoral acts in 2003. Article 7(1) of the 1992 National Assembly Elections Act, for instance, provided that the active and passive franchise extends to '[e]very citizen of the Republic of Slovenia who has reached the age of 18 by election day and *has not been declared legally incompetent*';

provisions to the same effect (or references to the National Assembly Elections Act as a *lex generalis*) were to be found in other electoral laws.

In 2003, this exception for persons ‘declared legally incompetent’ was challenged before the Constitutional Court for running counter to the wording of the constitutional provision which included no condition for franchise apart from citizenship and age. The Constitutional Court held that the disenfranchisement of mentally disabled persons is indeed not envisaged by the Constitution and that any limitation of franchise rights other than those warranted by Article 82(2) can only be allowed if it serves a legitimate public interest, i.e. the protection of the rights of others, and that any such limitation will have to satisfy a test of strict proportionality. In addition, the Court found that competence to exercise electoral rights cannot be automatically equated with legal capacity, i.e. that a declaration of legal incompetence may not also automatically lead to disenfranchisement. Accordingly, the Constitutional Court annulled those legislative provisions which disenfranchised persons ‘declared legally incompetent’.

Subsequently, the legislator introduced a new legislative provision that tried to regulate the issue of disenfranchisement in line with the Court’s decision. The new provision of Article 7(2) of the National Assembly Elections Act provides that, notwithstanding the general provision on franchise, the right to vote and be elected shall not be recognised in the case of a person ‘who has been completely deprived of legal capacity for reasons of mental illness, retardation or impairment, or who has been subjected to prolonged parental guardianship of parents or other persons beyond the age of maturity, and who is not capable of grasping the significance, purpose and effects of elections’. Article 7(3) adds the provision that, when ruling on the deprivation of legal capacity or prolonged parental guardianship, the court should separately also rule on the deprivation of electoral rights.

2.1.3. Persons convicted of criminal offences

Prisoners are not disenfranchised.

2.2. *Citizens abroad*

Slovenia has adopted an inclusive arrangement as far as electoral rights of non-resident citizens are concerned.

2.2.1. Residence in the country

Residence in the country is not a general condition for the franchise in national elections. Franchise in the national elections is extended to all citizens having reached the age of maturity, regardless of their current or previous residence in the country, and applies to both active and passive electoral rights. Furthermore, the electoral rights apply not only to national legislative and presidential elections but also to national referenda, since the Referendum and Popular Initiative Act provides that the rules applicable for national legislative elections also apply to referenda. In local elections, by contrast, candidates must be permanent residents of the municipality in which they wish to run, and the local elections also do not allow for casting votes from abroad via mail or at the diplomatic and consular missions for those citizens listed in the electoral register who are not resident in Slovenia.

2.2.2. Citizen residents who are temporarily absent

Citizen residents who are temporarily absent on election day largely have the right to cast their votes from abroad. In national and local legislative and presidential/mayoral elections, voters who are absent on election day may cast their vote at the seat of the district/municipal electoral commission before that day, but no sooner than five and no later than two days before the election day. In addition, in national elections, voters who are temporarily abroad may vote by mail or at the diplomatic and consular missions if they notify the National Electoral Commission of their intention to do so at least 30 days prior to election day (and if allowed to do so by the country of their temporary residence or by virtue of a treaty). Those temporarily abroad may cast their votes in the national referenda by mail or at diplomatic and consular missions if they notify the National Electoral Commission no later than fifteen days prior to voting day.

2.2.3. Citizens who reside permanently abroad

Citizens who reside permanently abroad may cast votes directly if they are in Slovenia on election day. Otherwise, they may vote by post or at diplomatic and consular missions abroad. Voters with permanent residence abroad exercise their electoral rights in the electoral district in which they or one of their parents last held permanent residency. If this cannot be ascertained, such a voter may choose the electoral district in which to exercise electoral rights. Alternatively, they may vote by mail or at the diplomatic and consular missions if allowed by their country of residence or by virtue of a treaty. This holds true for national legislative and presidential elections. As per the provisions of the Referendum and Popular Initiative Act, they may also cast their votes by mail in a national referendum if they notify the National Electoral Commission of their intention to do so at least fifteen days prior to voting day.

2.3. Foreign residents:

Foreign residents are generally disenfranchised from national elections, but have since 2002 been enfranchised in local elections.

2.3.1. Default rules

By default, third country nationals with registered permanent residence in Slovenia are enfranchised with regard to local elections and as far as active electoral rights are concerned. Their franchise was introduced with the amendment to the Local Elections Act in 2002 when Slovenian legislation began to be aligned with the requirements of EU law, notably Directive 94/80/EC, in anticipation of EU membership. As the law was being amended to provide active electoral rights to Union citizens with permanent residence in Slovenia, it was deemed, by reference to cultural standards and political judgment, that the same benefit should be extended to other foreign country nationals with permanent residence in Slovenia. Third country nationals have the right to vote in local legislative and mayoral elections, but they do not have the right to run as candidates. They also have the right to cast a vote in local referenda. They exercise their electoral right in the municipality of their registered permanent residence. Finally, although the relatively weak National Council is perhaps not of particular practical relevance for foreign residents, it may be useful to add that the right to vote for

representatives of the various professional groups (such as employers, employees or farmers) also extends to foreigners engaged in relevant professional capacities.

2.3.2. Special rules

There are no specific states whose citizens would enjoy special electoral rights in Slovenia, apart from those enjoyed by second country nationals coming from other EU Member States.

3. Electoral rights of EU citizens

Council Directives 94/80/EC on local elections and 93/109/EC on European Parliament elections have formed part of the established *acquis communautaire* by the time Slovenia was approaching the date of its accession to the European Union. Accordingly, it has attempted to anticipate accession by harmonising its electoral system in the preceding years, starting already in 2002 but only finally completing it in October of 2012 when an outstanding irregular limitation was rectified.

3.1. *Local elections:*

The first time Slovenia attempted to bring its legal order in line with Directive 94/80/EC was in 2002 when it introduced a general provision into Article 5 of the Local Elections Act, stating that the right to elect members of the municipal councils and the mayor also extended to ‘foreigners with permanent residence in the Republic of Slovenia’. Upon accession, an amendment in 2005 introduced a new paragraph in Article 5 dedicated specifically to Union citizens, granting them both the right to vote and the right to run as candidates in municipal legislative elections (while for third country nationals the franchise was still limited to only the right to vote). In contrast, as allowed by the Directive, the right to stand as a candidate in mayoral elections has been reserved for Slovenian citizens.

Inasmuch as the electoral rights of Union citizens were contingent on their permanent residence, which they could obtain after five years of residence, they were still indirectly placed at a disadvantage in comparison with Slovenian citizens who had no time requirement of minimum residence to register for permanent residence. The European Commission noted as much in its report to the European Parliament and the Council on the application of Directive 94/80/EC of 9 March 2012, listing Slovenia and Lithuania as two Member States that were under advisement as they seemed to have transposed Articles 3 and 4 of Directive 94/80/EC incorrectly. Slovenia agreed to amend its law again to bring it fully in line with the requirements of the Directive and in an amendment to the Local Elections Act adopted on 25 October 2012, the pertinent provision of Article 5(2) was amended to state that the right to vote and stand as candidate was granted to EU citizens who were either permanent residents in Slovenia or those who have obtained a registration certificate and who have registered a temporary residence in the territory of Slovenia.

3.2. *EP elections for EU citizens residing in the country*

Electoral procedures regulating participation of EU citizens at EP elections are, along with participation of first country nationals, regulated in the Election of Slovenian Members to the European Parliament Act, first adopted in 2002 and then amended in 2004 and 2009.

The Act provides that the franchise is extended to EU citizens under the same general conditions as Slovenian nationals, provided that their electoral rights have not been revoked and that they have been entered into the electoral register. The Act initially also provided that EU citizens should be permanent residents in Slovenia, but that was changed with the 2009 amendment whereupon they should only obtain a registration certificate. Unlike Slovenian nationals, however, EU citizens are not entered into the electoral register automatically but only upon request. The request can be filed at any time and must be accompanied with evidence of the applicant's identity; evidence of the country of citizenship; evidence of the jurisdiction of last entry into the electoral registry; a declaration that the person intends to exercise his or her electoral rights for European Parliament elections in Slovenia only; and a declaration that his or her electoral rights have not been revoked in this or her Member State of citizenship. The decision on the request is then forwarded to the country of the applicant's nationality and the country in which he or she was last entered into the electoral rights register.

An EU citizen is deleted from the register on their request or upon their name being entered into an electoral rights register in another EU Member State.

3.3. EP elections for national citizens abroad.

As per the wording of the Election of Slovenian Members to the European Parliament Act, electoral rights in European Parliament elections for Slovenian nationals temporarily or permanently residing abroad and their vote casting options largely correspond to the electoral rights for national legislative elections. One self-evident distinction is that a Slovenian citizen who is not resident in Slovenia and exercises his or her electoral rights in the EP elections in another Member State may not also do so in Slovenia.

Slovenian nationals are entered into the electoral rights register for the purposes of EP elections automatically if they are or have previously been permanent residents of Slovenia, since in the latter case they have already been transferred from the register of resident nationals into the electoral register of non-resident nationals upon leaving Slovenia. If they are not permanent residents of Slovenia and have not yet been entered into the register of non-resident nationals, then they are entered into the register upon request (see more detail below under 4.1.1). If they notify the competent authority that they intend to exercise their electoral rights for EP elections in another Member State or if it is discovered that they have been entered into the electoral register in another Member State, they are struck from the register and notified thereof.

3.4. Regional and other elections:

The Slovenian electoral system does not have regional elections or other types of elections in which resident EU citizens would be granted particular electoral rights under national law.

4. Exercising electoral rights

Slovenia has adopted the system of automatic voter registration (subject to small exceptions listed below), a number of ways of casting the vote for those who are unable to visit their designated polling place on election day, and an open integration of non-resident nationals in terms of both active and passive electoral rights.

4.1. National elections

4.1.1. Voter registration

Eligible voters are generally automatically registered in the electoral rights register. The norm is that entry into the electoral register is premised on the registry of permanent residence for those eligible voters who are permanent residents in Slovenia, and executed on request in the case of those eligible voters who are not permanent residents (notably non-resident nationals who have not yet been entered into the appropriate register and EU citizens who need not be permanent residents to acquire electoral rights in local and European Parliament elections). A permanent electoral register is maintained, comprised of the register of resident nationals, the register of EU nationals resident in Slovenia, the register of non-resident nationals and the register for the European Parliament elections. Before each election, one or more of the following electoral rolls are then also prepared on the basis of the permanent electoral register, as appropriate: the general electoral roll (which includes EU citizens and eligible third country nationals for the purpose of local elections); the electoral roll of non-resident Slovenian citizens; the electoral roll for the European Parliament elections; the electoral roll of Slovenian citizens belonging to Italian and Hungarian national communities; and the electoral roll of Slovenian citizens belonging to the Roma community (which is only relevant for local elections).

Electoral rights in national referenda correspond to the electoral rights in general elections and electoral rolls are prepared accordingly.

Non-resident citizens who have previously been permanent residents in Slovenia are transferred from the register of resident nationals into the electoral rights register of non-resident nationals upon permanently leaving Slovenia. If they have not yet been entered into the register of non-resident nationals, then they are entered into the register upon request. They may file the request at any time, and the request must include relevant personal data; evidence of citizenship; information on last known place of permanent residence in Slovenia of either themselves or one of their parents, or in the event that this cannot be ascertained a declaration stating in which electoral district the non-resident citizens will exercise their electoral rights; and the address of their permanent residence. If the competent authority is in possession of all this information, however, it carries out the registration of the non-resident voter *ex officio* (of its own motion) regardless of request, and it may obtain the required documents from its own registries, from the diplomatic and consular missions or from non-resident Slovenian citizens.

4.1.2. Casting the vote

The standard method of casting a vote available to resident citizens is by secret ballot at the polling station in the district in which the voter is registered.

If the voter is temporarily absent on election day the vote may also be cast before the election day, but no sooner than five and no later than two days prior to election day, at a special polling station at the seat of the district electoral commission.

If the voter is unable to cast a vote as provided by the law due to a physical defect or illiteracy, he or she has a right to be accompanied to the polling station by a person who will help in the casting of the ballot.

Each district electoral commission also appoints at least one polling station in the district that is accessible to handicapped persons, and voters who wish to use that polling station must announce their intention to do so at least three days prior to election day. The

commission also appoints one polling station within the district at which voters without permanent residence in the district can cast their ballots, if they announce their intention to do so at least three days prior to election day.

Persons in residential care homes for the elderly and voters undergoing treatment in hospitals may vote by mail if they notify the relevant electoral commission at least ten days prior to election day.

Voters who cannot come to their polling station on election day due to an illness may vote in front of the electoral committee at their home. They must notify the district electoral commission of this at least three days prior to election day.

Non-resident nationals who are entered into the appropriate electoral register may vote by mail or at the diplomatic and consular missions if allowed to do so by the country of their temporary residence or by virtue of a treaty. These voters are to be sent the ballots along with appropriate documentation by post in good time.

Absentee voters who are temporarily abroad may vote by mail or at the diplomatic and consular missions if they notify the National Electoral Commission of their intention to do so at least 30 days prior to election day and if allowed to do so by the country of their temporary residence or by virtue of a treaty.

Those temporarily abroad may cast their votes in the national referenda by mail or at diplomatic and consular missions if they notify the National Electoral Commission no later than fifteen days prior to voting day.

4.1.3. Running as candidate

All those eligible to run as candidates in presidential elections must be put forward as a candidate by at least ten Members of the National Assembly, by at least 5,000 voters or by a political party supported by three Members of Parliament or at least 3,000 voters. In addition, the written consent of the candidate is also required.

In national legislative elections, lists of candidates can be put forward by political parties (supported either by three Members of Parliament, or 50 or a hundred (depending on the residency of party members) voters resident in each of the electoral units) or by a thousand voters resident in each of the electoral units for which the candidate lists are to be presented. Each gender must comprise at least 35 per cent of the number of candidates on the candidate lists. The candidates for the special posts of the representatives of the Italian and Hungarian national communities may be put forward by at least thirty members of the respective communities. The written consent of the candidate is also required. Each candidate may only run in a single electoral unit.

4.1.4. Assimilated or special representation of citizens residing abroad

As stated above, Slovenia has adopted the system of assimilated representation, whereby non-resident citizens are registered to a particular voting district, determined either by the last place of residence of themselves or one of their parents in Slovenia or, if this cannot be ascertained, by their declared choice as to the electoral district in which they intend to exercise their electoral rights.

4.2. Local elections

4.2.1. Voter registration

Voter registration is automatic and the same general rules and features listed under 4.1.1. apply. In addition to nationals, third country nationals who are permanent residents are also granted the right to vote and entered into the electoral register on the basis of the registry of permanent residents. EU citizens are registered as having the right to vote and stand as candidates (except stand as candidates in mayoral elections) either on the basis of their permanent residence or their registration certificate and registered temporary residence. In local elections, both the electoral rolls of Slovenian citizens belonging to Italian and Hungarian national communities and the electoral roll of Slovenian citizens belonging to the Roma community are also maintained where applicable to enable these communities to elect their representatives in the municipal councils.

As stated, since 2002 foreign residents are enfranchised with regard to active electoral rights in local elections. They are registered automatically once they are entered into the registry of permanent residents, which may normally be awarded only after five years of uninterrupted legal residence in the territory of Slovenia. In the first local elections, upon the introduction of the franchise in 2002, some 13,000 (or, depending on the source, up to 14,451) foreigners, at that time the number still comprising both Union citizens and third country nationals, were thus entered into the electoral register.

Normally, the voters have electoral rights in the municipality in which they have permanent residence. EU citizens who are not permanent residents of Slovenia have electoral rights in the municipality of their last temporary residence.

4.2.2. Casting the vote

The rules regarding the casting of the vote in local elections are largely similar to those regulating the national elections. The general rule is that the voters exercise their voting rights at the polling stations in the municipality of their local electoral rights as determined by the municipal electoral commission.

One minor difference is that persons in residential care homes for the elderly and voters undergoing treatment in hospitals may vote by mail if they notify the relevant electoral commission at least seven days (as opposed to ten in the case of national elections) prior to election day.

More importantly, the national elections rules of voting by mail from abroad or at Slovenian diplomatic and consular missions abroad do not apply to local elections.

4.2.3. Running as candidate

Members of the municipal council are elected by majority vote if the council has fewer than twelve members and, by a proportionate vote, in larger municipalities with a larger municipal council. (Representative members of the Italian, Hungarian or Roma communities are always elected by majority vote.) In the case of majority vote, voters cast their ballots for individual candidates who are put forward either by political parties or by a number of voters that exceeds 1 per cent of votes cast in the last municipal elections and is no smaller than fifteen. In the case of a proportionate system, voters vote for candidate lists which are put forward in the same manner by political parties or voters (whose number need be no higher than 1,000). EU citizens may run as candidates, while third country nationals may not.

In mayoral elections, candidates are put forward in a similar fashion, but where their candidacy is supported by voters the required number of voters should be at least 2 per cent of the votes cast in the first round of the last regular mayoral elections, but no fewer than 15 and no higher than 2,500. Only Slovenian nationals may run for the office of a mayor.

4.2.4. Assimilated or special representation of citizens residing abroad

As the rule is that electoral rights in local elections should be based on the concept of residence, non-resident citizens residing abroad are precluded from standing in local elections or casting votes by mail or at Slovenian diplomatic and consular missions abroad.

