

UNIVERZA V LJUBLJANI
FAKULTETA ZA DRUŽBENE VEDE

Mijovska Ana

**Glasovanje v tujini makedonske diaspore na parlamentarnih volitvah
Republike Makedonije**

**Voting of the Macedonian diaspora in the parliamentary elections in
Republic of Macedonia**

Magistrsko delo

Ljubljana, 2014

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Abstract: Voting abroad is a topic which is not sufficiently analysed and covered in the literature, but still it is of great importance in relation to the equality of the right to vote for the citizens of a certain state, regardless where they reside. By possessing the citizenship, each citizen acquires rights and duties toward the state of citizenship, and has guaranteed freedom to exercise these rights and duties, among which is the right to vote. Republic of Macedonia as newly independent state whose political system is based on democratic principles, decided to include the Macedonian migrants (diaspora) into the election process by adopting the Law on Amending the Election Code in 2008, thus joining the group of 115 states in the world which enfranchised the diaspora. In this master's thesis the subject of analysis is the external voting of the Macedonian diaspora, by emphasising the five principles of equality, universality, freedom, secrecy and directness of the right to vote of Macedonian citizens who reside abroad. The analysis is conducted by presenting the legal acts and regulations in the area of election policy of Republic of Macedonia, which shows that legally some of the five democratic principles of suffrage are disrupted.

Key words: voting abroad, external voting, diaspora, Republic of Macedonia, voting rights, enfranchisement.

Glasovanje v tujini makedonske diaspore na parlamentarnih volitvah Republike Makedonije

Povzetek: Glasovanje v tujini je tema, ki v literaturi ni ustrezno obravnavana in zajeta, je pa zelo pomembna zaradi enake volilne pravice vseh državljanov neke države, ne glede na njihovo prebivališče. Z državljanstvom vsak državljan pridobi pravice in dolžnosti do države, katere državljan je, ter ima zagotovljeno svobodo pri izpolnjevanju teh pravic in dolžnosti, med katerimi je tudi volilna pravica. Republika Makedonija se je kot majhna neodvisna država, katere politični sistem temelji na demokratičnih načelih, odločila da s sprejemom Zakona o spremembah in dopolnitvah zakona o volitvah iz leta 2008 vključi v volilni proces makedonske izseljence (diasporo) in se s tem pridružila skupini 115 držav ki so omogočile pravico do glasovanja iz tujine. V tem magistrskem delu je predmet analize glasovanje makedonskih izseljencev s poudarkom na enakopravnosti in univerzalnosti do volilne pravice makedonskih državljanov, ki prebivajo v tujini. Analiza je bila izvedena s predstavitvijo pravnih aktov in predpisov na področju volilne politike Republike Makedonije, kar kaže, da so državljanom, ki prebivajo v tujini, odvzete določene pravice.

Ključne besede: Glasovanje v tujini, izseljenstvo, Republika Makedonija, volilna pravica.

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LIST OF ABBREVIATIONS

BiH – Bosnia and Herzegovina

DCR- Diplomatic- consular representative office

EU- European Union

MOI- Ministry of Internal Affairs

RM- Republic of Macedonia

SEC- State Electoral Commission

SFRY- Social Federative Republic of Yugoslavia

1 INTRODUCTION

The elections as a process of transferring the sovereignty from the people to the elected representatives appear in ancient Greece, more precisely in the period called pre-modern state which lasted until XVIII century. Of course, there is a difference between the elections in the modern democracies from that time and today, but essentially they retained the several reasons why they appeared at first place. The elections, above all, are a manner of achieving the civil unquestioned will to be governed, than the elections are “a totality of legal and political processes”, which take place in pre and post-election period, and finally they are a democratic act of selection and organization of the holders of power (Klimovski et al., 2012, 307–310).

In the modern countries, including Republic of Macedonia, the right to vote, specifically the electoral right is a guaranteed by the constitution and belongs to the political freedoms and rights of the human and citizen. These fundamental political rights and freedoms are closely related and regulated with the electoral policy. The implementation of the electoral policy affects the state authority’s legitimacy and its institutions (Risteska and Daskalovski 2009, 10). The electoral policy’ legal framework is composed of: Constitution of Republic of Macedonia, Electoral Code, Law on Members of Parliament, etc. The 1991 Constitution of Republic of Macedonia, adopted after the declaration of its independence, completely transformed the previously set constitutionality within the Social Federative Republic of Yugoslavia (SFRY in the further text). The Constitution’s fundamental values in the form of 11 basic principles are contained in separate indents in Article 8, including the new benchmark of constitutionality: political pluralism and free democratic elections (Klimovski *et al.* 202).

The people receive sovereignty and the right to vote with this new constitutional benchmark, which historically, from ancient Athens, is one of the oldest human rights manifesting free, immediate and democratic elections.

Based on this right, Republic of Macedonia allows its citizens, whether residing in the territory of Republic of Macedonia or abroad, to participate in the parliamentary elections and to have their own representatives in the national parliament, making Macedonia one of the few countries in world (France, Italy, Portugal, Croatia) that formally or effectively have institutionalized the special representation of the immigrants in the national parliaments (Kasapovic 2010, 15–16).

In 2008 the Law on Amending the Electoral Code was adopted, by which the citizens of Republic of Macedonia on temporary work and residence abroad gained their right to vote on the parliamentary and presidential elections in Republic of Macedonia.¹

Macedonian diaspora consists of Macedonian citizens who emigrated abroad for economic, political and other reasons. The number of immigrants is about 475,314 to 508,828, geographically displaced almost all continents, with the largest concentration in Europe, America, Australia (Emigration Agency of Republic of Macedonia). The first electoral participation of the immigrants occurred on the Independence Referendum of Republic of Macedonia from the former SFRY that was very significant for the success of the referendum and for the process of independence itself. It also justifies the lawful and legal regulation of the manner and procedure of their participation in the parliamentary elections and election of their representatives in the national parliament. Until present, they have participated in the preliminary parliamentary elections in 2011 and presidential and parliamentary elections in 2014 (Markovic 2011; Citizens Association MOST Final Report 2011; OSCE Final report 2014; Institute of Democracy Societas Civilis 2014). The inclusion of the Macedonian diaspora in the parliamentary elections led to many discussions and debates about the meaning and purpose of their electoral participation (Karakamisheva 2014).

1.1 Subject of research

The subject of research of this master's thesis is composed of the analysis of the legal frame of the parliamentary elections conducted in the Macedonian diaspora,

¹ Defined by Article 6 item 2 of the Electoral Code – consolidated text, Official Gazette of Republic of Macedonia No. 51/2011). In this master's thesis, the terms citizens of Republic of Macedonia residing abroad and in diaspora are used interchangeable. The term diaspora is defined by Gabriel Sheffer (Sheffer in Kasapovich 2010, 16) as “social-political formation, created as a result of either voluntary or forced migration, whose members regard themselves as of the same ethno-national origin and who permanently reside as minorities in one or several host countries”.

focusing on the rights of the voters (domicile and voters abroad). Macedonian citizen that reside abroad are enfranchised to vote on parliamentary and presidential elections in the Republic of Macedonia by implemented changes in the Electoral Code in 2008. I explain in details the introduced changes in the Electoral Code which determine the manner and procedure on implementing the elections in the diaspora as well as the other laws concerning this issue: Census Law (Official Gazette of Republic of Macedonia No.156/10), Law on Members of Parliament (Official Gazette of Republic of Macedonia No. 84/05), Law on Political Parties (Official Gazette of Republic of Macedonia No.23/13). The analysis will show whether the legal frame that enfranchise the diaspora is constructed according the Constitution of RM, the highest legal act that preserves and guarantees the basic political rights and freedoms of the Macedonian citizen.

1.2 Purpose of the research

The right to vote and to be elected is a privilege and duty for the citizen. Achieving and maintaining the universality, freedom and equality of the voting rights of its entire citizenry, is a tendency of democratic states and societies. These democratic principles should be implemented as a rule, not exception when the voting rights of the migrants/expatriates, that reside out of the borders of the domicile country, comes to terms. The research made by IDEA offers a broad analysis of the voting abroad and how it is regulated in the world. The legal requirements for the voters abroad vary from one state to another, showing that this subpart of electoral policy is still a field for improvisation, and in some cases, manipulation with the voters/ votes.

The purpose of this research is to show that the legal frame of the voting abroad of Macedonian citizen that reside abroad do not share equal position with the domicile voters, by focusing on the five democratic principles: universal, equal, free, secret and direct suffrage. The parliamentary elections in 2011 were followed with recommendations by non- governmental institutions for necessity of revision and improvement of the Electoral Code of 2008. Many of the problematic issues until today are unrevised, as are the unequal voting power of the domicile and voters abroad and the unequal right of access to the polling station abroad produced by having only one way for voting abroad- in the DCR of RM.

The comparison of the experiences of Republic of Macedonia with the experiences of Croatia and Slovenia which allow voting of the diaspora will indicate the similarity of the problems in the electoral process with which these countries are facing (International Institute for Democracy and Electoral Assistance 2007). The case of Croatia is relevant for this research in terms of the efforts that Croatian legislators made in order to provide equal voting power of the voters abroad, principle that was interrupted in the first election cycles abroad. Slovenia offers to the voters abroad several means for voting (voting in person in DCR, postal voting, OMNIA) since the number of Slovenian DCR in the world is quite small, which contributes to providing equal access and possibility for every voter abroad to be able to vote.

1.3 Research questions and methods of research

From the determined subject of research and according to the specified purposes of the research I discern the following research questions:

- Does the legislation of Republic of Macedonia provide equality of voters abroad and domicile voters?
- How is the equality of the domicile voters and voters abroad provided in other ex-Yugoslavian republics that exercise voting abroad?

In order to answer the set research objectives, I apply the following methods of research:

Descriptive method describing the subject of research, supplemented by analysis of the relevant literature: primary and secondary sources by which I explain and set the theoretical framework of the master's thesis.

Analysis of legal sources: laws and international legal acts: Constitution of Republic of Macedonia, Law on Amending the Electoral Code, Law on Political Parties, etc. which represent the legal framework regulating the electoral process.

A historical method will be applied in order to explain the evolution of the electoral right from its beginnings to the present.

A comparative analysis will show the similarities and differences of the electoral process in the diaspora of Republic of Macedonia and the neighbouring countries whose diaspora participates on the elections.

1.5 Structure of the master thesis

In the first introductory section I define and explain the basic concepts, social justification of the topic, subject, purposes and methods of research as well as the hypotheses drawn.

The following three chapters will contain key information and analysis on the subject of research, and through achieving the purposes of research will lead to establishing a concise conclusion.

In the second chapter, using a literature from relevant authors, I take into consideration the historical evolution of the electoral policy as well as the main actors who create it in Republic of Macedonia from its independency until present day, beginning from the Independence Referendum until the parliamentary elections in 2011 and 2014 when the Macedonian diaspora began to vote. The evolution of the electoral policy is an important part of this thesis because it presents the process of laying the foundations on a new democratic, sovereign and independent state which without properly built electoral system could not survive as such.

The third chapter is focused on the legal regulation of the elections; specifically it provides the legal framework which regulates them. Analysis of the formal legal acts (the Constitution of Republic of Macedonia, Electoral Code, Law on Amending the Electoral Code, Law on Members of Parliament, Law on Political Parties, Law on Citizenship, Law on Declaration of Domicile and Residence of Citizens) and of some international legal acts (International Covenant on Civil and Political Rights, European Convention on Human Rights, etc.).

The fourth chapter contains analysis of the voting of the Macedonian citizen abroad in order election of their representatives, based on the Constitutional rights and rights according to other laws in accordance with the five democratic principles of suffrage defined by the Code of Good Practice in Electoral Matters by the Venice Commission, and comparative analysis of experiences in voting abroad of Croatia and Slovenia.

The final fifth chapter is the conclusion of the overall analysis presented in this master's thesis. The information obtained by using different methods of research and relevant literature and legal regulations are expected to answer the research question and to satisfy the purpose of the research.

2 EVOLUTION OF THE ELECTION POLICY IN RM: FROM ITS INDEPENDENCE UNTIL TODAY

The development of the election policy and all democratic processes of independent Macedonia cannot be precisely analysed if we do not look back at their beginnings.

Macedonia prepared the path towards creating its own independent state within the frames of SFRY as its federative unit. The destabilization of the social and economic condition of the Federation and its federative members in the 1980-ties led Socialistic Republic of Macedonia to find its way out in complete independence. The preparations for complete secession and independence of the Macedonian state were performed in the following sequence: firstly, Macedonia changed its political organization, established a Parliament (plural, with only one house, comprised of 120 representatives), and introduced the institutions President and Government. Then the Declaration on Sovereignty of the Socialistic Republic of Macedonia was adopted, in which Article 1 states "the sovereignty of Socialistic Republic of Macedonia is expressed in accordance with the constitutional provisions on independence and territorial integrity as well as the right of the Macedonian people to self-determination,..., and the right to secession" (Gaber 2002, 231). On the basis of the Declaration, the Macedonian Parliament announced the Referendum on Independence, held on the September 8, 1991.

2.1. Referendum on independence

On August 6, 1991 the Parliament of Republic of Macedonia passed the Decision on announcing a referendum which defined the referendum question, date of the referendum and the bodies responsible for implementation of the referendum, enabling the citizens to declare themselves if they are for or against the independence of Macedonia, (Official Gazette of Republic of Macedonia 37/91). The manner and procedure for realization of the referendum are regulated with the Law on Republic Referendum (Official Gazette of SRM No. 29/73), i.e. the Law on Amending the Law on the Republic Referendum (Official Gazette of RM 40/91).

Because the question of independence is extremely important for all citizens, this law regulates the voting in a very flexible manner in which:

- all citizens of RM vote at determined polling stations in RM;
- persons with disability, ill persons, retired persons, convicted persons, persons serving the military term, or at military exercise and students, because of the well-founded inability to vote at the determined polling stations, they shall vote in suitable facilities such as: military units, hospitals and health institutions, prisons, retirement homes, student homes or other places and in other manner (for example: voting via postal mail or in the diplomatic and consular representative offices of SFRJ) according to legally prescribed rules (Articles 13a, 13b, 13c, Article 7, Article 8 of the Law on Amending the Law on Republic Referendum)
- citizens of RM who because of well-founded reasons are not in the country and cannot exercise their right to vote are given a deadline of five days before it is held to vote on the Referendum (Article 20 of the Law on Amending the Law on Republic Referendum);
- the citizens of RM who are temporary working or residing abroad shall vote in the diplomatic and consular representative offices of Socialistic Federative Republic of Yugoslavia or in the polling stations in their last address in RM (Article 13 of the Law on Amending the Law on Republic Referendum).

The Macedonian diaspora exercised its right to vote for the first time at the Referendum on Independence of Republic of Macedonia from the then Socialistic Federative Republic of Yugoslavia held on the September 8, 1991 on the territory of Republic of Macedonia. According to Article 9 of the Law on Amending the Law on the Republic Referendum (Official Gazette of RM, number 40/91), right to vote have all citizens of Republic of Macedonia who at the moment of the referendum are temporary working or residing abroad.

The voting was held at the determined polling stations, i.e. the diplomatic and consular representative offices of SFRJ abroad. In states where the voting of foreign citizens on elections from their mother state was not allowed, such as: Germany, Switzerland and the Netherlands, the voters voted through written declarations sent to the Republic Commission for Implementation of Referendum.

The vote of the diaspora was important for the success of the referendum and the declaration of independence of RM. According to the results of the State Commission 58.126 citizens of Republic of Macedonia who were temporary working or residing abroad voted at the polling stations abroad, while 4.223 Macedonians who did not have Macedonian citizenship at the moment of voting delivered signatures of support for the referendum (State Election Commission of Republic of Macedonia 1991).

Total of 1.132.981 citizens of RM voted at the Referendum or 75.74% of the total voting body, out of which 72.16% of the total voting body voted for the independence of RM (ibid).

The successful result of the referendum for secession of Republic of Macedonia from SFRY was a big step for the Macedonian nation towards the final creation of independent, sovereign state after the centuries-long aspiration of the Macedonian people for independency.

2.2 Creating the election policy in independent Macedonia

Since the declaration of independence of Republic of Macedonia until today, the members of the Parliament of RM are elected on direct elections.

After the introduction of political pluralism in 1989, in 1990 the first multi-party parliamentary elections for electing 120 members of Parliament of SRM within SFRY took place in the then Socialist Republic of Macedonia. After them in the history of independent Macedonia there were seven more parliamentary elections (1994, 1998, 2002, 2006, 2008, 2011, 2014), three of which were early elections (2008, 2011 and 2014).

The election model from the time of forming of the Macedonian state until today remains the same in continuity. The election model of Republic of Macedonia was subjected to several changes, converting from majority through combined model up to purely proportional election model.

Until 1997 the election of members of the Parliament of RM was carried out according to the majority model, which is disputed today as a model according to which the diaspora votes for its representatives in the National Parliament of RM. The majority election model was used in the first two election cycles in independent RM. Because of the noted increase in newly formed parties, the following elections were conducted according to the

combined model (majority – proportional), before finally the proportional model was implemented being used even today (Biljali 2011). In the short period of 23 years independency, Macedonia did not use just one election model, so there was not enough time and opportunities for weaknesses and qualities of these election models to be indicated.

Defining the election model and the method of appointment of mandates is of great significance for a democratic state. It is even more significant for a new state which strives toward democracy as Republic of Macedonia does. The election model may provide answers to the following challenges:

- First it can be included in the political system and can relate to it and its function. Every election model does not fit every society and it is hard to compare experiences of other states with completely different constitution in order to select the right election model.
- Second it should allow the expression of will of the citizens through passing their legitimacy on their parliamentary representatives.
- Third to encourage competition between the parties and, to a certain extent, to enable equal opportunities for victory to different political parties and independent candidates in the election campaign (Reynolds et al. 1997, 1– 9).

2.2.1 Actors in creating and implementing the election policy

The main actors who create the election policy in Republic of Macedonia are: the Ministry of Justice of RM and the Parliament of RM. The State Election Commission of RM is important for implementation of the election processes and bearer of many responsibilities.

The Ministry of Justice of RM is a state administration authority with the following competencies:

- A role in the development of state policies;
- Preparation and proposal of laws and other legal regulations and control over their implementation.
- Providing legal security and legal protection of the rights and freedoms of the citizens of RM.

In the category obligations and tasks of the Ministry of Justice, among others, is the obligation of building and conducting effective and modern election system in the frames of legal society in which the citizens of RM can realize their rights and freedoms (Strategic Plan of the Ministry of Justice 2008 - 2010).

The Parliament of RM is the bearer of the legislative power in Republic of Macedonia. It is also a representative body comprised of 120 – 140 representatives elected by the citizens of Republic of Macedonia through direct, general and free elections. The Parliament as a legislative house brings, i.e. adopts draft laws and it is responsible for their authentic interpretation. It has the potential to influence the election policy and actively act in the consideration of the election policy instruments as well as the defining of the budget needed for its implementation. In view of the elections, the act of announcing elections which defines the terms and course of the electing activities is brought by the President of the Parliament (Daskalovski and Risteska 2009; Electoral Code; Constitution of RM; Parliament of RM).

Among other competencies defined in Article 68 of the Constitution of RM, the Parliament of RM also adopts and amends the Constitution of RM and announces referendum.

The State Election Commission of RM takes care of the legitimacy of the elections and their implementation (Article 31, paragraph 1 of the Electoral Code 2011). The members of the SEC are elected by the Parliament of RM (Article 26, paragraph 5 of Electoral Code 2011).

According to the Electoral Code (Official Gazette of RM No. 51/2011), SEC of RM has a long list of competencies during the election process, foremost it is competent for providing and control over the legitimacy of the elections and the organization and control of the work of the election authorities in accordance with the Electoral Code, as well as all detailed activities related with the voting lists, registration of voters abroad, appointing electoral boards etc.

The Ministry of Foreign Affairs of RM has important role in terms of implementation of the elections in the diaspora that, through the diplomatic missions abroad, contacts with Macedonian migrants with regard to provide information about the elections, manner of registration and voting etc.

2.3 Macedonian diaspora

The concept and term “diaspora” is defined in the following way by the Ministry of Foreign Affairs of RM: diaspora is a term which encompasses the Macedonian national minority (MNM) and migrants (persons with former Macedonian citizenship), as well as all citizens of the Republic of Macedonia residing or working abroad irrespective of the length and category of ethnic Macedonians who never had Macedonian citizenship (Ministry of Foreign Affairs of RM).

The Macedonian diaspora is comprised of migrants who left their homeland due to economic, political or various other reasons. The emigration happened in several major waves, which are actually continuous and have not finished even today. The first major waves of emigration happened within the ethnic frames of Macedonia beginning at the end of the XIX and the beginning of the XX century (during the Balkan Wars), then in the period of the two world wars. At the time of Ottoman rule at the Balkans, ethnicity was an unfamiliar concept, so the term Macedonia, i.e. Macedonians refers to a geographical term (Kostov 2010). Macedonia in that period is a geographic region, comprised of Vardar, Aegean and Pirin Macedonia. There are files in the USA about the wave of Macedonian migrants where they declare as Macedonians, listing Macedonia, Bulgaria, Turkey as their country of origin (Makedonska Nacija 2009).

The second phase of emigrating waves started in 1945 and continues even today, among which the biggest are in the period of 1960s and 1970s as well as 1990s immediately after RM seceded from SFRY in the period of transition (Migracionen profil na RM 2008).

The data on the number and structure of Macedonian migrants are not precise and concrete. The scarcity of data about the emigration of Macedonian citizens is due to the length of the process of emigration of Macedonian citizens. Namely, the emigration lasts for more than a century.

Republic of Macedonia, even within the frames of SFRY and today, maintains an active contact with its migrants. Usually the link between the migrants and their homeland is carried out through the establishment and registration of Macedonian Migrant Associations, which participate in preserving Macedonian tradition, language and culture among the migrants in the accepting states.

With respect to the political activity of the Macedonian diaspora, the enthusiasm for voting at the referendum of independence of RM is obvious.

Even within the frames of SFRY, RM enabled its citizens who reside abroad to practice their right to vote according to the contemporary legal regulations. When we speak about the right to vote, we must separate the category of “ethnic Macedonians who do not have and/or never had Macedonian citizenship” from the voting body, because regardless the ethnic origin the right to vote is granted by having Macedonian citizenship.

The Macedonian diaspora was included in the election processes in Socialist Republic of Macedonia with the Law on Electing and Dismissal of Representatives and Councillors (Official Gazette of SRM no. 28/90). Article 46 of this Law states: “The citizens who temporary work or reside abroad vote at the polling station in the last address on the territory of SRM before emigrating or in the diplomatic and consular representative offices of SFRY abroad”. This Article guarantees the right to vote on parliamentary elections to the Macedonian citizens who temporary work or reside abroad, however they did not elect their representatives in the Parliament of RM, but their votes were added to the votes of the polling station where they have registered their last address in RM.

After the independence the citizens of Republic of Macedonia residing outside the borders of RM were excluded from the election process up to 2011, i.e. until the adoption of the Law on Amending the Electoral Code in 2008. However they never lost their right to vote, but could realize it only on the territory of Republic of Macedonia in the election unit where they have registered their last address in RM. There were numerous reasons. First, Macedonia was a young state in transition and in an unstable period, facing difficult challenges in creating healthy political and civil society. The weak voting tradition leads to confusion when selecting suitable election model and methods which complicates the circumstances for conducting elections in the diaspora. On the other hand the recognition of the new independent state by the states in the world is a precondition for establishing diplomatic consular relations and building diplomatic relations and foreign policy of RM. Establishing diplomatic relations with the states in the world and carrying out diplomatic missions is the first step towards bringing the Macedonian migrants in the world closer, and that process was not simple. Macedonia in the period of becoming independent (1990 – 1992) had no strength, nor idea how to establish strategic foreign policy and diplomatic strategy, strength in terms of for material and human resources for strengthening this plan; and idea in the sense that Macedonian authorities and bearers of the highest

functions still bore the socialistic theory of self-regulation which marginalized the diplomacy and its importance in the international relations (Gaber 2002, 63–64). Human resources were limited, because the experienced diplomatic officials were on a mission in the diplomatic and consular representative offices of SFRY, and out of those hundred, in the period of becoming independent and the war period only half responded to the request to return to Republic of Macedonia and join the Macedonian services (ibid., 68–69).

Because one voting model is introduced and accepted (personally, in a controlled environment, at a polling station) and no alternative manners of voting were suggested (through mail, fax etc.) the Macedonian citizens residing abroad could expect the return of their right to vote in the moment when enough spread network of diplomatic and consular representative offices of RM in the world is established.

Enfranchising the diaspora is important in few ways:

- The state of origin strengthens the connections with the members of its diaspora by allowing them to engage actively in the process of making political decisions,
- Produces equality of all of the citizen regardless of their place of residence,
- The diaspora need to be motivated as it has potential for contributing to the welfare in the countries of origin and to the economic development through foreign investment (Malmberg 2006).

3. LEGAL FRAME OF THE ELECTIONS IN RM

Rule of law is more powerful than the rule of men.

- Titus Livius

The legal frame of the elections in Republic of Macedonia is comprised of:

- national legal acts adopted by the Parliament of RM
- international legal acts ratified by the Parliament of RM.

The Constitution of RM, Electoral Code, Law on Members of Parliament and other laws adopted by the Parliament of RM which constitute the election legislation are in correlation with the international conventions for protection of human and civil freedoms and rights. In the following part I pay attention to every of these legal acts and with their presentation and analysis I provide insight in the election legislation of Republic of Macedonia in order to gain knowledge how the right to vote of Macedonian citizens is legally regulated.

3.1 Legal acts in Republic of Macedonia

3.1.1 Constitution of Republic of Macedonia

According to the Merriam- Webster dictionary Constitution <noun> has two meaning:

1. It is the system of beliefs and laws by which a country, state or organization is governed,
2. It is a document that describes the system.

The etymology of the Macedonian word for constitution “ustav” (*ycmaβ*) comes from the ancient Slavic word *заставумѣ*, meaning “to stop”, which could be understood as stopping the force of the state authorities to infringe the human, natural, innate rights (Apasiev 2009, 784).

Except human rights, constitutions include human and political rights of humans and citizens. Because the basis of the construction of the electoral process and the right to vote are always located in the constitution of states, so the Constitution of Republic of Macedonia is no exception.

Historically, Macedonia in the frames of SFRY has adopted several acts which precede the Constitution of RM and which guarantee the rights and freedoms of Macedonian citizens, and those are:

- The 1944 Declaration of ASNOM on Basic Rights and Freedoms of Citizens: the acts adopted on the First Session of ASNOM are historically significant for the Macedonian statehood. The 1944 Declaration of ASNOM on the Basic Rights of the Citizen of Democratic Macedonia defines the basic rights and freedoms of the

- citizens of Macedonia which were later guaranteed by the 1991 Constitution of independent Republic of Macedonia. Article 5 and 6 define: the right to vote of the citizens of Macedonia and the right to be elected (Declaration of ASNOM on Basic Rights and Freedoms of Citizens. Official Gazette of the Federal Unit Macedonia in the democratic and federative Yugoslavia, No. 1/70).
- The 1974 Constitution of Socialistic Republic of Macedonia (Official Gazette of SRM No. 7/74); and
 - The Declaration on Sovereignty of Socialistic Republic of Macedonia (Official Gazette of RM No. 27/91). After conducting the referendum, and on the occasion of declaring the citizens' will for independence of Macedonia, the Parliament of RM on September 17, 1991 adopted the Declaration on Sovereignty in which RM as "sovereign and independent state will adequately the generally accepted principles of international relations, contained in UN documents, in the final document of CSCE in Helsinki and the Paris Charter. Republic of Macedonia will found its internationally-legal subjectivity on following the international norms on the relations between states...//” (Article 2) and Article 5 according to which” /.../Macedonia will continue with the policy based on international norms with its basic purpose and content of recognising and respecting basic human rights and freedoms, /.../ the Republic of Macedonia understands this as a question that can be solved solely with peaceful and democratic means in the spirit of European and civilisation standards” (Gaber 2002, 235– 236).

The first Constitution of the independent Republic of Macedonia was adopted by the Parliament of Republic of Macedonia on the Parliament session held on November 17, 1991 (Sobranie na RM). With the adoption of the Constitution as a legal act with the utmost power, Macedonia is finishing the process of independence from Yugoslavia and breaks ground of the new independent country.

The Constitution of RM defines Macedonia as "sovereign, independent, democratic and social state" (Article 1 paragraph 1) in which "the sovereignty derives from the citizens and belongs to the citizens" (Article 2 paragraph 1).

Because the focus of this master thesis is the elections and the right to vote of the Macedonian citizens, I will focus on the Constitutional provisions that refer to that topic. Article 20 of the Constitution of RM guarantees the right or freedom to

association of the citizens of RM for politic, economic and other reasons stated in this Article, which allows formation of political parties and political associations and their active participation in the political system. The manner, conditions and procedure for founding and termination of the political parties are regulated with the Law on Political Parties (Official Gazette of RM, no. 76/04).

Furthermore, the right to vote is defined in the Constitution of RM with Article 22, as **equal, universal and direct, and is exercised at free elections by secret ballot. The universality** of the right to vote is consisted in the requirements for gaining the right to vote and the right to be elected, which are:

- 18 years of age
- mental capability (capable for work) to form and express one's own will (the citizens who have been deprived of the right to legal capacity lose the right to vote.),
- Absence of legal basis for deprivation of the right to vote to the citizen.

The equality of the right to vote indicates that the vote of each citizen has the same value, i.e. that each citizen has the right to give one vote on the elections.

The directness of the right to vote means that the voters are personally choosing their representatives, without the possibility of practicing of the right to vote through proxies (Klimovski *et al.* 2012, 241–242).

The exercise of the right to vote is founded on a basic assumption: having a citizenship of Republic of Macedonia. The citizenship is defined as “legal relation with public legal character between the individual, i.e. the citizen and the sovereign country on the basis of the status according to which he/she has the formal right to all civil, political and socio-economic rights in that country, whether it is on a domestic or foreign territory” (Klimovski *et al.* 2012, 234). One part of the triad of citizenship rights are the political rights or the political citizenship which include the opportunity to participate in the political authorities (the right to vote and to be elected) as well as the right to elect the representatives of political authority (right to vote) (Marshall 1998 in Deželan *et al.* 2007, 13–14).

The right to citizenship falls into the category of personal freedoms and rights and is guaranteed with Article 4 of the Constitution of RM. Besides the right to obtain citizenship, the Constitution of RM also contains a guarantee for the citizens of RM according to which the citizenship cannot be deprived nor they cannot be exiled from

Republic of Macedonia on any grounds. The manner of obtaining a citizenship and the entire legislation related to the citizenship of RM is covered in the Law on Citizenship of Republic of Macedonia (Official Gazette no. 67/92).

At the end, the right to equality of all citizens of Republic of Macedonia is guaranteed with Article 9, Paragraph 2 of the Constitution of RM, which states: “The citizens of Republic of Macedonia are equal in their freedoms and rights, regardless of sex, race, colour of skin, national and social origin, political and religious beliefs, property and social status. All citizens are equal before the Constitution and law”(Constitution of RM).

3.1.2 Electoral code

The Electoral Code of RM regulates the following processes:

- Manner and procedure of election of: President of RM, members of the Parliament of RM, members of the councils of the municipalities and a Mayor of the Municipality of Skopje
- Manner and procedure on registering the right to vote and managing the Voting List
- Defining the limits of the electoral districts, determining the polling stations and determining the manner of their functioning (Official Gazette of RM, no. 32/14).

According to the report from OSCE/ODIHR the Electoral Code of 2006, adopted just before the parliament elections in 2006, contains a large extent of the legal frame for performing the elections, but also contains "incomplete and contradictory provisions". This electoral code has suffered least changes, although several amendments for amending the electoral code were submitted, including amendments submitted by the Ministry of Justice of RM in which draft for voting of Macedonian citizens who are temporary abroad is included, but this and other draft-amendments were not adopted by the Parliament of RM (OSCE 2008, 5).

The adoption of the Law on Amending the Electoral Code in 2008 (Official Gazette of RM no. 136/08) the Macedonian citizens who are temporarily working and residing abroad are also included in the electoral process. Amendments that regulate the electoral process for the Macedonian citizens living abroad are included in this law.

Furthermore additional amendments and supplements are included in the Electoral Code related to the voting of the Macedonian diaspora, for example the amendments for voting of the election boards abroad, etc. The State Election Commission expanded its competences, thus taking a step forward for separation of the state institutions in the election process.²

The 2011 Electoral Code was amended and supplemented several times with the 2012, 2013 and 2014 Laws on Amending the Electoral Code.

The above indicates that the Electoral Code of RM has undergone a series of changes that on the dismay of the experts were usually adopted in the pre-election period. The enthusiasm for new amendments that improve or develop the election process is always welcomed, especially if these amendments are generally accepted and approved by the experts and voters.

One of the essential changes is the re-introduction of the Macedonian diaspora in the voting process. Part of the opinions of the members of Parliament regarding changing the Electoral Code is almost same after each amendment. Primarily, the request for amending the electoral model and/or changing the principle of closed lists with the principle of open lists is repeated; furthermore the redundancy of increasing the number of representatives from the diaspora for three more is pointed out, but an opposition to the voice of the diaspora it is not expressed (Sitel 2011, 2. April). After the Law on Amending the Electoral Code entered into force in 2008, Republic of Macedonia had three years to the next elections in 2011 to prepare the strategy and the method of performing the elections in the diaspora. Macedonia does not have experience with this kind of elections during the period of its independence, so the institutions had suffered a painstaking time organizing the voting abroad.

3.1.3 Other laws

Besides the Constitution of RM and Electoral Code of RM, in order to complete the legal frame of the election process in Republic of Macedonia, i.e. all regulations related to the voting and the election of members of Parliament of RM, the following laws should be

² Such as MoI which conveys part of the competences in view of the election process of the SEC of RM.

mentioned: Law on the Members of Parliament of RM, Law on Political Parties, Law on Citizenship and Law on Travel Documents.

The Law on Members of Parliament of RM contains all regulations regarding the election of members of Parliament, their function, duties and sanctioning. New articles have been included, which regulate the method of election and the mandate of the new representatives of the diaspora. (Official Gazette of RM no.161/08).

The Law on Political parties in RM (Official Gazette of RM no.5/08) defines the legal provisions which regulate the establishment, operation and termination of operation of the political parties in Republic of Macedonia. The political parties are stakeholders in the election policy or groups of interest who are actively participating in the election process through nomination of candidates for members of the Parliament of RM (Daskalovski and Risteska 2009).

The Law on Citizenship in Republic of Macedonia (Official Gazette of RM no.67/92) regulates the method and procedure for acquisition and termination of the citizenship. As I have already mentioned, the citizenship is a criteria for obtaining the right to vote in RM.

The Law on Travel Documents of RM is extremely important for the diaspora, especially because for voting in the diplomatic and consular representative offices of RM they need to have valid travel document issued by an authority in RM.

3.2 International acts

The international standards for fair and democratic elections and smooth exercising of all human rights and freedoms, including the right to vote are included in the international codes and conventions, such as: The International Covenant on Civil and Political Rights, Convention for Protection of Human Rights and Fundamental Freedoms and Code of Good Practise in Electoral Matters adopted by the Venice Commission.

It is especially important the international acts, declarations and conventions for human rights to be harmonized with the national practices. That is why, by accepting and ratifying them, these international acts become part of the positive legislation of Republic of Macedonia (Daskalovski and Risteska 2009, 10).

- The International Covenant on Civil and Political Rights was adopted on the General Assembly of UN (December 16, 1966) and entered into force on March 23, 1976 and in accordance with UN Charter and the Universal Declaration of Human Rights obliges the contracting countries of this Covenant to adhere to the principles contained therein, established in 6 parts and 53 articles which guarantee the protection of human rights of the citizen, right to self-determination, protection against discrimination on any grounds, protection of the family, the right to acquire citizenship, right of minorities etc. In accordance with Article 25, this Covenant guarantees the right of the human and citizen “To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors” (United Nations Human Rights).
- The Convention for the Protection of Human Rights and Fundamental Freedoms was signed by the members of the European Council in Rome 1950 in order to encourage the development of the human rights and fundamental freedoms and to ensure their protection. As an act of its expanding and amendment, the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms was signed in 1952 in Paris, containing several personal and political freedoms, such as: The right to free elections, regulated with Article 3 as: “...// free elections by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature”(Council of Europe 2010).
- The Code of Good Practise in Electoral Matters adopted by the Venice Commission contains guideline and explanatory report in which the principles on which the so called “Europe’s Electoral heritage” is based on are presented and explained (Venice Commission 2002).

The essence of this European “heritage” is contained in the five principles, which are stated in this code:

1. **Universal suffrage:** This principle implies the universality of the passive right to vote (the right to be elected) and the active right to vote (the right to elect). Criteria or age restriction – there has to be a minimal age for voting or nomination of any kind of election. In close correlation with providing

universal suffrage is an appropriate consolidation and updating of the voting list.

2. **Equal suffrage**, meaning: Equality of the vote (one voter has the right to only one vote); equality of the political force, or more precisely determining the limits of the electoral unit, taking into consideration the number of residents, number of registered voters and the number of voters who vote in order to avoid electoral geometry; equal opportunities of the political parties and candidates; etc.
3. **Free suffrage** means: freedom of the voters to form their own opinion and freedom of the voters to express their own opinion with a help of which will fight against voter frauds and different irregularities in the election process (for example: Observation of the electoral procedure and prevention of bribery of voters or family voting, protection of data and special observation and attention in case of postal, electronic or proxy voting, counting of the votes in legally established places or polling stations, insight into the electoral results).
4. **Secret suffrage** means secret, individual ballot in appropriate facilities, in voting booths which are properly bracketed and as the law prescribes, protecting the privacy of the voter and his/her right to selection.
5. **Direct suffrage** means a direct election of members, president and other authorities by the people (ibid. 13-24).

The five principles that cut across through all international regulations appear in the Constitution of Republic of Macedonia (Article 22).

4 FIVE DEMOCRATIC PRINCIPLES AND VOTING OF THE MACEDONIAN DIASPORA

After the presentation of the legal frame of the elections, the logical step is to continue with analysis of the implementation or managing the elections in practice. According to the internationally accepted conventions and acts the principle of free and fair elections, the universality of the right to vote and its secrecy and directness, is inserted in the legislature of Republic of Macedonia. But the interpretation of the laws and their

application is a completely other subject and that is why for assessment of the true reality of whether the elections are democratic and fair, not only the legal frame but the implementation of the elections needs to be considered (Klimovski *et al.* 324–325).

Republic of Macedonia has conducted two election processes in which the Macedonian diaspora was included: the 2011 parliamentary elections and the 2014 presidential and parliamentary elections. The growing emigration of the Macedonian citizens in the world has caused RM to amend the legislation in order to include the Macedonian diaspora in the electoral procedure. Macedonian domicile voters and voters abroad elect directly (direct suffrage) their representatives in the Parliament of RM. The other democratic principles are explained in the further chapter. Whether all efforts of the institutions of RM to allow the diaspora to exercise their right to vote based on the five principle of the European heritage were successful and effective, will be evident from the further analysis.

4.1 Universal Suffrage

General requirements for obtaining right to vote are:

- Minimum of 18 years of age
- Possession of Macedonian citizenship
- Working capacity.

Pursuant to Article 17 of the Law on Amending and Supplementing the Electoral Code, the right to vote on parliamentary and presidential elections have "the citizens of the Republic of Macedonia on temporary work or stay abroad, ..., who have registered their last residence in the Republic of Macedonia, and at the day of the elections are temporarily staying abroad for a period of three months up to one year, or are temporarily working or staying abroad for more than one year, in accordance with the records of the competent body " (Official Gazette of Republic of Macedonia No. 136/08).

More specifically, the right to vote in diplomatic-consular representative offices of Republic of Macedonia abroad have:

- The citizens of the Republic of Macedonia (on temporary work and stay abroad) who own a valid document issued by the competent body in Republic of

Macedonia (passport, ID) by which they prove their citizenship, and their identity.³

- The reasons for their stay abroad are not important, but the stay must be legal, that is they should own a document/certificate/permission issued by a competent body in the state where they are staying which proves the legitimacy of their stay or temporary work;
- Their last registered residence must be in the Republic of Macedonia;
- The voter must submit a document from which proves that he is staying abroad temporary, for a period longer than three months before the day of holding the elections, or is temporary staying or working abroad for more than a year.

The time requirement of residence abroad is following: the citizens of Republic of Macedonia who are legally staying or working in a foreign state less than three months before the day of the elections, even though they possess all documents and permissions for legal stay, cannot vote in DCR of Republic of Macedonia. Although the legal term for registration of voters in DCR of Republic of Macedonia ends 30 days before the day of the elections, and the voters that possess all documents and are staying abroad less than three months, cannot register and vote in the appropriate DCR of Republic of Macedonia in the state where they are staying. Macedonia is not the only state that practices restrictions regarding the temporary stay abroad of the voters from the diaspora. The world practice shows that states like Australia, Canada, Great Britain, New Zealand and less developed states like Guinea have time restrictions for the stay abroad.⁴

It should be legally specified why the citizens staying abroad for less than three months cannot vote in DCR of Republic of Macedonia, and then their right to vote to be properly regulated, as it is recommended in the Final reports of Citizens Association Most and OSCE/ODIHR from 2011 and 2014.

Furthermore, the formulation “temporary stay abroad” and “temporary stay and work abroad” should be properly explained and specified. Firstly because of the law

³ The citizenship of the Republic of Macedonia is acquired by: 1) origin, 2) birth in the territory of the Republic of Macedonia, 3) naturalisation and 4) by international agreements (Article 3 of the Law on Citizenship of the Republic of Macedonia, Official Gazette of Republic of Macedonia No. 67/ 92). The manners and conditions for acquiring and terminating citizenship of Republic of Macedonia are contained in the Law on Citizenship of Republic of Macedonia.

⁴ Australia and Canada allow their citizens abroad to vote only if they are staying abroad no more than 6 and 5 years respectively. After the expiration of this term they lose the right to vote on the elections of their native country, except in case they return in it. Great Britain allows voting of those staying abroad for 15 years maximum, while Guinea for 19 years (Rojas, 7 tč; Sundberg 2008)

regulations of most states in Europe, where the stay of foreigners is based on several bases, such as: study stay, stay because of work or employment, stay because of a family reunion. The temporary stay is also registered for a hospital treatment, professional qualification etc. Analogously, the temporary work certainly serves as a ground for acquiring permission to stay abroad, issued by a competent body in the appropriate state. The time frame “more than one year stay or work abroad” is also disputable. The terms temporary and permanent stay are not clearly distinguished. The temporary stay abroad does not include a short-term stay, but it is a regulated stay, approved on the basis of different reasons regulated by law (a touristic stay of up to 90 days is excluded), with validity of more than 3 months, that is 90 days. The permanent residence in Macedonia shall be retained and the temporary residence in the state of the stay shall be registered compulsorily. Unlike this kind of stay, the law also regulates another type of stay and it is approved on different basis, but includes changing the permanent residence in the Republic of Macedonia with a residence in the state of stay.

The domicile voters with residence in RM are registered automatically in the Voting list. The first step towards voting, for the citizens of Republic of Macedonia on temporary work and stay abroad is the registration, that is, the application to vote in the appropriate DCR of Republic of Macedonia in the state where they stay. The citizens of Republic of Macedonia who are staying abroad should submit an application in a certain term before announcing the elections in order to be registered in the voting list and to be able to vote abroad in DCR of Republic of Macedonia. The process of registration for voting can be performed in two ways: personal submission of filled registration form in DCR of Republic of Macedonia in the state of their stay or direct sending of scanned documents to the SEC of Republic of Macedonia through e-mail. All these documents are submitted in the registration of the voter abroad. The aim of the registration of voters from abroad is to enter their data in the Voting List with the new address, by which they can vote in the electoral unit abroad. The unique voting list of Republic of Macedonia contains all Macedonian citizens who are above 18 years of age and are capable to work, and thus are entitled to a right to vote.⁵

⁵ Competent body for managing the Voting list as of 1st September 2009, was the Ministry of Justice of Republic of Macedonia, while from 2009 the voting list is under the competency of State Electoral Commission (SEC).

An evidence for possessing Macedonian citizenship is valid documents issued by a competent body in Republic of Macedonia (passport, ID card). In practice, the problem of possessing valid document issued by MOI of Republic of Macedonia is controlled by legal regulation for issuing travel documents in the DCR of Republic of Macedonia. Namely, the process of changing the old passports and ID cards with new biometric documents finished in 2012, so the old personal documents became invalid. Macedonian migrants who cannot easily and quickly change their documents were also taken into consideration, and were obliged to stay in Macedonia until they receive the new documents. Pursuant to Article 5 of the Law on Amending and Supplementing the Law on Travel Documents, “the citizens of the Republic of Macedonia who are staying abroad for more than six months, uninterruptedly, can submit a request for issuing a passports in the DCR of Republic of Macedonia in the state of their stay” (Official Gazette of Republic of Macedonia No. 19/07). The duration of the procedure for acquiring a passport through DCR of Republic of Macedonia varies from a month up to three months, but for migrants this do not represent a problem, which can be seen from the data of MOI of RM. In 2011, were issued 705 passports, in 2012 -1261, while in 2013 in the pre-election period were issued 2100 passports (Telegraf 2013, 22. December). In practice, due to lack of information, appeared few voters with non- biometrical, old type of passports and IDs, whose expiration date was still valid, but the documents are not valid, so they did not get the opportunity to register for voting.

4.2 Equal suffrage

Equal suffrage contains:

- Equal voting rights and equal voting power;
- Equality of opportunity for the political parties and candidates.

4.2.1 Equal voting rights and equal voting power

The term “equal voting right” implies that every voter has one vote (if it is not regulated otherwise). Macedonian legislators maintained this rule for voters abroad as the domicile voters, which is guaranteed with the Constitution of RM. Even though this is the case, it doesn’t mean that votes of the domicile voters and the voters abroad have the same weight and power.

The equal voting power implies to an equal distribution of seats in constituencies especially when the elections are held in more than one constituency, like in the example of Macedonian elections. Equitable distribution of seats is exercised in accordance with specific criteria, such as:

- the number of people in a particular constituency including minors,
- the number of reported voters,
- and the number of people who actually voted.

If these criteria for conducting elections have not taken into account, the danger of so-called electoral geometry is possible (European Commission for Democracy through Law 1999).

Pursuant to Article 4 of the Electoral Code of Republic of Macedonia (Official Gazette No.54/11) the representatives in the Parliament of Republic of Macedonia are elected according to two models: 120 representatives are elected in six electoral units on the territory of Republic of Macedonia in accordance with the proportional model (closed lists system), while three representatives from the diaspora are elected in accordance with the plurality electoral model (also known as “first-past-the-post” or “winner-take-all”), in one election round with one representative from every unit. The allocation of mandates is performed as follows: the electoral units abroad (Europe and Africa constitute one electoral unit, North and South America another, and Australia and Asia, the third electoral unit abroad) bear one mandate each, achieved by the majority of votes, and the total number of votes cannot be below 2% of the applied and registered voters in the particular electoral unit. Each of the six electoral units in Republic of Macedonia bears 20 mandates allocated according to the D’Hondt formula.⁶

⁶ D’Hondt formula or D’Hondt method is a formula for allocation of mandates accepted in the European states (Austria, Belgium, Portugal, the Balkan states: Serbia, Macedonia, etc.), while in USA it is known as Jefferson method, where, in individual states, it has been used for several decades for allocation of mandates in the House of Representatives. The core of the method is comprised of minimizing of the representation of the overly represented parties in the representative bodies. On the other hand its negative influence on the representation of small parties is huge, so the only chance for the small parties is to enter into a coalition with the bigger and more represented parties in the representative body (Gallagher and Mitchell 1991, 34–35).

This decision on the allocation of mandates was brought in front of the Constitutional Court of the Republic of Macedonia. The Constitutional Court by majority vote enacted a Judgment Decision (Official Gazette of RM, no. 154/12) regarding the initiative for bringing the issue of the constitutionality of the elections in the diaspora, referring to the articles in the Electoral Code related to the electoral system and the allocation of seats from the diaspora, as well as question of equality of voice of the domestic voters and voters in the diaspora. The Decision stated:

- The voting rights of the citizens of the Republic of Macedonia with a temporary job or residence abroad who are enrolled in the voters list are not violating constitutional principles and norms, given that the Constitution guaranteed universal, equal right to vote to the citizens of RM
- The principle of equality of voting rights is not violated due to the introduction of different electoral model for electing the three members of parliament from the diaspora, with an explanation that it can not assess the agreement of this part of the statutory provision with the provisions of the Constitution, because it simply defines optional model for electing members of the parliament.

The Segregated opinion, authored by Branko Naumovski, President of the Constitutional Court and Natasha Gaber- Damjanovska, Judge of Constitutional Court (Official Gazette of RM no.154/12), suggests the following:

- The right to vote of the migrants who are citizens of the country in the election in their domicile country is undeniable and is based on the democratic principle of the universality of the voting right.
- The legislator has the right and responsibility to choose the appropriate electoral system for electing the members of Parliament, and need to take into consideration normative way to ensure the constitutionally guaranteed equal voting right of every citizen.
- As explained in this Segregated opinion, "the equality of vote in the legal sense means factual and / or legal confirmation of equal capacity or equal position of persons, generating a need for distributive justice." The equality of vote features four main features: each voter is taken into account when making decisions in the summary procedure, equal treatment of each voter; equal distribution of goods,

rights or benefits; equality in the final outcome; adapting to what should be distributed equally (giving equal opportunities). It addresses the relevant professional organizations as the Venice Commission and OSCE/ ODIHR, and their indication that "elections should follow the same standards for democratic elections and voting procedures in the country and abroad."

The Article 4, paragraph 3 of the Electoral Code generates inequality of voting power due to the existence of any provision which fully guarantees equality of vote. This refers to the legally determined threshold for getting support in votes of at least 2% of the registered voters abroad (in opposition of at least 5% for electing MPs in domicile constituencies) for electing the candidates for Parliament that represent the diaspora, which is representing scarce designed instrument that itself can not guarantee the principle of equality of vote nor for these three mandates and the domestic seats. As stated by the report of OSCE/ODIHR, the uneven electoral districts abroad and unbalanced number of voters in them creates inequality of voting rights of voters abroad and domestic voters.

The numeric data shows that in 2011 parliamentary elections one parliamentary seat worth an average of 9600 domicile votes, while mandates from diaspora were worth in 1578, 560 and 548 votes (respectively six and seventeen times less value than the domicile average).

The first requisite for successful implementation of the elections in the diaspora is obtaining precise data for the number of Macedonian migrants in the three electoral units abroad. This process is inevitable and necessary in order creating the quotas of representatives elected by the voters in the diaspora. It is a complex and long process that would take a lot of time and preparations. According to the statement of the Croatian analyst Boshko Picula the simplest way to solve it is by a census (Vest 2010, 19. March). In reality, the census would only be a partial solution, because:

- Pursuant to paragraph 2 Article 6, item 3 of the Law on Census of the Population, the Households and Dwellings in Republic of Macedonia (Official Gazette of RM no. 156/10), the Census records persons who have a place of residence in Republic of Macedonia, and during the Census, no

longer than 12 months (one year) before its conduction, are working abroad, as well as the members of their households.

- In the Voting List are registered the Macedonian citizens that have regulated residence abroad (with evidence by a state authority) longer than three months.

The difference arises in counting the migrants who live abroad for more than one year, since they are not counted in the census of the total population. Analogue to this, if the purification of the voting list is based on the performed census, these migrants would not be included in the voting list.

Due to these reasons, the experts' opinions stated that the purification of the voting list and its accuracy should be performed by a very different procedure than census. Here are mentioned the registers, the registers of deceased and the registers of citizens as important archival documents for preparing correct voting list, because, as the experience has shown, part of the election irregularities occurred as a result of deceased persons included in the voting lists.

In Republic of Macedonia the census still remains a controversial topic. From the independence of the country until today, there are 3 censuses conducted, or specifically: one unsuccessful in 1991, repeated in 1994, and the last one in 2002 which was terminated two of days before its completion (State Statistical Office of Republic of Macedonia). Since 2002, a census of the population of Republic of Macedonia has not been conducted, despite the attempts of the public to suggest it.

The Emigration Agency of Republic of Macedonia has official statistical data for the number of the Macedonian migrants in the world. As shown on their website, the last statistical data is from 2011, and it is estimated that the total number of migrants ranges from 475,314 to 508,828, of which: 38,360 in Canada, 43,783 in United States of America, 93,571 in Australia (Emigration Agency of Republic of Macedonia). These data is also confirmed by other domestic and foreign sources, by which can be approximately determined that the number of Macedonian migrants living abroad is around 400,000 or around 20% of the total amount of Macedonian population in 2007, according to the Migration profile of Republic of Macedonia 2008 (Government of Republic of Macedonia 2009). From this number, according to SEC of Republic of Macedonia, the

right to vote have only 68,000 Macedonian citizens living abroad (Sinadinovska 2014, 3. March). The number of eligible voters, on the other hand, is not known precisely.

For the preparation of the voting list in which will be included Macedonian migrants living abroad were used the data of the diplomatic-consular representative offices of Republic of Macedonia, partly from the Macedonian associations and with the help of the newly formed Overseas Committees by the major ruling and opposition parties. After changing their place of residence abroad, the migrants shall be obliged to report it in the appropriate DCR of Republic of Macedonia in the foreign country, or to register online on the web page of the Ministry of Foreign Affairs of Republic of Macedonia. It is also provided that very small number of the migrants reports the changes of their place of residency, which makes the records of migrants more difficult to keep. Updated and revised Voting List is the criteria for meeting another democratic principle, the universal suffrage according to The Code of Good Practice in Electoral Matters adopted by the Venice Commission. After the snap elections in 2011, the Citizen Association MOST's Final Report indicates the irregularity of the voting list, hinting that the voting list is purified only in the terms of the deceased persons, but a methodology for entering immigration, internal migration, adults, etc., is not applied at all (Citizen Association MOST 2011).

The number of mandates coming from the diaspora must be determined only on the basis of the data from the register of migrants and on the basis of correct data. It is suggested this registry to be kept by the Sector for expatriate relations in the Ministry of Foreign Affairs of Republic of Macedonia. From administrative and technical aspect this is a long-term process, but it is the only way to regularly perform the allocation of mandates according to the number of Macedonian migrants (Karakamiseva 2007).

The disproportionality of the electoral units adds to the inequality of the right to vote, also appointed in the final report of MOST of 2011 (Citizen Association Most 2011). Disproportionality of the units in RM is seriously disputed, for example: due to the inequality of the votes, two of the electoral units on the territory of Republic of Macedonia have been altered, and it is a very small difference in the number of voters (one has more than 327,000 voters, and the other electoral unit has 292,000 voters), while disproportionality of the three electoral units abroad is merely an issue (Risteski 2011, 6. May).

The complexity of the elections abroad brings to other principles of equality, as the equal access to information and polling stations of the voters abroad.

Equal access to information: The unequal availability of information between voters abroad and voters in the Republic of Macedonia is obvious from the on-line survey of Societas Civilis- Skopje (2014, 8–14), which investigates the level of information about the right to vote of the citizens of Republic of Macedonia staying or living in other states. In 2011 when the first elections abroad were held, 46% of the respondents were not informed at all about the possibility to vote, while in 2014 that percentage was lowered, and 16% of the respondents were not informed about the opportunity to vote on parliamentary and presidential elections in the Republic of Macedonia. In the pre-election period in 2014, the majority of the respondents did not know how to register, that is, how and where to submit the voting application, while only 16% of the respondents had information how to apply for voting on the forthcoming elections. The diplomatic consular representative offices of the Republic of Macedonia abroad, which publish the public call in the state, are obliged to inform the migrants in relation to the elections.

The notification of the citizens of Republic of Macedonia residing abroad for the announced elections and the information regarding the registration for voting, the day of the elections, polling stations and other details about the elections are conducted through DCR. According to the Electoral Code, after the announcement of the public call for elections by the State Electoral Commission (Article 50-a, paragraph 1), the Ministry of Foreign Affairs forwards the notification to DCR of Republic of Macedonia within three days, for the purpose of announcement in the appropriate states (Article 50-a, paragraph 2). Moreover, DCRs shall be obliged to publish the announcement in the three newspapers with largest circulation in the state in Cyrillic alphabet, in Macedonian language and in the official language of that state (Article 50-a, paragraph 3). The announcement shall contain the following information: type of elections, a call for an insight of the voting list, the term for start and completion of the period for registration for voting, who can vote and the required documents for registration for voting and the polling station, as determined in Article 50-a, paragraph 4 of the Electoral Code (Official Gazette No. 32/14).

According to the same survey, 65% consider this manner of informing as insufficient, that is, indicate to additional manners of informing, like social networks, informing

through mailing lists, different channels on internet.⁷ The voters in the diaspora do not have equal or any access at all to information regarding the election candidates – the ones who, if elected, will represent the interests of the migrants in the national Parliament of RM. According to Ivica Chelikovikj, secretary of the Macedonian Union in Sweden, the political parties are not putting efforts in the campaign and the representation of their candidates to the electing body abroad, so it is clear that they vote for a party, and the candidate for a representative is not really important (Ekonomski.mk 2014, 9. March).

Equal access to polling stations: Polling stations are opened in the diplomatic-consular representative offices (embassies) and in the consular offices where the citizens of Republic of Macedonia on temporary work or stay abroad give their vote on announced elections.⁸

Pursuant to Article 2, paragraph 4 of the Law on Foreign Affairs of the Republic of Macedonia (Official Gazette of Republic of Macedonia, No. 26/13), diplomatic missions of Republic of Macedonia abroad are: **“diplomatic – consular representative office”, “diplomatic representative office”, “consular representative office”, consular representative office governed by a honorific consular public servant (honorific consul) and “permanent mission”** are representative offices of the Republic of Macedonia in other states and in international organizations who perform activities listed in the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, other international agreements and this law”. The diplomatic status that depends on the intensity and scope of the diplomatic- consular representative offices is defined in Article 4, paragraph 25 of the same law, as follows: “Diplomatic representative offices of the Republic of Macedonia are embassies, permanent missions in international organizations, offices on relations and special missions, while consular

⁷ The author of this paper belongs to the category of uninformed. Knowing the laws and electoral rules, but because of lack of interaction with the other Macedonian migrants in Slovenia, I did not use the term to apply for voting on the presidential elections in 2014. Therefore, I can conclude that the connection of the individual with the fellow countrymen in a foreign state significantly increases the access to information as important resources in the election process.

⁸ Diplomatic consular representative offices are defined in Article 16 of the Electoral Code as “representative offices of the Republic of Macedonia in other states and in international organizations which perform activities determined by law” (Official Gazette of Republic of Macedonia, No 32/14). Polling stations are opened in the diplomatic-consular representative offices of Republic of Macedonia and consular offices of Republic of Macedonia. The honorific consulates and permanent missions are excluded of the opportunity to be polling stations.

representative offices of the Republic of Macedonia are general consulate, consulate, consular office and honorific consulate” (Gaber 2002, 225).

The diplomatic-consular representative offices of the Republic of Macedonia are part of the organization of the Ministry of Foreign Affairs of Republic of Macedonia. The functions executed by DCR of Republic of Macedonia are in accordance with the Vienna Convention on Diplomatic Relations.⁹ An important characteristic of the diplomatic-consular representative offices, in order to be pronounced as polling stations is the extritoriality, that is, the inviolability of the diplomatic premises, owned by the state sending the diplomatic mission, and protected by the foreign state (Gaber 2002, 225).

Since 1992 until today, Macedonia has established diplomatic relations with a total of 167 states. The first diplomatic-consular representative offices of Republic of Macedonia are opened in 1992 in: Tirana, Sofia, New York and Geneva. In 1993 were opened the first embassies in Ankara (Turkey) and Ljubljana (Slovenia) (Gaber 2002, 80–81). Today the diplomatic-consular representative offices of the Republic of Macedonia abroad count 44 embassies and consulates and 60 diplomatic offices in which are opened polling stations (Ministry of Foreign Affairs of Republic of Macedonia).

However, this number of DCRs worldwide is not enough to cover the voters from all continents, and on the other hand, every DCR does not cover same territory and same number of voters. In the process of amending the Electoral Code which would allow voting abroad, was analysed the selection of electoral model abroad, where voting in DCR of Republic of Macedonia was the most desirable but unacceptable option, due to two reasons: because of the unpreparedness from technical aspect and from the aspect of human resources and because this solution was rejected by the Venice Commission with an explanation that it does not provide equal conditions for exercising the right to vote, that is, it endangers the right to equal access to the polling station (Neskova, 2010; Citizen Association MOST 2011).

The following limitations of these polling stations are comprised in the quota of voters who can vote in one polling station.

⁹ The Vienna Convention on Diplomatic Relations is composed in Vienna on 18th April 1961, entered into force 24th April 1964 (United Nations 2005). The provisions of this Convention completely cover the diplomatic relations, in a broader sense, with a legal frame for their establishment, execution and termination. In more details, this Convention prescribes all rules on the diplomatic missions of sovereign states (Denza 2009, 3).

Namely, according to Article 165, paragraph 2 of the Electoral Code (Official Gazette of Republic of Macedonia No. 32/14) the number of voters voting in one polling station cannot be greater than 1,000 voters, than Article (3): The polling station cannot be determined for a settlement where live less than ten voters and in DCR, that is, consular offices where there are less than ten voters registered for voting. According to the Guidance on the Application of Article 165 paragraph 3 (State Electoral Commission of Republic of Macedonia 2014), in order to provide equality of the right to vote, the citizens registered in determined polling stations where there are less than 10 registered voters, shall be transferred to the closest polling station. Because of these reasons new polling stations were opened on the territory of RM: at the previous 2,976 polling stations, in 2014, by introducing the amendment in the Electoral Code, were added 504 more polling stations by which the number of polling stations rose to 3480 (Netpress 2014, 6. February).

This alternative opportunity is not provided to the voters in DCR of Republic of Macedonia abroad. Even if voting in another DCR of Republic of Macedonia in the country of stay is possible, the remoteness of the polling station from the residence of the voter can be thousands of kilometres. For example, in the Electoral unit 9 that covers Asia and Oceania, both in 2011 and 2014 were not opened polling stations in Doha (Qatar) and New Delhi (India) due to failure to comply with the minimum number of registered voters, while "the closest" opened polling stations were in Canberra and Melbourne (Australia) and Beijing (China) (Societas Civilis- Skopje 2014).

The personal, direct voting in DCR of Republic of Macedonia is not possible for every voter. The disabled and ill persons, persons in house arrest and in prison abroad have no way to exercise their right to vote in the foreign state. These categories of citizens vote in the Republic of Macedonia in suitable institutions or homes, in controlled environment, one day before the elections are held. For the Macedonian citizens staying abroad who fall in the abovementioned categories, there is no legal decision, that is, there is no way to exercise their right to vote, due to the inability to provide an exterritoriality of the institutions/homes in which they can vote under surveillance of an electoral board.

The opinion of Macedonian citizens with regard to voting in DCR of Republic of Macedonia is the following: 41% consider that voting in diplomatic-consular

representative offices of Republic of Macedonia only partially enable the Macedonian citizens abroad to exercise their right to vote; 63% consider that the manner of voting should be changed, 35% suggest voting through mail or by electronic means (Societas Civilis 2014, 12-4).

The recommendations of Citizens Association MOST and OSCE/ODIHR include the necessity of examining the possibility of introducing alternative ways of voting (Final Reports 2011).

4.2.2 Equal opportunity for parties and candidates

The citizens of Republic of Macedonia express their political will and choose directly their representatives in the Parliament on free elections. Direct suffrage is one of the five democratic principles, and is not separately analyzed since it is applied in the elections abroad.

Unlike the domestic voters, Macedonian Diaspora has major obstacles in terms of getting information about candidates for deputies who should represent the diaspora in the Parliament of RM. As already mentioned, the lack of awareness of the electorate abroad not only refers to the process of registration and voting actual voting, it is also about the lack of information in terms of the political parties and their nominees for members of the diaspora.

The Macedonian diaspora has divided opinions regarding the representatives who will represent its interests in the Parliament of Republic of Macedonia. The attitude towards the candidates of the parties is not satisfactory, a lot of the migrants are organized and hope to run and elect independent candidates who are closer to them and will understand their requests and suggestions, and as they stated "will represent the diaspora on the most objective manner", which will make the diaspora an "independent factor able to influence the political decision making in Republic of Macedonia" (Neskova 2011, 26. April). The difficultness of running as an independent candidate consists of collecting signatures for submitting a candidature (1000 signatures are required, which within an electoral unit abroad that covers 2 continents, is a really big undertaking). Therefore, on the elections in 2011 and 2014, the governmental political party nominated the candidates who won the

mandates in the three electoral units in the world. It is not an exception that Macedonian voters give their vote to a political party, rather than to a candidate.

The experience gained during the first mandate of the representatives (2011-2014) strengthened the primary opinion of the voters abroad for nominating independent candidates because the elected representatives are paying minimal attention to the diaspora, even in the pre- election period lack of campaign, which means complete lack of interaction between the representatives and the diaspora.

The interested parties in the election process – the political parties - are not pleased with the idea that migrants who do not have any contact with the current events in their country, or are not exposed on any campaigns for attracting voters (or to political pressures), will decide who will have the state authority. The political parties in Republic of Macedonia have different pretensions towards the diaspora, or they have different methods of promotion: some of them are for active and immediate participation of the diaspora in the political life and decisions in Republic of Macedonia (for example, the ruling party VMRO-DPMNE), some of them promote returning of the migrants in Republic of Macedonia and creating better conditions for their reintegration, the rest are for improvement of their condition in the countries where they are a minority (Mojanoski 2000). For attracting the votes of the diaspora is usually used the firm attitude related to the dispute with Republic of Greece for the identity and name of the Macedonian country, because it is known that the diaspora relentlessly advocates for preserving of the name Republic of Macedonia and the identity of the Macedonian people.¹⁰ This attitude is characteristic for the ruling political party VMRO- DPMNE, which resulted with winning the three parliament seats from the polling units abroad in 2011 and in 2014 parliamentary elections. The public is particularly concerned about the situation of complete dominance of the ruling party VMRO- DPMNE in the three polling units abroad, especially since the use of DCR of RM for agitation campaign abroad. The separation of state and government of the electoral instruments in elections abroad is desirable to eliminate the suspicion about pressure towards the electorate made by state

¹⁰ More details about the name dispute, for which there are two truths placed by RM and Greece, through Ministry of Foreign Affairs of Hellenic Republic. Available at: <http://www.mfa.gr/en/fyrom-name-issue/> 5th November 2014).

officials. Unlike the ruling party, all other parties and candidates have unfavourable status and lack of resources to campaign among the voters abroad.

4.3 Free suffrage

The principle of free suffrage includes:

- freedom of voters to form their own opinion about the candidates and policies;
- freedom to freely express those views in elections and to prevent electoral fraud.

The state must strive to provide free suffrage of their citizens, in accordance with the following criteria:

- Encourage political competition and its implementation, by providing equal representation of candidates and political parties in the electoral process and the campaign (principle of equal opportunity), which allows voters to form an opinion and attitude of who will win their vote;
- Prevention of opportunities for any impact on the electorate (coercion, bribery, vote buying, etc.) and their sanctioning by legal provisions;
- Implementation of free elections, ensuring the privacy of the voter and the secrecy of his vote, declaring the polling stations in accordance with the law and the distribution of seats according to the will of the electorate- according to the received votes (European Commission for Democracy through Law 1999, 24–26).

According to the Code of Good Practice in Electoral Matters by the Venice Commission, voters also have the freedom to prevent electoral fraud. In order to prevent electoral fraud following requirements should be fulfilled:

- Voting procedures need to be simple. Macedonian voters abroad vote in the polling stations- DCR of RM, in the same manner as the domicile voters. The registration of voters in the Voting list abroad, makes the voting procedure more complicated and less transparent for the voters.
- Voters should have the possibility to vote in polling stations. This requirement is applied in the electoral districts abroad, although it interferes with the right to equal access to polling stations, which in this case is disrupted.

- Postal, electronic, proxy or mobile ballot voting are acceptable if the procedure of that types of voting is safe and reliable (every possibility for fraud or any type of irregularity should be prevented, or if happened, should be sanctioned).

Other means of voting for the Macedonian citizens abroad are not allowed. The law does not regulate any type of voting different than the personal voting in the DCR of RM. The domicile voters (that have residence and vote in RM) are voting in the same manner according to the law.

Electoral fraud in the two electoral cycles abroad has not occurred. Irregularities and omissions occurred while updating the Voting list by SEC, and there were voters who were returned from polling station because they were not on the Voter list for voting abroad.¹¹

Regarding this type of cases, the Electoral Code stipulates that the voter may submit a complaint to initiate administrative proceedings to the Administrative Court of RM, if there is a reasonable suspicion that the reason to be rejected by the SEC does not exist (Article 48, paragraph 4,5). Voters abroad can send the appeal against the decision of the SEC by email through the closest DCR of RM or directly to the Administrative Court of Republic of Macedonia.

4.4 Secret suffrage

The Constitution of RM and the Electoral Code of RM guarantee the confidentiality and integrity of the polling station and the secrecy of the vote of the domestic voters and the voters abroad. As said in the Code of Good Practice in Electoral Matters, “ for the voter, secrecy of voting is not only a right but also a duty” (2002, 9).

Ensuring the confidentiality and regularity of elections in the DCR of RM concerns specific polling boards, which are composed of several members headed by President of the Electoral Board that is of the order of diplomats employed in appropriate DCR of PM. The Election Board has an assignment to conduct peaceful, direct, free and secret voting at the polling station and its surrounding and afterwards, to calculate and summarize the cast votes. The Election Code of the Republic of Macedonia prescribes all the functions and responsibilities of the Electoral Boards.

¹¹ 529 lawsuits against the decision of the SEC filed before the parliamentary elections in 2014 by the Macedonian citizens residing in Albania. The Administrative Court upheld all claims of these nationals due to unjustified refusal to enroll in the voter list at the embassy in Tirana, Albania (Neskova 2014).

Furthermore, the Election Code guarantees protection by law of personal data of voters (Article 55, paragraph 1).

The secrecy of the vote is also provided with organization of the area in which the voting is conducted, for example, installment of voting booths that provide physical separation of voters and ensure their privacy during voting. Prohibitions on the use of mobile phones, cameras and similar electronic devices in the premises where voting takes place apply to voters and the polling boards in DCR of RM (SEC of RM 2014).

4.5 VOTING OF THE DIASPORA OF CROATIA AND SLOVENIA

The voting of the diaspora on elections in their native countries over the years is a reason for a number of polemics and researches which bring into question the electoral models, funding of the elections in the foreign diplomatic representative offices, productivity and even the legitimacy of the votes received from the diaspora. The reactions of the citizens, who permanently reside in the native country, regarding the voting of their fellow citizens who have gone abroad (with temporary or permanent stay), are somewhat divided: the negative reactions are initiated from the costs themselves which are inevitably allocated from the country's budget for implementation of these complex elections, or due to the disagreement with the idea that those who live far from the country's borders will decide for its destiny; while the positive reactions are based on the patriotism and the sense of belonging, i.e. that each citizen, regardless of the place of residence and how long he/she has been separated from the native country, has the right to vote and to participate in the political life of the country in which he/she was born. The tougher polemics are kept on a level of intellectual and political elites that bring into question the essential problems that arise during the voting of the diaspora.

Except in Macedonia, such polemics regarding the advantages and disadvantages, which the voting right of the diaspora brings along, are in the focus of the remaining countries of the world. The countries that provided the migrants with right to vote, lead polemics and debates on how to improve the overall election process and whether to terminate it as a tradition or not. The countries which have not introduced such elections do not exclude

the opportunity to introduce them, relaying on democratic principles for the universality of the right to vote, but they also face with difficulties in the electoral model, the method and module of voting that would meet the democratic standards. In a century of globalization, the degree of migrations in the world increases rapidly (Ellis *et al.* 2007, 1–3). The reasons for migration are numerous: migration due to professional, study arrangements, economic, family reasons, political reasons, due to conflicts etc. Therefore, it is naturally the question about the political rights and freedoms of the migrants to be imposed, who regardless on their geographical coordinates, they are citizens of their native country, and thus have all guaranteed rights and privileges, but also duties.

Historically, such elections in the world are new phenomena, although they appear long time ago. It is considered that the first such elections were organized by the Roman emperor Augustus, when he gave a voting right to the members of the senates of the newly created colonies in election of public officials in Rome (Sundberg 2008). While in the modern world they appear in XIX century, mostly, following the World War I and World War II.¹² Today, 115 countries in the world have included the diaspora into the election processes. The regulations and practice of several countries from former SFRY, as well as countries from the world whose experience may be useful for improving the Macedonian election practice are given in addition.

4.5.1 Croatia

The Croatian model of enfranchisement of the Croatian diaspora was a role model for the Macedonian legislators in the process of enfranchising the Macedonian diaspora, therefore, Macedonia is faced with similar problems and critics as Croatia faced in the past election years.

The Croatian diaspora is extensive and spread all around Europe, USA and Canada, but mainly concentrated in the neighbor country Bosnia in Herzegovina (BiH in the further text). Franjo Tudjman, the first president of independent Croatia and leader of the Croatian Democratic Union (Hrvatska Demokratska Zajednica, in the further text HDZ)

¹² In Wisconsin, USA, in 1862 the soldiers who served in the Union Army during the Civil War voted. USA gradually introduced the voting abroad for non-military, and finally in 1968 a right to vote was granted to all US citizens abroad. New Zealand and Australia introduced voting abroad in 1890 and 1902, respectively. Also Great Britain, India, Indonesia, and later France etc. introduced voting abroad following the World War II (Sundberg 2008, 1–3).

presented the idea of gathering the Croatian migrants abroad in one “community” that is by all means coherent part of the Croatian nation, in order to pass the referendum for Croatian independence of SFRY in 1991 (Navarro Fierro *et al.* 2007; Regazzi 2009). The Croatian diaspora supported strongly the referendum, which justified the enfranchisement of the Croatians abroad.

The right to vote of the Croatian citizen abroad is guaranteed with the Constitution of Croatia. The Article 45 of the Croatian Constitution defines the right to vote of the Croatian citizens who reside outside the territory of Republic of Croatia and the number of their representatives in the Croatian parliament (NN 56/90). The Electoral Code for electing representatives in the Croatian Parliament contains an article which defines the voting of the citizens of Republic of Croatia who reside in Republic of Croatia, but on the election day are located abroad, they may vote in diplomatic and consular representative offices in the country they are at the moment, electing parliament representatives according their place of residence in the native country (Article 7, NN 120/11). The voters who do not reside in Republic of Croatia (Croatian citizen that permanently reside abroad) vote for their parliamentary representatives in Republic of Croatia through candidate lists in separate electoral unit (11th electoral unit which covers the entire world) (Article 8).

Right to vote in elections abroad have:

- Croatian citizen that reside abroad, regardless if they have or not permanent residence in Croatia, and are voting in the special 11th electoral district for electing representatives in the Croatian Parliament;
- Croatian citizen that have permanent residence in Croatia, but on the elections day are abroad vote in DCR abroad and their vote is transferred in the electoral district in Croatia where they possess permanent residence.

Active registration of the voters abroad is necessary. There is no legal restriction regarding the length of residence abroad for the Croatian voters abroad. The principle of universality of the suffrage is mostly respected in the Croatian law.

Croatian legislators put an effort in ensuring the equality of the domicile voters and voters abroad. As the IDEA study shows, Croatia adopted the Law on parliamentary elections in 1995, and enfranchised the Croatian diaspora. In 1999 the Law on Electoral Districts was enacted, according to which twelve seats were assigned to the special 11th

electoral district that represents the Croatian diaspora (10% of the total number of parliamentary seats). The number of the MPs elected in that district which represents the diaspora is equal as to each of the ten multi-member districts. Although the Croatian diaspora is quite large (400,000 voters abroad were estimated in that time), the disproportional number of seats assigned to the diaspora led to criticism and fluctuation in the further elections when the number of elected MPs abroad was determined by a formula that “takes into account the number of votes cast abroad and the average number of votes needed to obtain a seat in the districts in Croatia”(Navarro Fierro *et al.* 2007, 29). This led to changes in the allocation of mandates: the fixed quota of 12 elected MPs that represent the diaspora was changed with flexible quota of 0-14 seats (Laguerre 2013, 123). It is obvious that Croatia was facing with electoral geometry in the electoral districts abroad. The first electoral cycles abroad led to victory of the candidates of HDZ, which won all of the 12 seats that represent the diaspora. After that experience, the fixed quota of elected MPs was changed into flexible, which assured proportionality of the electoral districts in the country and abroad.¹³ Also, the MPs that represent the diaspora are elected according to the same electoral model (proportional, closed- lists) and with the same threshold as the other MP elected in the domicile.

The DCR of Croatia are the polling units abroad. Croatia has 263 polling units abroad, from which 124 are concentrated in BiH according to the number of Croatians that reside there (SEC of Croatia 2007). Postal, Internet or proxy voting abroad is not available for the Croatian migrants, but the number of polling units abroad is quite large and acceptable for the number of Croatians abroad.

One important point is the duration of the voting in diaspora in Republic of Croatia's diplomatic and consular representative offices: the voting lasts for two days, ends with the completion of voting in the polling stations on the territory of Croatia. This extension

¹³ An example for political calculations is Italy, where for the first time voting abroad was introduced during the fascist dictatorship of Mussolini, in order to support his nationalist ideas (which showed as successful); which later were terminated because of the fear of the left wing parties from a fatal loss on the elections because of the voters of the Italian diaspora, and due to the disapproval of the idea to be a part of the immediate decisions for the elections in Italy. The only choice that benefits the voters and the political authority in Italy was enabling institutional representation of the Italian diaspora in the Parliament and Senate, realized through an election of a certain number representatives from the diaspora (Lafleur 2011, 489–491).

of the period for voting is really important for those voters that do not have time to travel to distant polling station.

Kasapovic (2010a, 16–18; 2010b) argues about several problematic points regarding the voting of the Croatian diaspora, such as: proper perception of the diaspora, the distribution of the terms of office and the concept of territorial citizenship versus the ethnic citizenship concept. The authors critique is aimed towards the motive for Croatia to enfranchise the diaspora referring to the universality of the right to vote for every citizen, while the practice shows that the only motive for this action was enfranchising the Croatian minority in BiH, which is powerful electorate that makes severe difference in the elections outcome (large support for only one political party- HDZ). As the Interim Report (2007) of OSCE/ ODIHR shows, the urge for declaring large number of polling units in BiH for the voters there is a clear partisanship.

The competitiveness of the political parties in Croatia in the 11th special district abroad is obvious since there is flexible quota of elected seats. The voters are mobilized and the campaign is more active. The turnout in the 11th district abroad, in the last two election cycles in 2007 and 2011 expressed in numbers:

- In 2007 parliamentary elections, the number of registered voters amounts to 405,230, while 90,482 actually voted (around 22, 3%) (Kasapovic 2010b, 22; OSCE/ODIHR 2007, 4);
- In 2011, 411,758 registered to vote in the out-of-country constituency, while 21, 100 actually voted (OSCE/ODIHR 2011b).

The Croatian legislators are under constant pressure for improving the electoral laws regarding the diaspora, which is not the case with Macedonia, where the amends and changes in the Electoral code are usually enacted right before elections. The Croatian electoral code is subjected to changes that will improve the electoral cycle abroad and will meet the democratic principles of suffrage.

4.5.2 Slovenia

Slovenia also grants its migrants a right to vote on: referendums in Republic of Slovenia, parliamentary and presidential elections in Republic of Slovenia and European Parliament's elections.

Slovenian diaspora, as the Macedonian diaspora, is spread all around the world. The migration of Slovenians historically happened in few intervals, starting in the end of 19th and beginning of the 20th century. Largest flow of Slovenian migrants is noticed in United States of America, Latin America, Canada, although significant number of migrants is noticed in the European Union countries, ex- Yugoslav republics, etc.

Slovenia holds the elections abroad since 1992, mainly postal voting. Slovenian DCR abroad count 39, which is relatively small number, so exercising voting abroad by using postal or any other means was obligatory in order to provide equal right of the Slovenian citizen abroad to express their political will.

There is no special electoral district for voters abroad, so their votes are transferred in the district in Slovenia where they or their parent had registered permanent residence.¹⁴

The rules for registration of voters abroad are similar with the rules in Republic of Macedonia, and additionally the voters should sent an application by which will select one of the ways of voting.

There are several ways of voting differing from the type and length of residence of the Slovenian migrants abroad:

- Slovenian citizen with permanent residence abroad, i.e. those who have no permanent residence in Republic of Slovenia may choose between few ways of voting: postal, in Slovenia's DCR or on specially designated polling stations called OMNIA if they are in Republic of Slovenia on the voting day;
- Slovenian citizen which are temporarily abroad on the voting day, but have permanent residence in Republic of Slovenia, may vote postal or in Slovenia's DCR (State Electoral Commission of Republic of Slovenia).

Slovenia had a steady and well-planned enfranchisement of the Slovenian citizen that reside abroad. After the independence of Slovenia, during the period of establishing DCR of Slovenia abroad, voters abroad voted postal. When the number of DCR was sufficient, the personal voting in the DCR polling units was introduced to the voters abroad, as an additional mean for voting. No serious fluctuation of the voting abroad, neither political pressure nor manipulation was noted in the history of Slovenian elections abroad.

¹⁴ If the voter cannot provide information about the last registered permanent address in Slovenia by any reason, has the right to choose the electoral district for voting.

Table 4.1: Elections abroad: Macedonia, Croatia and Slovenia

	MACEDONIA	CROATIA	SLOVENIA
Universal suffrage	Yes	Yes	Yes
Time restrictions for voters abroad	More than 3 months residence in country abroad	No	No
Voting in DCR	Yes	Yes	Yes
Postal voting	No	No	Yes
Other ways for voting	No	No	Yes (OMNIA)
Same electoral model used home and abroad	No, proportional model is used at home elections, plural abroad	Yes, proportional model with closed lists	Yes, proportional model with closed lists
Special electoral district abroad	Yes, 3 electoral district	One electoral district abroad	No
Active registration needed	Yes	Yes	Yes
Elected MPs that represent diaspora	3 MPs are elected, one in each electoral district abroad (fixed quota)	Vary from 0-14 depending on the turnout and other determinants	/
Citizenship requirement	Yes	Yes	Yes
Election day/s abroad	1 day, day before the elections in RM	2 days ending when elections in Croatia end	1 day

Table 4.2: Voter turnout in elections abroad 1996-2014

	1996	2000	2003	2007	2008	2011	2014
Croatia	No data found	*127,046 **17,3%	*70,527 **17,78%	*90,402 **22,34%	Not an election year	21,114 (5,13%)	Not an election year
Slovenia	*5312	No data found	Not an election year	Not an election year	*11,262	*10,778	*8,228
Macedonia	Not an election year	Not an election year	Not an election year	Not an election year	Not an election year	*4,088	*11,441

Source: State Electoral Commission of Republic of Macedonia; State Electoral Commission of the Republic of Croatia and State Electoral Commission of the Republic of Slovenia.

The Table 4.2 shows the turnout of voters abroad the citizens of Croatia, Slovenia and Macedonia residing abroad: (*) stands for the number of voters that voted on the elections while (**) shows the turnout calculated in percentage. The turnout of Macedonian voters abroad classified by election district is presented in the Tables 4.3, 4.4 and 4.

The first parliamentary elections voting Croatian and Slovenian diaspora held in 1996. Macedonia enfranchise the diaspora in 2011. As seen from the table, the election turnout varies:

- Croatia has seen a drastic decline in turnout from the first elections held abroad, particularly in relation to the growth of registered eligible voters abroad: in 2000 were registered 360, 110 Croatian citizens abroad, while in 2011 their number was 411, 758 (State Electoral Commission of the Republic of Croatia).
- Slovenia increased the number of voters abroad. On the first elections in 1996 the Slovenian diaspora voted postal, while in subsequent elections was introduced voting in the DCR of Slovenia. A significant share of the increase in the number of voters abroad may have the entrance of Slovenia in EU in 2004, which allowed

the Slovenian citizens easier migration to other EU countries (State Electoral Commission of the Republic of Slovenia).

- Macedonia has a short history of the two election cycles abroad in 2011 and 2014. The turnout in the parliamentary elections in 2014 increased by more than 50% compared to the elections in 2011. The turnout in the three special electoral units where Macedonian diaspora votes for the elections in 2011 and 2014 is presented in the Tables 4.3, 4.4 and 4.5 (State Electoral Commission of RM).

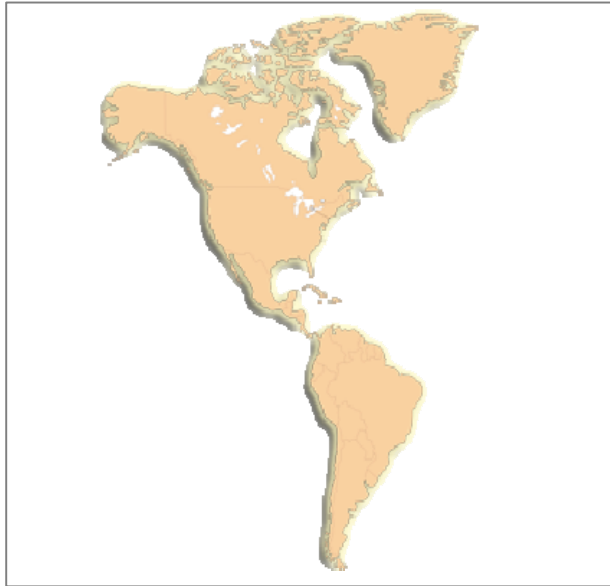
Table 4.3: Turnout in Electoral Unit 7: Europe and Africa

	2011	2014
Registered voters	4591	/
Voting polls (DCR)	28	27
Actually voted	2494 (54,32%)	8614 (45,55%)
Votes that won mandate	1578	4512



Source: State Electoral Commission of the Republic of Macedonia.

Table 4.4: Turnout in Electoral Unit 8: North and South America



	2011	2014
Registered voters	1824	/
Voting polls (DCR)	5	6
Actually voted	994 (54,50%)	1845 (55,29%)
Votes that won mandate	560	1170

Source: State Electoral Commission of the Republic of Macedonia.

Table 4.5: Turnout in Electoral unit 9: Australia and Asia

	2011	2014
Registered voters	798	/
Voting polls (DCR)	3	3
Actually voted	600 (75,19%)	982 (64,02%)
Votes that won mandate	548	881



Source: State Electoral Commission of the Republic of Macedonia.

5 CONCLUSION

Republic of Macedonia from its independence, by the plebiscite referendum in 1991 and the completion of the institutional phase of independence, faces with complicated process towards the democracy. The very modification of the political system leads to changes in all its subsystems, especially in the electoral system, for example:

- The introduction of political pluralism and complete change of the political culture, the young democracy encounters almost new terms and processes; multi-party, direct elections;
- In the transition period in Republic of Macedonia, the multi-party system led to a shift from one electoral model to another.
- Organization of democratic, fair and free elections in accordance with the international standards and codes and the democratic principles, which are based on the human and citizens' rights and freedoms, protected and guaranteed by the Constitution of Republic of Macedonia.
- Protection of the political rights and freedoms by providing equality and universality of the voting right.

While Macedonia lays the foundation of an independent country, the outflow of Macedonian citizens abroad uncontrollably increases. The diaspora has been important for a small, undeveloped and new sovereign state. The enormous support by the Macedonian migrants throughout the world on the independence referendum in 1991 was of great importance for the success of the referendum. Although Macedonia recognized the political force and the voting potential of the diaspora, after the referendum, the diaspora was disenfranchised until 2008, when the amendments and supplements of the Electoral Code were enacted and implemented. The Electoral Code and other laws that create the legal frame of the elections in RM are in accordance with the Constitution of RM and international legal acts that guarantee the rights and freedoms of the citizens. I have focused on the five democratic principles of suffrage defined by the Code of Good

Practice in Electoral Matters of the Venetian Commission and their implementation into the electoral process abroad.

The answer of the first research question consists in the presentation and interpretation of the legal frame that regulates the voting abroad and shows that violation of the five democratic principle of suffrage exists.

The principle of equal suffrage is violated on several basis:

- The Electoral Code generates inequality of voting power. The votes of the domicile voters and voters abroad have different weight and power, due to the defined threshold for electing MPs that is different home and abroad (respectively 5% and 2%) and different electoral system for electing members of Parliament (proportional for home elected MPs and plural for MPs that represent the diaspora). Following the same standards for democratic elections and voting procedures in the country and abroad as suggested by the Venice Commission abroad can avoid unequal voting power and furthermore, unequal distribution of seats.
- The political parties and candidates do not have equal opportunity in winning seats in the three electoral districts abroad. There are few main determinants for this inequality: the necessity of resources for campaign abroad excludes the smaller political parties and favors the bigger and more powerful parties; the difficulty of the independent candidates to collect signatures for even submitting a candidature; the limited means for political campaigning abroad (since political activity and campaigning for other country's election is not allowed in most of the countries).
- This type of elections requires revising some of the rights that are strictly preserved in the domicile voting: equal access to information and equal access to polling stations. Voters abroad have limited access to information about the elections and candidates. The Electoral Code obliges the DCR of RM to publish the announcement for the elections in three best selling newspapers in the appropriate states. Furthermore, the DCR of RM abroad have significant role in informing and registering the voters abroad. Online surveys show that the vast of majority of Macedonian citizen that live abroad are not informed about the elections abroad or their right to vote in elections.

The DCR of RM are declared polling stations where the voters abroad can give their vote, if at least 10 voters are registered to vote in the appropriate DCR. The remoteness of the polling stations to the voter's residence can be thousands of kilometers, since the Electoral Code does not regulate this issue. This affects every voter (or at least the voters that do not reside close to DCR of RM) but excludes the disabled, those in medical care, prisoners. Postal voting or any other alternative way of voting can be solution for preserving the right of all citizens to vote.

The principle of universality of suffrage is equally applied for the domicile and voters abroad, except the two additional requirements that are necessary for Macedonian citizen abroad to vote: the voters abroad need to reside in the foreign country legally for more than 3 months and they need to register in the special Voting list in order to vote abroad. The recommendations of OSCE/ ODIHR and Citizens Association MOST aim for abolishing the time of residence abroad requirement and for simplifying the procedure for registration in the Voting list. Due to administrative or other errors, there were appeals from voters that were properly registered, but not allowed to vote since they were not registered in the Voting list for voting abroad.

The Constitution of RM and the Electoral Code also guarantee the freedom and secrecy of voting (domicile and abroad). There are no noted cases of violations of the freedom and the secrecy of voting during the voting abroad in 2011 and 2014.

By analysing the legal frame of the voting abroad of two other countries, Slovenia and Croatia, and their experience with this type of elections, I found some similarities and differences with the electoral regulations in Macedonia. Macedonian legislators used the Croatian model for enfranchisement of the diaspora, and made the same violations regarding the equality of the voting power. Croatia have changed the fixed quota of 12 MPs that are elected by the diaspora with a flexible quota of MPs depending on several determinants and elected by the same electoral model as in the domicile elections (proportional model with closed lists). In order to implement this, one special electoral district was implemented that covers the world. Slovenian diaspora does not elect representatives. Slovenian voters abroad give their votes in the electoral districts of their last registered address in Slovenia. The rules, electoral model and requirements are equal for domicile and voters abroad.

Macedonia, as Croatia and Slovenia, needs to implement equal rules for domicile and abroad voting in order to achieve the equality of suffrage of all voters, home and abroad:

- The minimal threshold for electing MP seat should be equal home and abroad. In any other case, we are facing with electoral geometry and violation of the equal voting power of the domicile and voters abroad;
- The size of the electoral districts abroad should be revised and quotas of elected MP seats should be defined according to the size of population (in this case, number of Macedonian citizen that reside in that foreign electoral district), number of voters including minors, and other determinants that are important for obtaining equal suffrage;
- Macedonia should prolong the voting in DCR to more than one day (Croatian citizen abroad vote two days in row. Voting abroad ends in the moment when voting in Croatia is ended), which will allow more voters to arrive to the polling units and vote. There are recommendations and demands by the voters abroad for introducing an alternative (postal) voting (Slovenia introduced postal voting first, and then implemented voting in DCR) since the limited voting in DCR violates the right for equal access to polling stations.

Voting abroad, in today's times of globalization, growing emigration and immigration is almost necessary electoral strategy for including the migrants in the political system and decision-making in their home country. In the further analysis a greater attention should be brought to facilitating the methods of executing the right to vote of the citizens living abroad, according to the democratic principles.

6 POVZETEK V SLOVENSKEM JEZIKU

Volitve so celota pravnih in političnih procesov za prenos suverenosti z ljudstva na njihove izvoljene predstavnike. Volitve so demokratično dejanje za izbiro in organizacijo nosilcev oblasti (Klimovski *et al.* 2012, 307–310).

Glasovanje iz tujine, v današnjem času globalizacije, povečanega izseljevanja in priseljevanja, je skoraj nujna volilna strategija za vključevanje migrantov v politični sistem ter za sprejemanje neposrednega odločanja v matični državi. Najpomembneje je,

da ima v skladu z demokratičnimi načeli, vsakdo, ki ima državljanstvo države, ter je nosilec pravic in privilegijev, hkrati do države tudi obveznosti. Država je dolžna zaščititi pravice in svoboščine vseh državljanov, ne glede na to, kje živijo. Prav tako je država dolžna zagotoviti pravno urejene razmere in možnosti, s katerimi bo državljan uresničil svoje osnovne, politične pravice in svoboščine, med katerimi je tudi volilna pravica (aktivna in pasivna).

Državljanji Republike Makedonije s prebivališčem (začasno ali stalno) v tuji državi, so bili vključeni v volilni proces tudi ko je bila RM v okviru SFRJ (46. člen Zakona o volitvah in odpoklicu poslancev in svetnikov (Uradni list SRM št. 28/90): » Državljanji, ki začasno delajo in prebivajo v tujini glasujejo na volišču v kraju zadnjega prebivališča na ozemlju SRM, pred odhodom v tujino ali na diplomatsko konzularnih predstavništvi (v nadaljnjem besedilu DKP) SFRJ v tujini«. Diaspora je veliko prispevala k izidu Referenduma o neodvisnosti RM v letu 1991, ko je glasovala na DKP- jih SFRJ ali po pošti (Republiška volilna komisija Socijalistične Republike Makedonije 1991). Po osamosvojitvi RM, sledi priprava političnega sistema nove države, ki vključuje tudi oblikovanje stabilnega volilnega sistema, ki temelji na demokratičnih načelih in brez katerega se RM ne bi mogla imenovati demokratična država. Poleg te notranje politične spremembe poteka tudi priznanje neodvisnosti RM s strani držav po svetu ter vzpostavitev diplomatske mreže in pošiljanje prvih diplomatskih misij. Ker je bil ta proces naporen in dolg, vendar potreben za izvedbo volitev v diaspori, in naj bi potekal na DKP-jih Republike Makedonije, makedonska diaspora do sprejema Zakona o spremembah in dopolnitvah zakona o volitvah v letu 2008, ni bila vključena v volilni proces.

S sprejetjem Zakona o spremembah in dopolnitvah zakona o volitvah iz leta 2008 je RM svojim državljanom, ki ne prebivajo na ozemlju Republike Makedonije, zagotovila, da so se lahko udeležili parlamentarnih volitev in pridobili svoje predstavnike v nacionalnem parlamentu v RM, s čimer se uvršča med redke države v svetu (Francija, Italija, Portugalska, Hrvaška), ki formalno ali dejansko institucionalizirajo ločeno zastopnost priseljencev v nacionalnih parlamentih (Kasapovic 2010, 15–16). Pravica do glasovanja razseljenih državljanov RM, je opredeljena v drugem odstavku, 6. člena Zakona o volitvah: »Državljanji Republike Makedonije, ki na dan glasovanja začasno delajo ali bivajo v tujini, in so vpisani na seznam volivcev, na podlagi evidence pristojnega organa

in prijave za glasovanje, lahko glasujejo za izvolitev poslancev v skupščini Republike Makedonije v diplomatskih in konzularnih predstavništvih Republike Makedonije v tujini, oziroma v konzularnih predstavništvih, v skladu z določbami tega zakonika«. V skladu z drugim odstavkom 4. člena istega zakona, se volijo trije poslanci, po eden iz vsake volilne enote v tujini (VE 7: Evropa in Afrika, VE 8: Severna in Južna Amerika in VE 9: Avstralija in Azija), po večinskem modelu v enem krogu volitev (Uradni list RM št. 54 /11).

Spremembe volilnega zakonika in uvedba glasovanja v diaspori so izzvale odziv javnosti, volivcev in strokovnjakov, ki so izpostavili vprašanja nepravilnosti v volilnem zakonu in kršenje številnih demokratičnih načel, pridobljenih z mednarodnimi konvencijami in sporazumi, ratificiranih s strani RM in Ustavo, ter zakoni RM. Kritike se nanašajo predvsem na zakonske omejitve, s katerimi se volivci soočajo v tujini (omejena glasovalna pravica, omejen dostop do volišč, itd.).

Raziskovalna vprašanja in raziskovalne metode

Predmet raziskovanja tega magistrskega dela je analiza volitve diaspore za izvolitev predstavnikov v nacionalni parlament v RM. Poseben poudarek je na enakosti pravice do glasovanja (pet demokratičnih načel evropske dediščine) za vse državljane RM z analizo pravnih virov (zakoni), primarnih in sekundarnih virov. Zgodovinska metoda se uporabi za to da bi predstavila evolucijo volitev in volilne politike v RM, medtem ko se s primerjalno analizo primerjajo izkušnje nekaterih držav iz nekdanje SFRJ, ki so uvedle glasovanje diaspore glede na izkušnje Republike Makedonije.

Na podlagi določenega predmeta raziskovanja in ciljev, sem postavila naslednja raziskovalna vprašanja:

- **Ali zakonodaja Republike Makedonije zagotavlja enakopravnost volivcev v tujini in domicilnih volivcev?**

- **Kako je enakopravnost domicilnih volivcev in volivcev v tujini zagotovljena v drugih nekdanjih republik Jugoslavije, ki izvajajo glasovanje v tujini?**

Pet demokratičnih načel in glasovanje makedonske diaspore

Iz nadaljne analize bo razvidno, ali so bila prizadevanja institucij RM, da bi diaspori omogočili, da uveljavlja svojo pravico do glasovanja, ki temelji na petih načelih evropske dediščine, uspešna in učinkovita.

Po 17. členu Zakona o spremembah in dopolnitvah zakona o volitvah (2008) imajo volilno pravico na parlamentarnih in predsedniških volitvah »državljeni Republike Makedonije, ki začasno delajo ali bivajo v tujini, /.../ ki so prijavi zadnje prebivališče v Republiki Makedoniji, in so na dan volitev začasno prebivali v tujini od treh mesecev do enega leta ali začasno delali ali prebivali v tujini več kot eno leto, v skladu z evidenco pristojnega organa« (Uradni list RM, št. 136/08), po vloženi prijavi za glasovanje (lastnoročno podpisani) na DKP-jih v državi bivanja ali po elektronski pošti Državni volilni komisiji Republike Makedonije. Glasovanje poteka na voliščih, diplomatskih in konzularnih predstavništvih Republike Makedonije in konzularnih pisarnah, ki vključujejo 44 veleposlaništev in konzulatov ter 60 diplomatskih pisarn (Ministrstvo za zunanje zadeve Republike Makedonije). Alternativno glasovanje (po pošti, po elektronski poti) ni bilo omogočeno, čeprav so se za to zavzemali civilna združenja, ustanove, poslanci, in tudi volivci (Civilno združenje MOST 2011; OSCE/ODIHR 2011; Societas Civilis-Skopje 2014).

Volivci na DKP izbirajo po enega poslanca iz vsake volilne enote, po večinskem volilnem modelu v enem volilnem krogu, medtem ko se poslanci v volilnih enotah v Makedoniji volijo po proporcionalnem modelu.

Analiza vključuje predstavitev in razlago pravnega okvira, ki ureja glasovanje v tujini in glasovalne pravice volivcev v tujini.

Po analizi pravnih aktov je bilo ugotovljenih nekaj zakonskih rešitev, s katerimi je bila odvzeta glasovalna pravica državljanom RM, ki živijo v tujini. Nekatera od demokratična načela so kršena, predvsem enaka volilna pravica. Iz primerjalne analize, ki vsebuje analizo volilne pravice slovenskih in hrvaških volivcev v tujini, je razvidno, da ima Hrvaška uspešen razvoj zakonodaje, glede omogočanja enake glasovalne moči volivcev v tujini, medtem ko Slovenija izstopa glede različnih načinov glasovanja: poleg na DKP-jih, omogoča tudi glasovanje po pošti in na volišču OMNIA, glede na to da ima relativno majhno število DKP po svetu, podobno kot Makedonija. Prav tako je predstavljena volilna udeležba na parlamentarnih volitvah v Sloveniji, Hrvaški in Makedoniji od leta 1996 do leta 2014.

Zaključek

Odgovor na prvo raziskovalno vprašanje je sestavljen iz predstavitve in razlage pravnega okvira, ki ureja glasovanje v tujini, ter kaže, da gre za kršitev petih demokratičnih načel volilne pravice.

- **Enaka volilna pravica** pomeni, da ima vsak volivec en glas (če ni urejeno drugače). Enaka volilna moč pomeni enako razdelitev sedežev v volilnih enotah. Ta enakost mora biti zagotovljena, zlasti ko volitve potekajo v več kot eni volilni enoti, tako kot v primeru makedonskih volitev. Načelo enake volilne pravice je prekršeno:
 - Volilni zakonik ustvarja neenakost glasov. Glasovi domicilnih volivcev in volivcev v tujini, zaradi opredeljenega praga za izvolitev volivcev, imajo drugačno težo in moč, ki se doma in v tujini razlikujeta (oziroma 5% in 2%), ter drugačen volilni sistem za volitve članov parlamenta (proporcionalni volilni sistem za volitve poslancev v Makedoniji, in množinski za poslance, ki zastopajo volivce v tujini). Kot je predlagala Beneška komisija, če se volitve doma in v tujini izvajajo po enakih standardih za demokratične volitve in po enakih postopkih glasovanja, bi se lahko izognili neenakosti glasovalne moči in poleg tega neenaki porazdelitvi poslanskih sedežev.
 - Politične stranke in kandidati nimajo enake možnosti za sedeže v treh volilnih enot v tujini. Obstaja nekaj glavnih determinant za to neenakost: nujnost sredstev za kampanjo v tujini izključuje manjše politične stranke ter daje prednost večjim in močnejšim strankam. Neodvisni kandidati imajo težave pri zbiranju podpisov za oddajo kandidature ter omejena sredstva za politične kampanje v tujini (politična dejavnost in kampanja za volitve v drugi državi, v večini držav ni dovoljeno).
 - Tovrstne volitve zahtevajo revizijo nekaterih pravic, ki so strogo ohranjene pri domicilnem glasovanju: enak dostop do informacij in enak dostop do volišč. Volivci imajo v tujini omejen dostop do informacij o volitvah in kandidatih. Zakon o volitvah zavezuje DKP, da objavi napoved za volitve v treh najbolj prodajanih časopisih v ustreznih državah. Poleg tega imajo DKP v tujini pomembno vlogo pri obveščanju in registraciji volivcev v tujini. Spletne ankete kažejo, da velika večina makedonskih državljanov, ki živijo v tujini, ni bila

obveščena o volitvah v tujini ali pravici do glasovanja na volitvah. DKP prijavi volišča, na katerih lahko volivci v tujini lahko oddajo svoj glas, če je najmanj 10 volivcev vpisanih v volilni imenik v ustreznem DKP. Oddaljenost volivcev do DKP je lahko na tisoče kilometrov, saj volilni zakonik tega vprašanja ne ureja. Kršena je tudi pravica do enakega dostopa do volišč: vsem volivcem, ki ne živijo v mestu, kjer je DKP v tujini, so te pravice kršene. V skladu s prvim odstavkom, 166. člena Zakona o volitvah: »Volišče, praviloma ne sme biti oddaljeno več kot 3 km od najbolj oddaljenega naslova v urbanih naseljih in več kot 5 km v ruralnih naseljih«, medtem, ko drugi odstavek določa, da to pravilo ne velja za volišča v DKP v tujini (Uradni list št.11).

To velja za vse volivce (ali vsaj na volivce, ki ne prebivajo v bližini DKP), izključuje pa invalide, tiste ki so v zdravstveni oskrbi in zapornike. Poštno glasovanje ali kateri koli drug alternativni način glasovanja bi lahko bil rešitev za ohranitev pravice vseh državljanov do glasovanja.

- Načelo **univerzalnosti volilne pravice** se enako uporablja za domicilne volivce in volivce v tujini, razen dveh dodatnih zahtev, potrebnih, da makedonski državljani lahko volijo v tujini. Volivci v tujini morajo več kot 3 mesece zakonito prebivati v tuji državi in se morajo registrirati na poseben volilni seznam. Priporočila OVSE / ODIHR si najbolj prizadevajo za odpravo časa bivanja v tujini, obveznosti in za poenostavitev postopka za registracijo na volilni seznam. Zaradi administrativnih ali drugih napak, je prišlo do pritožb volivcev, ki so bili ustrezno registrirani, vendar niso smeli voliti, ker niso bili vneseni na volilni seznam v tujini.
- Ustava RM in volilni zakonik prav tako zagotavljata **svobodo in tajnost glasovanja** volivcev v tujini. Kot je zapisano v Kodeksu dobre prakse v volilnih zadevah: » Za volivce, tajnost glasovanja ni samo pravica, ampak tudi dolžnost« (2002, 9). Med glasovanjem v tujini v letih 2011 in 2014 niso bili ugotovljeni primeri kršitev svobode in tajnosti glasovanja.

Pri analizi pravnega okvira glasovanja v tujini v drugih dveh državah, tj. v Sloveniji in na Hrvaškem, ter njihovih izkušenj s tovrstnimi volitvami sem našla nekaj podobnosti in razlik v primerjavi z volilnimi predpisi v Makedoniji. Makedonski zakonodajalci so uporabili hrvaški model dodeljevanja pravice do

glasovanja v diaspori, in so ponovili enake kršitve v zvezi z enakostjo moči glasovanja. Hrvaška je zamenjala določene kvote 12 poslancev, izvoljenih v diaspori, s prilagodljivo kvoto poslancev, odvisno od več dejavnikov in po enakem volilnem modelu izvoljenih kot v domicilnih volitvah (proporcionalni model z zaprtih seznamov). Za izvedbo tega je bil uveljavljen poseben volilni okraj, ki zajema svet. Slovenska diaspora ne voli predstavnikov. Slovenski volivci v tujini (izseljenci ali zdomci) volijo v volilnih okrajih svojega zadnjega registriranega naslova v Sloveniji. Pravila, volilni model in zahteve so enake za vse volivce, ne glede na prebivališča.

V Makedoniji, tako kot na Hrvaškem in v Sloveniji, potrebujejo enaka pravila za izvajanje volitev doma in v tujini da bi dosegli enakost volilne pravice vseh volivcev, doma in v tujini.

- Minimalna meja za izvolitev poslanskih sedežev mora biti enaka doma in v tujini. V vsakem drugem primeru, se soočamo z volilno geometrijo in kršitvijo enake glasovalne moči volivcem s prebivališčem v Makedoniji in volivcev v tujini;
- Velikost volilnih enot v tujini je treba revidirati in kvote izvoljenih poslanskih sedežev je treba opredeliti glede na velikost populacije (v tem primeru je to število makedonskih državljanov, ki prebivajo v tem tujem volilnem okraju). Upoštevati je treba število volivcev, vključno z mladoletniki, in drugi dejavnike, pomembne za pridobitev enake volilne pravice;
- Makedonija mora podaljšati glasovanje na DKP za več kot en dan (hrvaški državljani v tujini glasujejo dva dni zapored; glasovanje v tujini se konča v trenutku, ko se konča glasovanje na Hrvaškem), kar bo več volivcem omogočilo da pristopijo do volilnih enot in h glasovanju. Obstajajo priporočila in zahteve, ki jih imajo volivci v tujini za uvedbo alternativnega glasovanja (po pošti, primer: Slovenija je uvedla glasovanje po pošti, izvaja pa tudi glasovanje na DKP), saj glasovanje omejeno samo na DKP, krši pravico do enakega dostopa do volišč.

Izkušnje različnih analiziranih držav (Hrvaška, Slovenija) kažejo, da ni univerzalnega pravila in načina za izvedbo volitev v tujini. Vsaka država, odvisno od svojih izkušenj, političnih izbir in politične kulture uvaja zakonodajo, ki ustreza vsem parametrom in

interesom, ter se uporablja in zagotavlja pravice do glasovanja, ki temeljijo na petih demokratičnih načelih evropske dediščine, zaščiteneh z zakoni teh držav.

V nadaljnji analizi je treba večjo pozornost nameniti olajšanju načina izvršitve volilne pravice državljanom, ki živijo v tujini, v skladu z demokratičnimi načeli.

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