

EXERCISE OF NATIONAL MINORITY RIGHTS IN CROATIA AND EUROPEAN INTEGRATIONS

INTRODUCTION

National minority rights in the Republic of Croatia used to represent a problem for which there was not enough political will to realize them in their entirety. The most problematic period was at the time of the war and instable peace. The international community identified the problem of violation of minority rights in Croatia quite quickly and thus it exerted constant pressure and provided different kinds of assistance in order to improve the situation. In this context, the issue of normative regulation and practical fulfillment of national minority rights formed an important criterion and a sort of test for democratization of Croatia, while its successful realization represented one of conditions for economic and political integration into European organizations.

Faced with the fact that it could not decrease already acquired rights of existing national minorities,² the Republic of Croatia recognized their acquired rights immediately after it had gained its independence. A certain problem arose in defining „new national minorities“ and their rights, and the problem of defining the status of Serbs in Croatia and their rights grew to an open conflict. Main problems concentrated on violation of human rights, especially of members of „new“ national minorities and inexistence of independent judiciary. It can be stated that political transition in Croatia could not have commenced and gathered momentum until the change of the government in 2000. When the democratic transition began, first significant steps in protection of human rights and rights of minorities were taken. It all contributed to elaboration and implementation of policy of integration of national minorities into the Croatian society.

In the past period, the legislative system pertaining to protection of national minorities was completed. Thus, in 2000 the Law on Education in Languages and Scripts of National Minorities and the Law on the Use of Languages and Scripts of National Minorities were adopted and in 2002 the Constitutional Act on the Rights of National Minority and a range of by-laws were enacted, thus creating conditions for a systematic exercise of the national minority rights. These laws were adopted by consensus of the parties in the Croatian Parliament, which also ensures that there is political will to implement them.

After the general elections of 23 November 2003, the Government of the Republic of Croatia reached and concluded agreements with representatives of national minorities, and in its programme it undertook the obligation to develop specific measures whereby it would continually work on the protection and promotion of the protection of national minorities, and resolve the remaining open issues faced by national minorities. The Government also committed itself to fully implement the Constitutional Law on the Rights of National Minorities, and the laws that regulate education and official use of languages and scripts of national minorities.

In general, in the past few years a significant progress in improvement of national minority rights has been made, and especially so in the legislative sphere. There has also been improvement in the exercise of their rights to their own culture and language as well as in extension of the rights of members of national minorities to participate in decision-making process. Representation of national minorities in the Croatian Parliament has also been

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² Hungarians, Italians, Czechs, Slovaks, Ruthenians, Ukrainians...

secured,³ as well as in representative bodies at local and regional level. Apart from that, a new system of participation of minorities in the decision-making process, by means of councils and representatives of national minorities, has also been introduced.

Even though a considerable improvement has been made as far as legal regulations and realization of national minority rights are concerned, still there are certain difficulties in the exercise of these rights, which primarily ensue from economic and social problems. This especially refers to exercise of national minority rights in war-devastated areas, faster return of refugees and improving the living conditions for Roma. A significant improvement has also been achieved in establishment of more tolerant environment in Croatia, so that national minorities are now regarded as Croatian advantages and certainly not a problem. The Government gave its contribution by taking measures with a view of strengthening the atmosphere of tolerance and intercultural dialogue.⁴

NATIONAL MINORITIES IN CROATIA

The last census in Croatia was carried out in 2001, and a year after that official result of the census was published.⁵ The results show that the total population size decreased in the 1991–2001 period by approximately 7,25 % (from 4.784.265 to 4.437.460), the number of members of majority Croatian population increased by 11,53 % (from 78,1 to 89,63 %), while the number of members of national minorities⁶ in the overall population of the Republic of Croatia decreased by approximately 50 % and they account for 7,47 % or 331.383 citizens.

Table 1: Population of Croatia by nationality and gender in 2001 and by nationality in 1991

	Total	%	Men	Women	1991.
The Republic of Croatia –	4.437.460	100,0	2.135.900	2.301.560	4.784.265
in total Croats	3.977.171	89,6	1.912.953	2.064.218	3.736.356
National minorities					
Total	331.383	7,5	158.990	172.393	
Albanians	15.082	0,3	8.653	6.429	12.032

³ Number of representatives of national minorities to the Croatian Parliament has been increased from five to eight and the constituency has been extended to all national minorities in Croatia.

⁴ To illustrate these measures, one can mention the already traditional event “Cultural Creativity of National Minorities of the Republic of Croatia” that is held every November in the Concert Hall Vatroslav Lisinski in Zagreb. The participants of this event are amateurs and members of national minorities and the festival provides them with an opportunity to get to know each other better, to engage in intercultural dialogue and to gain recognition for different minority cultures. According to: Report on Implementation of the Framework Convention for the Protection of National Minorities, the Government of the Republic of Croatia, Zagreb, 2004, p. 3.

⁵ The census was carried out in the Republic of Croatia in the period between 1st and 15th April 2001, in compliance with the Law on Census, Households and Dwellings, 2001. The following census units were covered by the Census: 1) persons, that is, citizens of the Republic of Croatia, foreign citizens and persons without citizenship who are usual residents of the Republic of Croatia, irrespective of whether, at the time of the Census, they were present in the Republic of Croatia or were abroad as well as persons who, at the Census moment, were temporary residents of the Republic of Croatia, 2) households of such persons and 3) conventional dwellings and other occupied premises.

⁶ In its Constitutional Law on the Rights of National Minorities, the Republic of Croatia has for the first time clearly defined the concept on a national minority. According to the Constitutional Law, „a national minority shall be a group of Croatian citizens whose members have been traditionally settled in the territory of the Republic of Croatia and who have ethnic, linguistic, cultural and/or religious characteristics which are different than those of other citizens and who are guided by the wish for the preservation of those characteristics.” Constitutional Law on the Rights of National Minorities, the Official Gazette, no. 155/2002, Article 6.

Austrians	247	0,0	100	147	214
Bosniacs	20.755	0,5	10.896	9.859	43.469
Bulgarians	331	0,0	157	174	458
Czechs	10.510	0,2	4.930	5.580	13.086
Germans	2.902	0,1	1.254	1.648	2.635
Hungarians	16.595	0,4	7.482	9.113	22.355
Italians	19.636	0,4	9.210	10.426	21.303
Jews	576	0,0	259	317	600
Macedonians	4.270	0,1	2.018	2.252	6.280
Montenegrins	4.926	0,1	2.738	2.188	9.724
Polish	567	0,0	116	451	679
Roman	9.463	0,2	4.777	4.686	6.695
Romanians	475	0,0	203	272	810
Russians	906	0,0	174	732	706
Ruthenians	2.337	0,1	1.125	1.212	3.253
Serbs	201.631	4,5	97.481	104.150	581.663
Slovaks	4.712	0,1	2.180	2.532	5.606
Slovenians	13.173	0,3	4.215	8.958	22.376
Turks	300	0,0	183	117	320
Ukrainians	1.977	0,0	832	1.145	2.494
Vlachs	12	0,0	7	5	22
Others	21.801	0,5	11.267	10.534	3.012
Have not declared their national affiliation					
In total	89.130	2,0	43.537	45.593	73.376
Regional affiliation	9.302	0,2	4.757	4.545	45.493
Unknown	17.975	0,4	9.153	8.822	62.926

Note: In the 2001 census 19.677 citizens declared that their nationality was Muslim.

Table 2: Population of Croatia by religion, the 2001 census

	Total	%
Republic of Croatia- in total	4.437.460	100,0
Catholics	3.897.332	87,8
Easter-Rite Catholics	6.219	0,1
Old Catholics	303	0,0
Orthodox Christians	195.969	4,4
Muslims (Islamic)	56.777	1,3
Jews	495	0,0
Adventists	3.001	0,1
Baptists	1.981	0,0
Evangelicals	3.339	0,1
Jehovah's Witnesses	6.094	0,1
Christ's Pentecostal Church	336	0,0
Other Protestants	4.068	0,1
Other religions	4.764	0,1
Agnostics and non- declared	132.532	3,0
Atheists	98.376	2,2

Unknown	25.874	0,6
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Table 3: Population by mother tongue, the 2001 census

	Total	%
Republic of Croatia-in total	4.437.460	100,0
Croatian	4.265.081	96,1
Croato-Serbian or Serbo-Croatian	7.015	0,2
Serbian	44.629	1,0
Macedonian	3.534	0,1
Slovenian	11.872	0,3
Albanian	14.621	0,3
Czech	7.178	0,2
Hungarian	12.650	0,3
Romani	7.860	0,2
Ruthenian	1.828	0,0
Slovakian	3.993	0,1
Italian	20.521	0,5
Ukrainian	1.027	0,0
Other languages	18.942	0,4
Unknown	16.709	0,4

Source: Data provided by the Central Bureau of Statistics – data on the number of members of national minorities in Croatia.

The results of the 2001 census confirmed earlier speculations on a change of the ethnic composition in Croatia compared with the composition in 1991. The 2001 census in terms of nationality registered statistical data for 22 minority communities according to ethnic affiliation.⁷ The largest minority community in terms of ethnic affiliation form Serbs with 201.631 members or 4,54% of share in the total population size of Croatia, then Bosniacs – 20.755 or 0,5%, Italians – 19.636 or 0,4%, Hungarians – 16.595 or 0,4%, Albanians – 15.082 or 0,3%, Slovenians -13.173 or 0,3%, Czechs – 10.510 or 0,2%, Roma – 9.463 or 0,2%, Montenegrins – 4.926 or 0,1%, Slovaks – 4.712 or 0,1%, Macedonians – 4.270 or 0,1%, Germans – 2.902 or 0,1%, Ruthenians – 2.337 or 0,1%, and Ukrainians – 1.977, Russians – 906, Jews – 576, Poles – 567, Romanians – 475, Bulgarians - 331, Turks – 300, Austrians – 247 and Vlachs – 12. In addition, 19.677 inhabitants declared themselves as Muslims.

Decrease in the number of members of national minorities in comparison with the 1991 census was registered in the number of Serbs – 65%, Montenegrins – 49%, Slovenians – 41%, Macedonians – 32%, Ruthenians – 28%, Hungarians – 25%, Ukrainians – 20%, Slovaks – 15%, Italians – 7%, while there was an increase in the number of Roma – 41%, Albanians 25% and Germans – 10%. In the 2001 census, a number of Muslims, registered in the 1991 census (43.496 members), declared themselves as Bosniacs. The total number of Bosniacs and Muslims according to the 2001 census amounts to 40.529 members, which points to a decrease in the number of Muslims registered in 1991 at 7%.

⁷ Data provided by the Central Bureau of Statistics – www.dzs.hr

The data on religious structure of population (Table 2) and mother tongue (Table 3) show that the majority of national minorities is highly integrated into the Croatian society. For instance, the number of Orthodox Christians (195.969) is smaller than the total number of members of national minorities for whom we can assume that are of Orthodox affiliation.⁸ As regards the mother tongue, in almost all national minorities, except Italians, there is smaller number of those whose mother tongue is a minority language than the number of members of respective national minority. This is mostly evident with the members of Serbian national minority of whom only 44.629 members declared to speak Serbian language and 7.015 to speak Croato-Serbian or Serbo-Croatian language.

According to the last census in Croatia, members of national minorities live in the territory of numerous Cities/towns and municipalities. National minorities are concentrated in large number mostly in territory of: Istria, Northern Dalmatia, Lika, Kordun, Banovina, western and eastern Slavonia and Baranja. If we compare the results of the 2001 census with several previous censuses, then we can notice that all national minorities, with the exception of Albanians, Roma and Germans, have experienced a decrease in the number of their members. The most drastic decrease has occurred in the number of the most numerous national minorities such as Serbian, Hungarian, Czech and Italian. The reasons for the decrease of the number of members of national minorities can be found, although not exclusively, among the following:

- a) consequences of the war waged in Croatia between 1991 and 1995;
- b) their territorial dispersion, which contributes to the weakening, and eventually breaking of ties within one national minority;
- c) movement of population to cities/towns and urbanization which causes the weakening of village communities, breaking of ties based on an indigenous economic activities and breaking of ties with minority cultures;
- c) population migration, not only from villages to towns, but also the interregional and overseas migration, especially during and immediately after the war of 1991–1995;
- d) higher level of education which allows higher social mobility of members of national minorities;
- e) mixed marriages as an institute that polarizes the ethnic component of the society – this is very typical for members of the Serbian national minority who live in cities/towns and in areas that were not affected by the war;
- f) weakening of cohesive elements of the ethnicity which are being replaced by identification with one's professional or social group or regional affiliation.⁹

The official data on ethnic composition of population point to a significant decrease in the number of certain national minorities. The Serbian national minority experienced the biggest decrease: the number of 581.663 citizens (1991) was reduced to 201.681 (2001) citizens. This means that the number of Serbs was decreased by almost two-thirds in comparison to their number in 1991. However, other national minorities also experienced a reduction of number of their members. The number of Bosniacs and Muslims was decreased by 3.000, Hungarians from 22.355 to 16.595, Montenegrins from 9.724 to 4.926, etc. The conclusion can be drawn that the reduction of members of national minorities was primarily caused by emigration during the war. This is undoubtedly true in the case of Serbs, although there are no precise data on how many members of the Serbian national minority emigrated during 1990s.

On the other hand, the number of Croats registered in the two censuses leads to the conclusion that a large number of members of national minorities changed their ethnic affiliation. Namely, we can assume that the majority of them declared that their nationality was Croatian. This can be concluded to a certain degree on the basis of increase of the number of Croats between the two censuses. While in 1991 there were 3.736.356 Croats, by 2001 their number grew to 3.977.171, which is an increase of 240.815 people. Such an increase cannot be explained solely by an increased birth rate among the Croats in the ten

⁸ By this we mean the members of Serbian, Macedonian, Bulgarian and Russian national minorities.

⁹ People who live in Istria, Lika, Kordun, Dalmatia, Slavonia, Gorski Kotar...

year period at issue (1991–2001), given that negative birth-rate prevailed during that period.¹⁰ This increase of ethnically declared Croats can be explained in part by immigration of Croats from Bosnia and Herzegovina and diasporas during the 1990s. Their increased number can also be explained by the fact that a number of Croatian citizens who come from mixed marriages (Croatian-Serbian, Croatian-Bosniac...) declared themselves as Croats in the 2001 census. At the same time, we should not forget that in the 1991 census as many as 106.141 persons declared themselves to be Yugoslavs,¹¹ and such an option was not provided in the 2001 Census. Apart from the above mentioned reasons for the increase in the number of Croats in the 2001 census, we should not exclude the possibility that a certain number of Serbs, Bosniacs-Muslims, Hungarians, Montenegrins and other members of national minorities changed their national affiliation in the period between the two censuses. One of the most important consequences of the significant decrease in the number of members of national minorities in Croatia is a growing public awareness of the need to set up additional mechanisms for the protection of national minorities. This awareness already brought to enactment of the Constitutional Act on the Rights of National Minorities in 2002 and development of a new pro-minority policy. The intention behind all the measures is to stop any further decrease in the number of members of national minorities and to enable the completion of the process of return of refugees, which will inevitably lead to an increased number of members of national minorities, especially of the Serbian national minority. The Head of the Central Bureau of Statistics of the Republic of Croatia explained that the 2001 Census did not encompass people who had lived away from Croatia for more than one year. He claimed that the Census was carried out in accordance with the United Nations recommendations. Thus, the refugees from the Republic of Croatia were not registered in their former homeland, but rather in the country in which they resided at the time. On the other hand, the Republic of Croatia had the international obligation to register refugees from other parts of former Yugoslavia who resided in its territory, and this caused a further increase in the number of Croats and a decrease in the number of members of national minorities.¹²

HUMAN RIGHTS AS A FRAMEWORK FOR REALIZATION OF NATIONAL MINORITY RIGHTS IN CROATIA

The legal system of the Republic of Croatia ensures a high degree of protection of human rights and fundamental freedoms. Basic provisions of the Constitution of the Republic of Croatia define human rights as the „highest values“. Chapter III of the Constitution is dedicated to fundamental freedoms and human rights and rights of citizens, which in more than 55 provisions guarantees the exercise of these rights regardless of race, color of skin, gender, language, religion, political or other belief, national or social origin, property, birth, education, social status or other characteristics. It is guaranteed in the Constitution that all citizens are equal before the law and that members of all national minorities have equal rights.¹³

The Constitution guarantees furthermore personal and political freedoms and rights, as well as right to live and to be free. It prohibits maltreatment, forced labor, incitement to war, resort to violence or national, racial or religious hatred. Apart from personal and political freedoms and rights, fulfillment of economic, social and cultural rights is also guaranteed:

¹⁰ According to approximate demographic estimates, more people died during that period (approximately 45.000 more) than were born.

¹¹ Although in the 1991 Census the option to declare oneself as Yugoslav in the formal legal sense was not considered to be a national affiliation, it actually did function as a national affiliation.

¹² See: Report of the Republic of Croatia on Implementation of Framework Convention for Protection of National Minorities, the Government of the Republic of Croatia, Zagreb, 2004, pp. 45-47.

¹³ The Constitution of the Republic of Croatia (consolidated text), Collection of Laws (edited by Mato Arlović), Narodne novine, Zagreb, 2003, pp. 3–53.

right of ownership, inheritance, entrepreneurial and market freedoms, right to work and to enjoy freedom to work, right to social security, social insurance and health care, as well as right to strike. The equality before the law and prohibition of discrimination based on race, color of skin, gender, language, religion, political or other belief, national or social origin, property, birth, education, social status or other characteristics is especially guaranteed by criminal laws.

In the context of protection of national minority rights, the Constitutional Act on the Rights of National Minorities in Croatia plays a significant role in realization of a general framework of protection of specific minority rights, including the issue of participation of minorities in decision-making process on the local, regional and state level. Rights of members of national minorities to use a minority language at the public and official level as well as education in minority languages are elaborated in two specific acts that regulate this topic.

Croatia has made enormous efforts in order to establish a legal system for protection of human rights as indispensable components of functioning of a democratic system. As a result of these efforts, Croatia has become a member of almost all international instruments on the global and regional level concerning human and minority rights. In consideration of the fact that Croatia used to be a constituent part of another state and that it gained its independence in 1991 after dissolution of the Socialist Federative Republic of Yugoslavia, the Republic of Croatia committed itself to many agreements concerning this sphere by the on the basis of the Succession Agreement. Croatia has also concluded many other significant agreements concerning human and minority rights and it accepted furthermore the majority of controlling mechanisms as envisaged by international agreements in this field as well as all newly adopted additional protocols on the strength of which the sphere of protection of these agreements has been broadened.¹⁴

With a view of approaching the European Union, the Government started few years ago a process of re-examining the legislation in order to modernize it in accordance with international standards in the field of protection of human and minority rights. After that, a number of significant alterations were made, especially in the field of protection of national minorities. There were also changes in the field of criminal law and criminal proceedings, in the field of economic and social rights and the Constitutional Act on the Rights of National Minority was adopted. The admission of Croatia into the Council of Europe as well as the ratification of the European Convention on Human Rights and the additional Protocols brought in Croatia a new element of protection of human rights and secured the process of bringing the national legislation into harmony with international standards. Before the ratification, Croatia carefully examined compatibility of the national legislation with the standards of the European Convention on Human Rights. As a result, certain alterations were made in laws right before or after the ratification of the Convention. Taking general measures, which include change of legislation and practice, forms an important part of implementation of the European Convention on Human Rights and Freedoms. These measures, on the other

¹⁴ The fact that Croatia joined the Framework Convention for the Protection of National Minorities of the Council of Europe is very important for realization of national minority rights. After the Republic of Croatia submitted the first State report on implementation of the Framework Convention for the Protection of National Minorities on 16 March 1999 (the deadline was on 1 February 1999), the Advisory Committee of the Council of Europe began to review the State report on its 4th meeting held from 25th to 28th May 1999. In the context of the reviewing, a delegation of the Advisory Committee visited Croatia from 23rd to 26th October 2000, in order to ask for additional information on implementation of the Framework Convention from the Government representatives, non-governmental organizations and other independent sources. In June 2000, the Government gave answers to the additional questions of the Advisory Board concerning the Report of the Republic of Croatia on implementation of the Framework Convention for the Protection of National Minorities. The Advisory Board gave then its opinion on Croatia at the 10th meeting on 6 April 2001. In April 2004, Croatia drafted another report which shows a significant improvement that was made in realization of national minority rights.

hand, are important in execution of final verdicts of the European Court for Human Rights, which were passed in cases against the Republic of Croatia.¹⁵

Respect of human rights of members of certain national minorities, especially Serbs, Bosniacs and Roma, is still conditioned by the legacy of war and discriminatory policy from the 1990s. Discriminatory legal regulations have mostly been changed by new legal solutions, but in certain fields of realization of the rights they often do not have any impact on improvement of the situation.

Problems of discrimination can still be encountered in recognition and realization of a broad spectrum of the so-called acquired rights, such as right to status, property, pension and social rights, labour code, tenancy rights, compensation of victims of terrorist acts, etc. This discrimination affects to the largest degree citizens of Serbian nationality in the category of refugees, displaced persons and persons who lived in the areas under the UN protection during the war.¹⁶ One of the basic problems that cause such a discriminatory attitude towards the mentioned category of citizens, and therefore affect their survival and/or their sustainable return to Croatia, is the fact that judiciary and civil-service bodies, unlike the relation towards members of the majority nation, do not recognize them the fact of war¹⁷ as legally relevant in realization and recognition of their acquired rights. Consequently, some categories of the citizens did not experience the war as a form of «greater force» and thus legal regulations designed to be implemented under normal (peaceful) conditions¹⁸ were applied restrictively in their case (especially in the case of members of the Serbian national minority). According to Human Rights Watch „the key human rights issues determining Croatia’s path to Europe are refugee return and accountability for war crimes“.¹⁹

The problem of protection of human rights of members of national minorities is mostly observed in case of Roma, who are subjugated to discrimination in Croatia as far as realization of a broad spectrum of rights is concerned, such as rights to citizenship, provision of housing, health care, education, employment, access to the media, etc. According to the

¹⁵ In this context, following provisions were passed or altered:

a) Article 63, which was included in the Constitution in the Chapter on the Constitutional Court of the Republic of Croatia, stipulates that the Constitutional Court shall initiate proceedings in response to a constitutional complaint even before all legal remedies have been exhausted in cases when the court of justice did not decide within a reasonable time about the rights and obligations of the party. This provision rendered possible the establishment of a legal means for length of civil and criminal proceedings. The European Court recognized efficacy of this legal system.

b) Article 292 of the Family Law stipulates a time limit of three months at the most within which the court has to take measures to establish paternity. If the client fails to appear at court or refuses to do so, the court delivers a judgment on how important that fact is. (Case “Mikulić vs. Croatia”, violation of the right to respect family life).

c) Article 10 of the Law on the Responsibility for the Damage Caused by Terrorist Acts and Public Demonstrations (Official Gazette, No.117/03), regulates that the court will reinstitute the proceedings that were stayed. The Law on Responsibility of the Republic of Croatia for the Damage Caused by Members of the Armed Forces and Police during the Homeland War has also been enacted (Official Gazette, No.117/03). Article 4 of this Law regulates reinstatement of proceedings that were stayed and thus the European Court for Human Rights established violation of the right to access to court in the case “Multiplex vs. Croatia”.

¹⁶ There are no major problems over assuring the rule of law and respect for fundamental rights. However, Croatia needs to take measures to ensure that the rights of minorities, in particular of the Serb minority, are fully respected. Croatia should speed up the implementation of the constitutional Law on National Minorities and accelerate efforts to facilitate the return of Serb refugees from Serbia and Bosnia and Herzegovina. European Commission’s Opinion on the application of Croatia for membership of the European Union, 20 April 2004, www.vlada.hr

¹⁷ Homeland War, 1991–1995.

¹⁸ Report about Implementation of Framework Convention for Protection of Rights of National Minorities in Croatia 1999–2004, Center for peace, law assistance and psychological assistance Vukovar, 2004, p. 7.

¹⁹ Human Rights Watch: New government must address refugee return and war crimes, 9 January 2004, www.reliefweb.int

reports of the European Roma Rights Center, high levels of discrimination and violence against Roma remain a serious problem in Croatia while legal protection against discrimination and racially-motivated violence is inadequate.²⁰ Official adoption of the National Programme for Roma by the Croatian Government in October 2003 was a result of a very long process that lasted two to three years. First suggestions to adopt such a program came from the Government itself. The program has well defined goals, measures, means and areas of responsibility. It is based on human rights and respect of the Roma (Bayash) cultural identity. The Programme was formed as a result of a long process of consultations in which state and local authorities as well as representatives of the Roma took part. It is important to make a regular analysis of the results obtained by the Program in order to assess whether the measures produce good results or need to be modified.

The state authority in the Republic of Croatia is established on the principle of distribution of powers into legislative,²¹ executive and judicial power. The right of legal protection is guaranteed by the Constitution. However, in the recent past, „the courts were subjected to political influence, inefficiency of bureaucracy, insufficient funding and there were a great number of unsolved cases“,²² although political pressure weakened in time. There were quite a number of objections to the work of the administration of justice regarding discrimination, i. e. different approach to cases depending on ethnic affiliation of the involved party, which is corroborated by the OSCE report from 2002 on prosecution of war crimes before the national courts. The report states that despite certain improvement, “war crime prosecution in Croatia in 2002 continued to be affected by procedural and substantive problems, particularly related to the national origin of both defendants and victims“.²³

While the return of displaced ethnic Croats has almost come to an end, the problem of refugees and displaced persons who are members of national minorities (mostly members of the Serbian national minority) still represents the most serious problem of violation of human rights of members of national minorities. In its opinion on Croatia from April 2004, the European Commission emphasizes that implementation of the provisions to provide housing solutions to refugees and internally displaced persons who wish to return has to be accelerated and improved. The Commission calls upon the Government to make additional efforts as regards the sustainability of the returns as these concerns the improvement of the economic situation and the general atmosphere in the areas of return.²⁴

The sustainability of return, especially of members of national minorities, and all the issues concerning this process are quite complex and they are still encounter a number of political, legal and economic barriers. However, there is more and more political will to overcome these barriers.²⁵ The biggest problems in creating conditions for the return of refugees and displaced persons represent a slow process of repossession of private property, lack of remedies for former holders of tenancy right who lived in socially owned houses and status issues, while a considerable improvement has been achieved in solving requests and providing assistance in reconstruction of houses and apartments damaged or destroyed during the war. In the second half of 2002, unlike in the previous period, a significant number of decisions on eligibility for State-provided housing reconstruction were issued for Croatian

²⁰ Written Comments of the European Roma Rights Centre Concerning the Republic of Croatia – For Consideration by the United Nations Committee on the Elimination of Racial Discrimination at its 60th Session, March 4-5, 2002, www.errc.org/publications/indices/croatia

²¹ Article 4 of the Constitution of the Republic of Croatia.

²² Country Report on Human Rights Practices – US Bureau of Democracy, Human Rights and Labour, Report on respect of human rights in Croatia for 2003, February 2004, p. 1.

²³ OSCE Mission to Croatia: Background Report: Domestic war crimes trials 2002, February 2004, p. 1.

²⁴ European Commission’s Opinion on the application of Croatia for membership of the European Union, 20 April 2004, pp. 26 and 29, www.vlada.hr

²⁵ The Government formed a special commission which works intensively on the return of Serbian refugees. Apart from that, though it is a result of political settlement, the agreement on cooperation between the Government and SDSS concluded in 2003 also contributed to improvement of atmosphere and conditions for return of Serbian refugees and displaced persons.

Serb beneficiaries²⁶, and this process continued in the next period as well. In 2003, the rate of solving the claims of members of the Serbian national minority for the State-provided housing reconstruction was accelerated to a considerable degree.

As the reconstruction of houses owned by ethnic Croats is almost finished, some 75% of reconstruction beneficiaries in 2003 were Serbian returnees. It is expected that in 2004 this number will increase to 80% and the reconstruction of all damaged houses and apartments will be finished by the end of 2005.²⁷ The Law on the Responsibility for Damage Caused by Terrorist Acts and Public Demonstrations and the Law on Responsibility of the Republic of Croatia for the Damage Caused by Members of the Armed Forces and Police during the Homeland War were adopted in July 2003. Thus, for the first time after 1996, there was a regulation of compensation for the damage and realization of rights to reconstruct houses and apartments owned by members of the Serbian national minority that were destroyed during the war in the areas out of war activities, which was not covered by previous legal regulations on reconstruction.²⁸

Status rights, such as right to the Croatian citizenship, represent another problem of refugee members of national minorities. The Act on Citizenship contains discriminatory regulations on acquisition of Croatian citizenship. All ethnic Croats, regardless of the place of their residence before the independence of the Republic of Croatia, are entitled to acquire Croatian citizenship, while members of other nationality, in case they did not acquire Croatian citizenship earlier, can realize this right if they meet conditions, but only through much more complex procedures regardless of their legal residence in Croatia for longer period of time. Apart from a number of refugees (members of the Serbian national minority), these discriminatory regulations also affected members of other national minorities, such as Roma, Bosniacs and Albanians.²⁹ Thus, for instance «Romany non-governmental organizations estimate that some 25% of the Roma do not have papers on citizenship».³⁰ Hereby, it is worth mentioning that the National program for Roma envisages a number of measures for improvement of the position of this most vulnerable national minority. The citizenship is a precondition for exercise of a great number of rights, such as right to employment, social welfare and other.

POLICY OF PROTECTION OF NATIONAL MINORITIES IN CROATIA

In the field of legal regulation of the position of national minorities Croatia has reached a high level of normative preconditions for protection of their rights. At the end of 2002, the Constitutional Act on Rights of National Minorities was adopted, all international conventions concerning national minority rights were ratified, a number of implementary regulations from this sphere were enacted and several interstate agreements that regulate mutual protection of national minorities were signed. In the past three years, until then a quite unfavorable status of majority of national minorities started to improve. It is to be expected

²⁶ OSCE, Report on status, No. 11, November 2002.

²⁷ The Government of the Republic of Croatia: Report on return of refugees and displaced persons from 2000 to the end of September 2003. www.vlada.hr

²⁸ As by 2003 the Government had not shown too much interest to regulate this issue, it seems that the adoption of the Law in July 2003 ensued primarily from the judgment delivered on March 2002 by the European Court for Human Rights. The Court established that by repealing Article 180 of the Civil Obligations Act, the Government of the Republic of Croatia violated the regulation of the European Convention for Protection of Human Rights which stipulates the right to access to court and to fair trial. (European Court for Human Rights, the case “Kutić vs. Croatia”, No. 48779/99, judgment from 1 March 2002)

²⁹ Report about Implementation of Framework Convention for Protection of Rights of National Minorities in Croatia 1999–2004, Center for peace, low assistance and psychological assistance Vukovar, 2004, p. 12.

³⁰ Country Report on Human Rights Practices – US Bureau of Democracy, Human Rights and Labour, Report on respect of human rights in Croatia for 2003, February 2004.

that, as Croatia proceeds in direction of European integration with all the positive social processes that will ensue from it, the position of all Croatian citizens as well as of members of national minorities will improve to a considerable degree.

Despite post-war and transitional difficulties, Croatia has managed to develop a complete model of protection of national minorities on the national, regional and local level and to adjust it to European experiences and standards. It is important to emphasize that the model of cultural autonomy renders possible for national minorities to integrate into the Croatian society and not to assimilate. This model secures preservation and development of identity of members of national minorities (ethnic, cultural, linguistic, religious), either individually or in form of associating with other citizens.

According to the adopted model of cultural autonomy, most of ethnic rights of members of national minorities (education, science, libraries, protection of monuments) are exercised by means of state institutions that are responsible for certain spheres of social activities, by which the principle of integration of members of national minorities into the Croatian society is fulfilled as well as preservation of their cultural and national identity. Other ethnic rights (informing, publishing, amateur cultural art groups) are secured through activities of non-governmental organizations of national minorities which assures in addition protection from assimilation. The model also enables and stimulates development of relations between members of national minorities and the parent countries of their nationality which fosters cultural and linguistic development.³¹

Croatia is one of those countries that regulated the position and rights of national minorities with a special act – the Constitutional Act on Rights of National Minorities. The first act concerning protection of national minorities was adopted in 1991, but a number of revisions and amendments of the act were made in the subsequent years.³²

Adoption of the new Constitutional Act on Rights of National Minorities, which also formed an obligation of the Republic of Croatia undertaken by the Stabilization and Association Agreement with the EU, brings an end to establishment of a complete normative framework for realization of national minority rights. Under the Constitutional Act, the Republic of Croatia ensures realization of special rights and freedoms of members of national minorities enjoyed by them individually or together with other persons belonging to the same national minorities, and when being determined by this Constitutional Act or special acts, together with members of other national minorities, which is stipulated. This especially refers to:

- usage of own language and script, in private and public use, and in official use;
- education and schooling in the language and script they are using;
- usage of own insignia and symbols;
- cultural autonomy by means of keeping, developing and expressing their own culture, and preserving and protecting their cultural material heritage and tradition;
- right confessing own religion and founding of religious communities together with other members of this religion;
- access to media of mass communication and performing of actions of public information (receiving and distribution of information);
- self-organizing and uniting for realization of common interests;
- representation in representation bodies on national and local level, and in administration and judicial bodies;
- participation of members of national minorities in public life and administration of local affairs by means of Councils and representatives of national minorities;

³¹ Tatalović, Siniša, *Ljudska prava u Hrvatskoj – opterećenost problemima nacionalnih manjina*, in *Između autoritarizma i demokratije*, (ed. Vujadinović Dragica), CEDET, Beograd, 2004, p. 439.

³² The Constitutional Act on Human Rights and Freedoms and Rights of Ethnic and National Communities or Minorities in the Republic of Croatia, Official Gazette, No. 65/1991, 27/1992, 34/1992 – consolidated text, 51/2000, 105/2000 – consolidated text.

– protection from every act that endangers or may endanger their existence and exercise of rights and freedoms.³³

Although the model of cultural autonomy and political representation of national minorities in the Republic of Croatia may be rated favorably for its structure, still there are a number of problems in its implementation, concerning:

– insufficient level of competence and/or readiness of certain bodies of the state administration to implement the Constitutional Act;

– insufficient interest of certain bodies of local and regional self-government to exercise the rights of national minorities;

– a certain degree of apathy and/or insufficient motivation of members of national minorities or their organizations and representatives to improve their position.

To overcome these problems as well as to eliminate prejudices of a part of the population against certain national minorities are top priorities in improving the status of national minorities in Croatia.

Education and schooling of members of national minorities is executed in pre-school institutions, primary and secondary schools and other school institutions with teaching in the language and script they are using, under provisions and in the way determined by the special act on education and schooling in the language and script of national minorities.³⁴

Under the Constitutional Act, members of national minorities, in accordance with the special law, also exercise the right to official use of their language and script. Likewise, they can have trans-border contacts and cooperate with relevant institutions of the parent country of their nationality in issues concerning exercise of their minority rights.³⁵ As far as realization of political interests is concerned, the Republic of Croatia guarantees to members of national minorities the right to be represented in the Croatian Parliament.³⁶ Apart from that, the Republic of Croatia also guarantees to members of national minorities the right to representation in bodies of local self-government and representative bodies of units of regional self-government.³⁷

Article 15 of Chapter III of the Constitution of the Republic of Croatia stipulates that aside from the general electoral right, the special right of the members of national minorities to elect their representatives into the Croatian Parliament may be provided by law. This provision was included into the Constitution of the Republic of Croatia when it was amended in November 2000.³⁸ The provision is exceptionally important in terms of guaranteeing and securing political rights of national minorities in Croatia as, apart from general and equal electoral right, it recognizes on constitutional and legal level a special and unequal minority electoral right to national minorities.

Despite the fact that the Constitution of the Republic of Croatia guarantees a general equality of all before the law, regardless of race, color, gender, language, religion, political or other belief, national or social origin, property, birth, education, social status or other characteristics, the legislator supported a view according to which, in order to secure equality of the majority nation and national minorities, there was a need in Croatia to secure in normative terms political representation of national minorities in the highest representative body of the state. Article 15 of Chapter 3 of the Constitution of the Republic of Croatia stipulates explicitly the principle of positive discrimination in favor of national minorities.

The Croatian legislation uses the technique of pre-reserved places for members of national minorities in representative bodies and other bodies of the Government and bodies of local and regional self-government. There is a difference in the number of those places

³³ The Constitutional act on national minority rights, Official Gazette, No. 155/2002, Article 7.

³⁴ The Constitutional act, Article 11.

³⁵ The Constitutional act, Article 16.

³⁶ The Constitutional act ..., Article 19.

³⁷ The Constitutional Act ..., Article 20.

³⁸ Change of the Constitution of the Republic of Croatia, Official Gazette, No. 113/2000.

according to the proportion of representation of a national minority in the overall population of the Republic of Croatia or the local community.³⁹

At the last parliamentary elections in 2000, and that was the case at the 2003 elections, this model was applied by a special electoral registration for national minorities, by which members of national minorities were given the right to make a choice between general candidate lists or candidate lists of their national minority. This electoral procedure was discriminatory for members of national minorities in comparison to all the elections held in the past when they could vote for the general and minority candidate lists. Due to obvious possibilities of manipulation with votes of the electoral body constituted by members of national minorities, an issue is raised over legitimacy of the principle of positive discrimination in the electoral process. Thereby, we should refer to the generally accepted standpoint: it is legitimate to provide for application of the positive discrimination principle in normative terms only for the period necessary to overcome causes of the situation which have led to the need of its inclusion into the electoral and legal system of the country. Is political representation of national minority still necessary in Croatia on the strength of constitutional and legal norms, by determining the pre-reserved number of places in representative bodies for members of national minorities? There is still no unambiguous answer to the question.⁴⁰ What we can state at the moment is that a legal intervention, in form of stipulating legally binding right of national minorities to political representation in the Croatian Parliament, will be needed until the Croatian society reaches that level of development when there will be no fear of political marginalization of non-Croats in the highest representative body of the Republic of Croatia.⁴¹

Table 4: The results of the 2003 elections of representatives of national minorities to the Croatian Parliament

Electoral unit for minority (-ies)	Total number of voters	Voted	%	valid voting papers	%	number of votes of the elected candidate	%
Serbs	222.769	47.610	21,37	46.126	96,88	25.773 †	22,16
Hungarians	10.366	4.204	40,56	4.080	97,05	1.714	42,01
Italians	12.520	6.051	48,33	5.849	96,66	4.669	79,83

³⁹ In protection of the electoral right of minorities on the national level, the Constitutional Act on Rights of National Minorities recognizes two groups of minorities: those that in the total amount of population participate with more than 1.5% and those whose number is less than 1.5% in the total amount of population of Croatia. The Serbian national minority, which participates with more than 1.5% in the total amount of population, has the right to be represented in the Croatian Parliament with at least one and at most three representatives. Other minorities enjoy the right to have five representatives altogether. The Constitutional Act does not stipulate the right of members of national minorities to enjoy double electoral right and it is highly unlikely that such a provision will be incorporated in future electoral laws. The electoral law, on the strength of which the last elections at the end of 2003 were conducted, does not envisage inclusion of that provision.

⁴⁰ As the factual basis for a discussion we could use statistical data on the number of voters/members of national minorities who voted at the 2003 parliamentary elections for minority candidates. The percentage varied from 21,37% for members of the Serbian national minority, over 40,56% for members of the Hungarian national minority to 48,33% for the Italian national minority. See table 4.

⁴¹ Omejec J., *Uloga lokalne samouprave u multikulturalnim pitanjima i međuetničkim odnosima u Republici Hrvatskoj*, Hrvatski pravni centar (Croatian Legal Center), Zagreb, 2001, p. 27.

Czechs and Slovaks	7.386	3.357	45,45	3.257	97,02	1.277	39,21
Austrians † †	8.908	1.933	21,70	1.854	95,91	265	14,29
Albanians † † †	21.930	4.726	21,55	4.587	97,06	2.711	59,10

† The majority of votes (25.773) in the electoral unit in which three representatives of the Serbian national minority were voted won Voislav Stanimirović. The other two elected representatives were Milorad Pupovac with 25.210 votes and Ratko Gajica with 16.092 votes.

† † In this electoral unit, members of Austrian, Bulgarian, German, Jewish, Polish, Romany, Romanian, Russian, Russian, Turkish, Ukrainian and Vlach national minorities voted one representative and the elected representative was Nikola Mak, a member of German national minority.

† † † In this electoral unit, members of Albanian, Bosniac, Macedonian and Slovenian national minorities voted one representative and the elected representative was Šemso Tanković, a member of Bosniac national minority.

The important issue regarding the right of national minorities to political representation in local representative bodies is: With regard to the provision of the Constitutional Act, on the strength of which members of national minorities enjoy the right to representation in the bodies of local and regional self-government in proportion to their share in the total population size of a certain unit of local and regional self-government, can then the electoral model of pre-reserved places for members of national minorities in the local representative bodies be considered as the best one? The provision of the Constitutional Act at issue is not appropriate in some degree for the level of local self-government because it is not in line with the European standards of protected rights of national minorities, especially in the life of local communities. Namely, the basic idea of promotion and protection of rights of national minorities on local and regional level lies in assuring minority communities their right to their own identity, along with all the rights that ensue from it. Therefore, political influence of members of national minorities on decision-making process in the local representative body should be confined only on those issues concerning the rights of national minorities. In other affairs that presuppose „general“ political presentation in a county, town or municipality, members of national minorities should participate as citizens of the relevant county, town or municipality, regardless of their national affiliation. This should at the same time lead to the creation of conditions for implementation of civil concept of administration at local and regional level. Contrary to this, by provision of the right of members of national minorities to proportional representation in representative bodies of local self-government in Croatia, this principle is undermined because minority representatives in local representative bodies have actually a „general“ mandate, just like all the other councilors.⁴² In this way, the purpose of their pre-secured political presentation in a body of representative is lost as they, apart from their dealing with minority rights in the town/municipality council as equally as all the other councilors, cannot have efficient influence on the decisions of the majority when it concerns issues regarding national minority rights and that is because their mandate of a „general“ councilor does not secure them any additional right in dealing with minority issues in comparison with non-minority majority in the town/municipality council.

⁴² The electoral law for local levels also has considerable flaws just as the Law on Election of Representatives, and especially in provisions concerning the election of minority representatives. The Law stipulates inexistence of the double right to vote, which, in respect of the electoral model, forms a political declaration and not an actual provision. Namely, the proportional electoral model applied in Croatia for elections of local and regional self-government highlights the role of political parties, and additional elections for minority representatives are held only if on the list of candidates of political parties, which take part in distribution of mandates in the body of representative of local or regional self-government, no minority representative is nominated. In this way there is a possibility that the majority elects those who will represent the minority and thus the role of minority non-governmental organizations and minority political parties is undermined.

With the aim of promotion, preservation and protection of status of national minorities in the society, members of national minorities elect their representatives, in the way and under the conditions determined by the Constitutional Act, so that they can participate in public life and administration of local affairs through Councils and representatives of national minorities in units of local and regional self-government. In the units of self-government in the territory of which members of national minorities participate with at least 1,5% in the total population of the unit of self-government, in the units of local self-government in the territory of which live over 200 members of an individual national minority and the in units of regional self-government in the territory of which live over 500 members of a certain national minority, members of each such national minority can elect National Minorities Council of. In the unit of self-government where at least 100 members of a national minority live, a representative of national minorities is elected for the territory of the relevant unit of self-government.⁴³ Unlike the election of minority councilors, whom political parties are also authorized to nominate, in the election of members of the National Minority Council political parties are not entitled to nominate their members. The Constitutional Act refers exclusively to associations of national minorities and groups of citizens-members of the relevant minority as authorized nominees for this procedure.⁴⁴

As an important novelty in the Constitutional Act, national minority councils enjoy the right:

- to propose to the bodies of the units of self-government measures for improvement of situation of the national minority in the country or on some of the regions, including giving proposal drafts of general legal acts by means of which issues of importance for the national minority are being regulated to the bodies passing them;

- to nominate candidates for offices in bodies of the state administration and bodies of the units of self-government;

- to be informed on every issue that is to be discussed by the committees of the representative body of the unit of self-government, and considers the situation of the national minority;

- to give opinions and proposals to the programs of radio and television stations on local and regional level aimed for national minorities or on programs related to minority issues.⁴⁵

The legislator avoided a possibility of establishment of minority self-government on national level, but there is a possibility of creation of coordination of national minority councils. Free association of councils of different national minorities in one unit is also allowed within the coordination, as well as association of councils of one national minority, either in several local units or on national level. However, as there is no possibility to establish minority self-government on national level, there is also no possibility to constitute a National Minorities Council as a legal entity that would have authority to represent the national minority before the Government. Units of self-government are obliged to secure preconditions for the work of councils and representatives of national minorities in the territory under their authority. Apart from that, the means that the National Minorities Council realizes from its property are from donations, gifts or inheritances. The means that the Council acquires from the state budget or budget of the unit of self-government can be used exclusively for purposes set by the budget and the law. As far as the means acquired from their own resources are concerned, they can be used exclusively for activities and affairs of importance for the national minority set in the program of work of the National Minority Council.

⁴³ The Constitutional Act ..., Article 24.

⁴⁴ Candidates for members of National Minorities Council or candidates for representatives of national minorities can be nominated by association of national minorities or at least 20 members of national minorities from the territory of the community, or 30 from the territory of the city of 50 from the county.

⁴⁵ Constitutional Act ..., Article 31.

In the units of self-government in which the minority has no basis to establish a National Minorities Council as the number of the minority members is less than the number determined by the Constitutional Act, but in the territory of the unit live at least 100 members of the national minority, for the territory of such unit of self-government a representative of national minorities is elected. The representative, as well as the National Minorities Council, is being elected in accordance with the electoral act. The elected representative has the authority to represent the minority before the bodies of the unit of self-government and he/she has the commitment to coordinate and promote common interests of the national minority.⁴⁶ The first elections for National Minorities Councils were held on 18 May 2003 and on 17 February 2004. The very fact that the elections were held and that the councils were established means that the Republic of Croatia has entered a new phase of the protection of national minorities rights. Even though a number of problems occurred during the first elections for Councils and representatives of national minorities and even though there was a low poll, still a considerable number of councils and representatives were elected which constitutes a good start for improvement of realization of national minority's rights on local and regional level. It is important to emphasize that the establishment of a council forms no obligation, but a right which members of every national minority may exercise.⁴⁷

Table 5: Data on the total number of voters and turnout for all national minorities at the elections for the National Minorities Councils and representatives held on 18 May 2003 and 15 February 2004

Elections of national minorities councils				Elections of national minorities representatives		
	Total number of voters	Voters who voted	%	Total number of voters	Voters who voted	%
Counties 18.05.03	320.793	37.752	10,21	4.992	790	15,83
Counties 15.02.04	137.545	8.733	6,35	2.452	261	10,64
Towns 18.05.03	132.991	14.422	10,84	1.444	353	24,45
Towns 15.02.04	48.859	4.392	8,99	2.101	145	6,90
Municipalities 18.05.03	88.615	19.607	22,13	115	27	17,42
Municipalities	12.695	2.056	16,20	28	6	21,43

⁴⁶ The Government determined that national minorities are entitled to establish councils in 16 counties and 262 units of local self-government and that they are entitled to elect minority representatives in all counties and in 40 towns.

⁴⁷ The Government of the Republic of Croatia announced on 16 April 2003 the elections for National Minorities Councils and national minority's representatives and the elections were held on 18 May 2003. A number of minority associations complained that there was a short time limit from the announcement to the elections (considering the fact that the Easter holidays coincided) and that members of national minorities were not informed enough on the role of the councils. The Government reached decision on 11 June 2003 on authorities for establishment of a council. As only less than half of the Councils to which minorities are entitled were elected at the first elections, the Government of the Republic of Croatia announced additional elections for national minorities' councils and national minorities' representatives. These elections were held on 15 February 2004 and additional 291 councils and 101 representatives of national minorities were supposed to be elected at the elections. However, only one third of potential members of the council used the right to be nominated, so that 60% of possible number of the councils were elected at the first and the additional elections, which is considered a good result, considering the fact that these were the first elections and that members of national minorities were not informed enough with the role of the councils in decision-making process.

According to the Constitutional Act on the Rights of National Minorities, one of newly established institutions is also the National Minorities Committee⁴⁸ which is entitled to propose to the Parliament and the Government to consider some issues of importance for the national minority, and particularly the implementation of the Constitutional Act and special acts by means of which minority rights and freedoms have been regulated. The Committee also enjoys the right to give opinions and proposals on programs of public radio and television stations aimed for national minorities and on treatment of minority issues in programs of public and radio stations and other means of communication. In the regions that are traditionally or predominantly inhabited by national minorities, the Committee may propose implementation of economic, social and other measures in order to preserve their existence in that regions. Furthermore, the Committee has the right to request and obtain from the state authorities and authorities of the local and regional self-government data and reports necessary for considering issues from their scope. In this matter, the Committee may call and request the presence of representatives of state authorities and authorities of the local and regional self-government, competent for the issues in scope of the National Minorities Committee. The Act stipulates that the Committee cooperates with the competent bodies of international organizations and institutions dealing with issues of national minorities and competent bodies of parent countries of the members of national minorities with residence in the Republic of Croatia. The Committee has the authority to distribute the financial means ensured in the state budget for the programs of associations and institutions of national minorities. The users of the means submit to the Committee yearly reports on the expenditure of the means allocated to them from the state budget and the Committee submits reports on that matter to the Government of the Republic of Croatia and the Croatian Parliament.

OPINION OF THE EUROPEAN COMMISSION ON NATIONAL MINORITIES RIGHTS IN CROATIA

The Constitutional Act on the Rights of National Minorities, which was adopted by the Croatian Parliament on 13 December 2002, formed one of political obligations that Croatia had to fulfill as determined by the Stabilization and Association Agreement. Only when the Act was adopted, the path for Croatia was open to apply for the full membership of the European Union. The avis, i. e. Opinion on the application of the Republic of Croatia for the EU membership which the European Commission presented on the basis of the Governments answers to the EC Questionnaire, emphasizes the importance of adoption of this Constitutional Act as it sets domestic legal framework for minority rights in Croatia.⁴⁹ Representatives of the European Commission consider as particularly important the right of national minorities to be represented in the Croatian Parliament and they underline the fact that the number of national minorities representatives in the Parliament has increased from five, as set by the electoral law from 2000, to eight, which is guaranteed by the Constitutional Act and which was realized for the first time at the 2003 elections. The European Commission also emphasizes the right of national minorities to have representatives in

⁴⁸ The members of the Committee are being appointed by the Government for a period of four years in the following way: seven members from persons nominated by the National Minority Councils; five members from the group of persons prominent in culture, science, religion and other professions nominated by minority associations, religious communities, legal entities and citizens-members of national minorities. The members of the National Minorities Committee are also representatives of national minorities in the Croatia Parliament. The Constitutional Act ..., Articles 35 and 36.

⁴⁹ European Commission's Opinion on the application of Croatia for membership of the European Union, Commission of the European Communities, Brussels, 2004, pp. 24–29.

judicial and administrative representative bodies at the local and regional level. It is highlighted furthermore that Croatia has ratified all the Council of Europe conventions which it has signed, such as European Convention on Human Rights and Fundamental Freedoms, the Framework Convention for the Protection of National Minorities, the European Charter for Regional and Minority Languages, as well as the UN Convention on Civil and Political Rights. The legal framework of minority protection in Croatia also encompasses bilateral agreements on protection of national minorities concluded with Italy and Hungary. The European Commission finds as extremely important the fact that Croatia is preparing a bilateral agreement with Serbia and Montenegro on that subject.

In view of the European Commission, use of minority language and script as well as education of minority members in their mother tongue and script is correctly provided for. It is stated that members of national minorities in Croatia exercise their right to use their mother tongue officially on an equal basis on the territory of cities/municipalities and counties, if their share of population is at least one third or if so provided by international agreements. The Commission also evaluated favorably education of national minorities in their language and script and in particular funding (from the state budget or private resources) and the procedure of establishment of an educational institution. „The principles of equality and non-discrimination, protection of the national identity, social integration, freedom to establish educational institutions, educational programmes and curriculum and the provision of adequate teacher training appear to be incorporated in the Croatian legislation. These principles are consistent with the basic principles contained in the Council of Europe Framework Convention for Protection of National Minorities and the European Charter for Regional or Minority Languages.“⁵⁰

The avis also refers to the fact that until now some 60% of envisaged 471 minority councils with 6662 councilors have been elected and established. Elections for local minority councils were held twice, on 18 May 2003 and on 15 February 2004. However, the Commission concludes that the elections of the minority councils were prepared in short period, that they received low support from the Government and that they were characterized by low organization at the level of minority organizations as well. The Commission also point to the low turnout of 8% of total minority population at the additional elections for members of the national minorities councils held on 15 February 2004 in 15 counties, 64 towns and 132 municipalities.

The avis also mentions the right of national minorities to representation/proportional representation in representative bodies of local self-government. It is underlined that by-elections for representative bodies of local and regional self-government were only held on 15 February 2004 in those counties/municipalities where not enough minority representatives could be nominated through party lists.⁵¹ The Commission observes that under the Law on Local Elections of 2001, these elections should have been held already by September 2002, so that minority members could exercise their right to representation/proportional presentation in representative bodies.⁵²

⁵⁰ Ibidem, p. 25.

⁵¹ The Government of the Republic of Croatia called the total of 21 by-elections for representatives of national minorities and representatives of the Croatian people in representative bodies of local and regional self-government units. 19 by-elections were called for representatives of national minorities in representative bodies, and 18 by-elections were held, i.e. 94.74% since there were no candidates in the municipality Petrijanec (Varaždinska County). 22 candidates were to be elected, and 32 were nominated. Two candidates were to be elected in the by-elections for representatives of the Croatian people in municipality's Šodolovci and Markušica and two candidates were nominated. According to: www.gong.hr

⁵² The avis does not explicitly refer to the fact that representation of national minorities in representative bodies of local and regional self-government was regulated by previous constitutional provisions of the position of minorities, namely by the Constitutional Act on Rights of Ethnic and National Communities or Minorities of 1991, but that this right of representation of minorities, as stipulated by the then Constitutional Act, was never exercised.

The European Commission stated that with regard to minority representation in state administrative and judicial bodies, minorities are still underrepresented. The Government is being criticized for not having developed a program to remedy underrepresentation in the long term which is due to practical difficulties, the constraints of the state budget and employment of new personnel, and in the case of the judiciary, to the independence of courts in selecting judges. It is emphasized furthermore that a number of laws, such as the Law on State Administration, the Law on Courts, the Law on the State Judicial Council and the Law on the State Prosecutor's Office, still have to be brought in line with the Constitutional Act on Rights of National Minorities and that mechanisms of positive discrimination have to be incorporated in these laws. This observation is particularly significant and it will carry much weight in the process of screening of Croatian political institutions and harmonization of the Croatian legal framework with the acquis communitarian.

The Commission also leveled criticism against the situation of the media in Croatia and especially with regard to implementation of the Constitutional Act on Rights of National Minorities. Even though the Commission has established considerable improvement of coverage of minorities and issues of their concern both in electronic media and in the press, still it points to the need of implementation of provisions of the Constitutional Act that public radio and TV stations at national and local level have to produce and broadcast programs for minorities in their languages.

In the Commission's view, the Roma minority, though not large in population, deserves special attention. According to the 2001 census, the Roma population accounts for 0.21% of the population of the Republic of Croatia (9,463 persons). However, their estimated number is significantly higher, 30,000 to 40,000, as Roma often declare themselves as members of the majority group or do not register at all. The problem of citizenship is acute in the case of the Roma population as a considerable number of its members have no citizenship. The avis thus points to the fact that some members of the Roma community, as stateless persons, do not enjoy fundamental human rights. The Commission especially underlines the fact that foreigners cannot receive free legal aid in civil cases which is provided by the Bar Association to the Croatian citizens. Therefore, those members of Roma minority without citizenships do not enjoy the fundamental right of access to justice.⁵³

Being the minority with the largest number of citizens in Croatia, the position of the Serbian minority is quite distinct. The Commission refers to a drastic decrease of the share of the Serbian national minority in the last census,⁵⁴ as well as to relations between the Croatian State and the Serbian minority which are burdened by the legacy of the Homeland War (1991–1995) and the change of the status of the Serbian minority from a constitutive nation to a national minority. The problems of refugees, repossession of property and provision of housing care for former tenancy right holders are elaborated in particular. The Commission noted that in December 2003 the Government signed a political agreement with the elected representatives of the Serbian minority in the Croatian Parliament thus offering them a certain number of positions in the administration. Furthermore, the Commission noted that the existing institutions of the Serbian minority (political parties, schools, cultural organizations) can work freely without any political obstacles.⁵⁵ However, the Commission also observed

⁵³ Encouraged by the Council of Europe and OSCE, the Croatian Government adopted a National Program for Roma, in order to overcome the acute social exclusion of this minority. The Commission rated favorably the Program which addresses issues such as status, political presentation at local level, children's rights to education, health care, social welfare and housing. However, the Commission expresses its doubts whether the funds allocated to this initiative in the state budget will be adequate to implement the Program.

⁵⁴ Its share has decreased from 12.1% (the 1991 census) to only 4.5% (the 2001 census).

⁵⁵ The European Commission points to the fact that certain rights of the Serbian national minority, especially of its part living in the Danube Region, which was peacefully reintegrated under the sovereign control of the Croatian Government, are provided for by, not only by the Constitutional Act on Rights of National Minority, but also by the Erdut Agreement and the Government Letter of Intent. It is stated that most of these provisions have already been implemented and that some provisions have been incorporated into the Constitutional Act on Rights of National Minorities. The Commission

that the provisions of the Erdut Agreement concerning proportional representation of the Serbian minority in the judiciary have not been implemented yet. In conclusion, the European Commission established that the Serbian minority is still not being integrated into the Croatian society at all levels.

The Commission observed that there is a very high number of cases pending in the European Court for Human Rights against Croatia which is due to procedural problems in the Croatian judiciary. The majority of issues concerning protection of human rights, which the Croatian judiciary has failed to deal with, are connected with the war and its consequences and in particular with inadequate legislation governing property issues and compensation for the damage caused by terrorist activities and war.

The avis also points to the fact that development of the civil society has intensified only in the recent years. While in 1999, there were only some 15.000 non-governmental organizations registered, their number had increased to more than 23.000 by August 2003. Importance of the role of NGOs in advancing protection of human rights is emphasized, especially in protection of rights of refugees that are members of national minorities. The European Commission believes that Ombudsman could play a more important role in protection of minority rights, but concludes that the Ombudsman's Office faces serious budgetary constraints.

Croatian achievements so far in protection of minorities, a number of ratified international agreements that have been incorporated into the domestic legislations, the adopted Constitutional Act and ensuing commitments, as well as referring to those acts that are still not in harmony with the Constitution Act and international standards, provide a good basis for harmonization of the Croatian legislation with the acquires communitarian, but also for creating domestic legal initiatives in order to promote the position of national minorities in Croatia.

PERSPECTIVES FOR REALIZATION OF NATIONAL MINORITY RIGHTS IN CROATIA

We can conclude that the position of national minorities has improved due to on-going political, administrative and social changes in the Republic of Croatia. This is also the result of newly established legal and political conditions that have enabled national minorities themselves to bear more responsibility for their own position. In this sense, apart from improvement of certain legal regulations as well as their implementation in administration at state, regional and local level, there is a need to foster coordinated activities of minority organizations aimed at strengthening of the position of national minorities in the future. These primarily encompass activities designed for enhancing participation of members of national minorities in non-governmental organizations and in non-governmental organizations that would be established by the members of national minorities themselves, as well as for fostering their participation in bodies of state authority at national, regional and local levels. Joint activities of national minority associations bear special importance, as well as their mutual cooperation and cooperation with non-governmental organizations for protection of human rights and promotion of democracy and civil society. There is growing urgency to undertake activities aimed at the general public in Croatia. Joint activities of non-governmental organizations of national minorities designed to build political culture and raise the level of tolerance can contribute considerably to eliminating the existing stereotypes. It is especially important to discuss sensitive issues related to life in a multi-ethnic and multi-cultural society without national passions and euphoria. In this context, it is necessary to carry out educational reform that would incorporate the principle of multiculturalism and interculturalism into all aspects of school activities. In assessing the exercise of rights of national minorities in Croatia, it should be pointed out that the right to cultural autonomy is

concluded that these two agreements continue to be legally binding obligations as far as tackling minority issues in the Danube region is concerned.

most fully exercised by members of national minorities who had that right before the establishment of the independent Republic of Croatia, due to their high level of organization. Members of the nations of the former Socialist Federal Republic of Yugoslavia who lived in Croatia, and who by fact of its international recognition became members of national minorities, are still getting organized with the aim of exercising their rights as minorities.

The overall political and social situation in Croatia is still not very favorable for exercising of minority rights. Consequences of the war and complex economic and social conditions have taken their toll and thus national minority rights cannot be fully discussed as in a well-ordered democratic country. In this context, the greatest problems relating to some national minorities are the return of refugees and their social status and integration issues.⁵⁶ However, it is to be expected that with the advances the Republic of Croatia is making in the direction of European integrations and all the positive aspects that this process brings, there will be growing understanding that national minorities constitute Croatia's wealth and certainly not a problem. In creating the favorable environment for the realization of national minority rights, Croatia has created important conditions for strengthening of its international position. It is by virtue of its national minorities that Croatia can obtain better ties and cooperation with certain countries in its surroundings, and not only in sphere of culture, but even more in the economic field. In addition, these countries can give their assistance to Croatia in various fields. As already stated, there is growing understanding in Croatia that its national minorities constitute bridges that make links and thus it is to be expected that national minorities will turn out to be a significant advantage of Croatia on its so much desired road towards European integrations.

Despite all positive changes in exercising of national minority rights, the Republic of Croatia still faces certain problems which need to be solved. This especially refers to the drastic decrease of the number of members of national minorities (the Serbian national minority, the Bosniac national minority and others) between 1991 and 2001, and to the need to implement a certain policy aimed at stopping the decrease of the number of members of national minorities. Certain provisions of the laws regulating the national minority rights are still being implemented at a slow rate, which especially refers to the return of refugees, implementation of the Law on the Use of Languages and Scripts of National Minorities and Representation of National Minorities in Bodies of State and Judicial Authorities. To help councils and representatives of national minorities to play their role, it is necessary to improve the conditions of their work, that is, to secure necessary funding and facilities for their work by local and regional self-governments. All studies conducted so far have shown that topics related to national minorities receive insufficient media coverage, since the media presentation of national minorities is extremely important for their inclusion in public life, as well as for making the public aware of the problems of national minorities.⁵⁷

The Republic of Croatia received at the beginning of this year the positive avis of the European Commission on its economic and political capacities to join the European Union as a full member. In mid-June, Croatia became a candidate for the EU membership. Further democratization and rhythm of joining the EU will depend on real intentions of the Government to fulfill political and economic criteria and prerequisites, along with the full respect of human and minority rights according to international standards. The international community should not just assess the level of respect of human and minority rights in Croatia

⁵⁶ Due to the proactive policy of the Government, in the first half of 2004 4.652 returnees returned to Croatia, among whom 2.615 are ethnic Serb refugees (56%). Furthermore, in the same period 1.461 housing units were repossessed by their owners after temporary occupants had left their property, among which 468 housing units were illegally occupied. There are still 2.048 occupied housing units and owners of 1.420 of these units applied for repossession. According to: Report on Return of Displaced Persons and Refugees in the Republic of Croatia for 2004, the Government of the Republic of Croatia, Zagreb, 2004, p. 3.

⁵⁷ In order to secure better access of national minorities to the media, the National Minorities Committee co-finances broadcasts in minority languages on several local radio stations, and together with Croatian Radio Television the Committee also launched a project of special broadcasts in minority languages on the Croatian Television.

on the basis of changed rhetoric, harmonization of legislation and promises of the Government. The international community must be consistent in demanding fulfillment of all international commitments that Croatia has assumed as well as standards that it promotes, as the future of national minorities in Croatia will depend to a large degree on it.⁵⁸

PROBLEMS AND PROSPECTS OF THE ROMA MINORITY IN CROATIA

The Roma national minority, due to its cultural and economic specific features, is faced with numerous obstacles, distinctive just for this minority, in exercising its rights. Therefore, experts and humanitarians dealing with protection of minority rights believe that the specific position of the Roma national minority in Croatia deserves special attention and that there is a need to launch concrete programmes in order to improve their situation. There are many reasons for these intentions. Namely, the Roma are traditionally on the fringe of the society or are completely excluded from society and they do not have a parent country that would stand in protection of their rights. Therefore, the Roma are in the worst position of all the other national minorities in Croatia.

Specific problems that the Roma face in exercising their rights in Croatia can be divided in the following groups:

The majority of the Roma do not have documents on citizenship. According to the law, the right to citizenship is a prerequisite to exercise all other rights. Even though this right is part of the first, fundamental generation of human rights, in the case of the Roma national minority it is still not realized to the full extent.

Due to their social exclusion, members of the Roma minority do not enjoy equal opportunities to access to information, knowledge and skills. Furthermore, due to a low level of literacy of the parents and insufficient knowledge of the Croatian language, as well as to grave economic living conditions, the Roma children find themselves in a considerably more unfavorable position as opposed to the children of members of the majority nation already in the first instance of the education system. Therefore, the Government has taken certain measures on the basis of the National Programme for Roma aimed at additional investments into schools, teachers' training in schools, and establishment of pre-school programmes and improvement of the Roma settlements in order to decrease to a considerable extent the difference between the Roma children and the children of majority communities in the educational system. Until recently, there were segregated schools or classes for the Roma pupils in certain regions of Croatia which also prevented the Roma children to enjoy equal opportunities in education.

Members of the Roma national minorities are also deprived of equal rights in obtaining public services. Due to their traditional way of living, a part of the public believes that they do not need certain public services. Authorities at local and national level still quite often neglect problems of the Roma settlements, shifting blame from one level of administration to other or finding explanation for it in lack of interest of the Roma minority itself. Realization of rights to public services is also often burdened by unsolved property rights of the land on which members of the Roma national minority live.

Employment of the Roma, which apart from education is another element crucial for their integration into the Croatian society, is obstructed by an exceptional low level of education, but also by stereotypes on work habits of the Roma, due to which indirectly members of the Roma minority usually fail to get a job.

The right to social welfare and health care is also in connection with general access to information and education as well as with the right to citizenship. In Croatia, with a relatively large Roma population, under conditions of complex economic situation, it is quite difficult to secure sufficient funds for appropriate social welfare and health care of members of the Roma

⁵⁸ See: Alternativni izvještaj o primjeni Okvirne konvencije za zaštitu prava nacionalnih manjina u Republici Hrvatskoj za period 1999–2004., Centar za mir, pravne savjete i psihološku pomoć, Vukovar, 2004, p. 53.

national minority. Specific life style of the Roma who have an aversion to institutions of the system as a frequent symbol of repression, as well as their mobility which implies lack of having a permanent place of residence also prevent realization of the rights as envisaged by the existing legal system which tends to be more and more flexible and in which more and more members of the Roma minority can participate in the decision-making process on all levels of administration.

The Roma minority is not a homogenous community. Their internal differences also contribute to their inability to define their own national identity and to preserve their traditional culture. Different languages that the Roma use and prevailing oral literature point to the need of standardization of the language and the script, their consistent use in books, media, press, everyday communication and especially in schools, as well as the need of development of publishing. Cultivation of their traditional inclination and aptitude for music and dance as well as presentation of their work by the media can considerably change the stereotypes of the environment in which members of the Roma minority live and thus contribute to the affirmation of this minority.

Aware of the efforts which other European countries have made in order to improve the position of the Roma minority, and also aware of unfavorable position of the Roma minority in Croatia, the Croatian Government adopted a National Programme for Roma in October 2003.⁵⁹ The adoption of the Programme is a result of a long process that lasted two to three years. The Government itself was the first to propose adoption of such a programme. Between, 2001–2003 the Council of Europe assisted the Government in drafting the Project for Roma with the Stability Pact, which was supported by the Council of Europe and the European Commission. Consultations with Roma associations during the drafting of the Programme were funded and a number of Croatian and international experts were involved in the process, who gave their analyses and comments to the Croatian Government concerning problems of integration of the Roma into the Croatia society and especially concerning obstacles they face in realization of their rights to citizenship, housing, social welfare and health care.

The National Programme for Roma is comprehensive as it encompasses various aspects such as education, housing, health care, social welfare, culture as well as fight against discrimination, legal aid or inclusion of the Roma into social and cultural life. Goals, measures, means and areas of responsibility are well defined and determined in the Programme. It is based on human rights and respect of the Roma (Bayash) cultural identity. The Programme came as a result of a long process of consultations between bodies of local and national authorities and representative of the Roma minority. The fact that a number of ministers and government officials took genuine interest in drafting of such a programme only facilitated not only the process of its adoption, but also the commencement of its implementation. The Government already secured funds for implementation of the Programme in the 2004 state budget, but a part of the funds are also provided by certain foundations, such as the Open Society Institute in Croatia. Among already commenced projects from the National Programme for Roma, it is important to mention solving certain problems in education and obtaining public services as well as in education of young Roma leaders. In the future, it will be important to analyze on a regular basis the results of the measures as envisaged by the Programme in order to assess whether the measures produce good results or they need to be modified. We can conclude that by the adoption of the National Programme for Roma and commencement of its implementation, Croatia stands an excellent chance to improve considerably the position of the Roma national minority and enables its integration into the Croatian society in the near future.

CONCLUSION

⁵⁹ National Programme for Roma, the Government of the Republic of Croatia, Zagreb, 2003.

The position of national minorities in the Republic of Croatia used to be defined either by the Government itself or in cooperation with institutions of the international community which, among others, has resulted in adoption of the Constitutional Act on Rights of National Minorities. The adoption of the Constitutional Act, which regulates the rights of national minorities, formally enabled realization of their rights in a wider sphere, which was additionally facilitated after appropriate implementers legislation was adopted and fundamental international documents relating to protection of national minorities were ratified. The most important of these documents are the Framework Convention for Protection of National Minorities and the European Charter for Regional and Minority Languages.

The position of national minorities in Croatia has been improving constantly due to ongoing political, administrative and social changes in Croatia. This has also been achieved because the new legal and political conditions give the national minorities themselves greater responsibility for their own position. This especially refers to the important role of Councils and representatives of national minorities as well as their greater involvement in the work of the bodies of state authority at national, regional and local level. In order to enable full exercise of the rights of national minorities, Croatia should ensure respect of all international commitments it has assumed and take some concrete steps so as to eliminate remaining negative consequences of discriminatory policies against members of national minorities. It should also assure recognition and/or compensation of the acquired rights that were abolished due to discrimination and violation of human rights. In this sense, among others, it is necessary to create political, security, legal and economic preconditions for sustainable return of refugees and displaced persons to their homes, with a special emphasis on urban areas.

It is especially important to secure proportional representation of members of national minorities in state administration and judicial bodies and to eliminate discrimination in employment of members of national minorities. It is necessary to constantly take into consideration possible changes regarding proportional representation of members of national minorities in the national composition of population in certain areas, bearing in mind a certain number of returned refugees and displaced persons and comments on the results of the 2001 census. Furthermore, it is important to make additional efforts and to launch concrete activities aimed at promoting inter-ethnic cooperation and understanding at all levels. Thus, it is necessary to penalize all those who are responsible for acts of violence, hatred and discrimination on the basis of ethnicity or religion. If the Constitutional Act on Rights of National Minorities as well as all other relevant acts at all levels are implemented with consistency, and if mechanisms for controlling and monitoring are effective, such as are the mechanisms developed by the National Minorities Committee, then Croatia will manage to eliminate all problems concerning exercise of the rights of national minorities in short period.

In creating the favorable environment for the realization of rights of national minorities, the Republic of Croatia has created important conditions for strengthening of its international position. It is by virtue of its national minorities that Croatia can obtain better ties and cooperation with certain countries in its surroundings, and not only in sphere of culture, but even more in the economic field. In addition, these countries can give their assistance to Croatia in various fields. There is already growing understanding in Croatia that its national minorities constitute bridges that make links and thus it is to be expected that national minorities will turn out to be a significant advantage of Croatia on its so much desired road towards European integrations.

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