

Croatia

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A. Introduction

After the change of government in 2000, official policies no longer manifested nationalistic features and certain human and minority rights issues (such as the process of the return of refugees of ethnic Serb origin and the restitution of their property), as well as cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY) improved in Croatia. A predominantly positive human rights record has been maintained by the government elected in October 2003.¹ At the beginning of his mandate, the current Prime Minister proclaimed his government's aspirations to join the EU in 2007, together with Romania and Bulgaria. However, the postponement of the accession negotiation talks made this plan impossible and the government now claims that the country could become an EU member by the end of this decade.

On 21 February 2003, Croatia submitted an application for EU membership. Aspiration towards EU membership was consolidated in June of that year, when the Thessaloniki European Council reiterated its determination to fully and effectively support the European perspective of the Western Balkan countries and stated that, "the Western Balkans countries will become an integral part of the EU, once they meet the established criteria".²

After the Commission prepared a positive opinion on Croatia's application for membership on 14 April 2003,³ Croatia was awarded candidate status on 18 June 2004. The main findings of the opinion are that Croatia (i) is a functioning democracy with stable institutions guaranteeing the rule of law; (ii) can be regarded as a functioning market economy, and should be able to cope with the competitive pressure and market forces within the Union in the medium term, provided that the country continues implementing its reform programme to remove remaining weak-

1 Antonija Petričušić, "Wind of Change: Croatian Government's Turn towards Policy of Ethnic Reconciliation", 6 *European Diversity and Autonomy Papers (EDAP)* (2004), at <<http://www.eurac.edu/edap>>. Compare Siniša Tatalović, "Proširenje Europske unije i osvajanje prava nacionalnih manjina" in Mitja Žagar *et al.*, *Manjine i europske integracije*, (Stina, Split, 2005), 28-32. Compare also Natasa Zambelli, "Contested rights-constructed identities: The changing discourse on minority rights in Croatia", paper presented at the ECPR 1st Graduate Conference at the University of Essex, September 2006.

2 European Council, "Thessaloniki Agenda for the Western Balkans: Moving towards European Integration", 19-20.06.2003, at <http://ec.europa.eu/enlargement/enlargement_process/accesion_process/how_does_a_country_join_the_eu/sap/thessaloniki_agenda_en.htm>.

3 Communication from the Commission, "Opinion on Croatia's application for membership of the European Union", COM (2004) 257 final, Brussels, 20.04.2004, at <http://eurlex.europa.eu/LexUriServ/site/en/com/2004/com2004_0257en01.pdf>.

nesses; (iii) and is in the position to take on the other obligations of the membership in the medium term, provided that considerable efforts are made to align its legislation with the *acquis communautaire* and ensure implementation and enforcement. The opinion was accompanied by the European Partnership for Croatia, which listed short and medium term priorities for Croatia's preparations for further integration into the European Union.⁴ The European Partnership reflected the country's stage of preparation at the time it was passed and was tailored to fit its needs. Croatia was expected to respond to the European Partnership by preparing a plan with a timetable and details in terms of how it intends to address the European Partnership's priorities. The progress in implementing the priorities is monitored regularly by the Commission, predominantly in its annual reports. In other words, the partnership serves as a checklist against which to measure progress.

The Council Decision on the Principles, Priorities and Conditions contained in the European Partnership with Croatia has foreseen two kinds of measures in the form of political criteria concerning human rights and the protection of minorities, depending on the time duration the measures would require. Short-term priorities required improvement of minority rights, in particular in ensuring that proportional representation of minorities in local and regional self-government units is achieved, as well as in the state administration and judicial bodies, and in bodies of the public administration. In addition, authorities were asked to provide the necessary means, including adequate funding, to ensure proper functioning of elected minority councils. All short-term priorities regarding the rights of minorities have so far been met. However, in the part relating to completing refugee return and accomplishing housing reconstruction, a lot remains to be done, as almost two thirds of refugees of Serb ethnic origin have not returned to their pre-war housing. The country was additionally asked to create social and economic conditions to improve the climate for returnees and the acceptance of returnees by receiving communities. Finally, it was found necessary to enhance regional co-operation for accelerating the process of refugee return.⁵ A major achievement at the broad, political level was a declaration on refugee return in South Eastern Europe by ministers responsible for refugee issues from Croatia, Bosnia and Herzegovina, and Serbia and Montenegro, signed in Sarajevo on 31 January 2005. The three countries undertook a commitment to create adequate conditions to enable refugee return in the region and to support refugees

4 Council Decision on the principles and conditions in the European Partnership with Croatia, COM (2004) 275 final.

5 Contrary to the regional cooperation conditionality in the Western Balkans countries that has partially proven to be effective, pre-accession criteria on regional policy and minority protection which the Commission had already introduced as a rule in the previous enlargement waves did not result in new political strategies or effective implementation of laws in the new Member States, thus demonstrating "the weakness of EU conditionality in these key areas". Compare James Hughes, Gwendolyn Sasse and Claire Gordon, "EU Enlargement and Power Asymmetries: Conditionality and the Commission's Role in Regionalisation in Central and Eastern Europe", Working Paper 49/03, at <<http://www.one-europe.ac.uk/pdf/w49hughesassgord.pdf>>.

who choose to stay in their host countries. However, up until today, no significant improvement can be seen in refugee return in all three countries. Croatia has, however, prepared a comprehensive road map with an attached budgetary and timeframe commitment, and has actively participated in tri-lateral discussions. What yet remains to be tackled is a comprehensive solution for former occupancy tenancy rights holders who do not wish to return to Croatia along with the convalidation of acquired rights.

The Partnership has also listed two medium-term priorities. The first one concerns the implementation of Roma rights, primarily; strengthened implementation of the National Strategy for the Roma, including the provision of the necessary financial support at both the national and local levels, anti-discrimination measures aimed at fostering employment opportunities, increasing access to education, and improving housing conditions. Another medium-term priority tackles the process of refugee return, which should be completed through proper and timely implementation of the relevant legislation. In addition, economic and social reintegration of returnees should be ensured through regional development programmes in previously war-affected areas.

The Commission recommended in its opinion that negotiations for accession to the EU should be opened in March 2005, provided the country has demonstrated full cooperation with the ICTY. Nevertheless, due to the non-cooperation with the ICTY, the accession negotiations were suspended until 3 October 2005. Negotiations were opened on the basis of a generally fulfilled set of political criteria, for the most part later enshrined in Article 6(1) of the Treaty on European Union and proclaimed in the Charter of Fundamental Rights, and the Stabilisation and Association Process conditionalities established by the Council in 1997. The Commission clearly stated that the negotiations will be based on Croatia's own merits and the pace will depend on Croatia's progress in meeting the requirements for membership, thus not linking the Croatian negotiating procedure to the Turkish one. The chapter on the Judiciary and Human Rights in which human and minority rights legislation approximation will be assessed was supposed to be "opened" in spring 2006, but the Commission has postponed bilateral screening of this chapter until September 2006.

The European Commission assesses the improvements in regular progress reports.⁶ This main instrument for monitoring progress on accession *inter alia* analyses the situation in the country with respect to the political criteria for membership, i.e. human rights and the protection and promotion of the rights of minorities. In this way the Croatian authorities are constantly made aware that the respect for human and minority rights constitutes an important pre-accession component, and the European Union serves as a human and minority rights watchdog. The following paragraphs will demonstrate that the Europeanization process has significantly contributed to the democratization of the Croatian political space, underlining an argu-

6 James Hughes and Gwendolyn Sasse, "Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEEC", 1 *Journal on Ethnopolitics and Minority Issues in Europe* (2003), 1-38.

ment put forth in numerous academic works on the democratic aspect of EU enlargement,⁷ which, in short, understand accession conditionality “as one of the primary means of ‘democracy promotion’”.⁸

B. Legislative Framework for Minority Protection in Croatia

The Croatian Constitution lists in its preamble Serbs, Czechs, Slovaks, Italians, Hungarians, Jews, Germans, Austrians, Ukrainians, Ruthenians, and other ethnic minority communities that are citizens of Croatia as Croatian minorities.⁹ Apart from these constitutionally-mentioned ethnic communities, members of several other ethnic groups are recognized as minority communities: Albanians, Bosniaks, Bulgarians, Montenegrins, Macedonians, Poles, Roma, Romanians, Slovenes, Turks, Vlahs and Jews. A census conducted in Croatia in April 2001 reported that around 90% of the country’s inhabitants are of Croatian ethnic origin. The results of the census further reported that 7.47% of the population belong to national minorities, which is half of the total number of the minority population in 1991.¹⁰

The legal framework for minority protection in Croatia has improved significantly with the adoption of the Constitutional Law on the Rights of National Minorities in 2002.¹¹ The law sets the domestic legal framework for minority rights, and, together with several related laws¹², it establishes a high level of normative prerequisites for the protection of minority rights. It is generally perceived that the position of minorities has improved and that minorities are able to execute their rights to a great extent. The typical official justification for the non-implementation of some of the prescribed minority rights is a lack of financial resources or the absence of political will on the side of regional and local officials.

The Constitutional Law on the Rights of National Minorities in the Republic of Croatia guarantees national minorities the right to education in their language and script, usage of the language and script, cultural autonomy, as well as the right to

7 Jeffrey J. Anderson, “Europeanization and the Transformation of the Democratic Policy”, 40(5) *Journal of Common Market Studies* (JCMS) (2002), 793-822. Gwendolyn Sasse, “EU Conditionality and Minority Rights: Translating the Copenhagen Criterion into Policy” *European University Institute, EUI Working Papers*, Issue 16/2005, 1-21.

8 James Hughes and Gwendolyn Sasse, *op.cit.*, 1.

9 Constitution of the Republic of Croatia, Official Gazette 41/2001.

10 Results of the 2001 Census of Population, at <<http://www.dzs.hr/>>.

11 Constitutional Law on the Rights of National Minorities in the Republic of Croatia, Official Gazette 155/2002. A thorough analysis of the Constitutional Law is contained in Antonija Petričušić, “Croatian Constitutional Law on the Rights of National Minorities”, 2 *European Yearbook of Minority Issues* (2002/2003), 607-629.

12 Law on Elections for the Representatives in the Parliament of Republic of Croatia, Official Gazette 22/1992, 68/1995, 116/1999, 53/2003, 69/2003; Law on the Election of Members of Representative Bodies of Local and Regional Self-Government Units; Law on the Use of Languages and Scripts of National Minorities and Law on the Education in the Language and Script of National Minorities, Official Gazette 51/2000.

participate in public affairs through representation in representative bodies on the local and regional, as well as on the state levels, including their representation in administrative and judicial bodies. The constitutional law has also introduced new institutions: councils and representatives of national minorities and, on the state level, the Council for the National Minorities. Since the constitutional law expands the rights of minorities, it was necessary to secure special measures in order to implement these new rights in practice. This refers in particular to the appointment of councils and national minority representatives whose mandate will be explained in subsequent paragraphs. The adoption of the Law on the Ratification of the Council of Europe's Framework Convention on the Protection of National Minorities has made the Framework Convention an integral part of the national legal system of the Republic of Croatia, legally superseding other national acts, in accordance with Article 140 of the Constitution. The Republic of Croatia has so far submitted two state reports to the Framework Convention on the Protection of National Minorities, in 1999 and in 2004.¹³ The European integration process, lacking its own minority rights standards, employs exactly the principles and standards enshrined in the Council of Europe minority rights instruments: the Framework Convention on the Protection of Minorities and the European Charter for Regional or Minority Languages.¹⁴

C. Ethnic Composition and Territorial Distribution of Minority Groups

It has been demonstrated in academic literature as well as in research projects that location, educational and economic profile and historical relationship with the host state determine whether national minorities will be the (un)privileged population of a particular region.¹⁵ There are several regions where minority populations are

13 See ACFC/SR(1999)005 16/03/1999 and ACFC/SR/II(2004)002 13/04/2004, at <http://www.coe.int/t/e/human_rights/minorities/>.

14 On the importance of the implementation of the Council of Europe minority rights standards compare Reiner Hoffman and Erik Friberg, "The Enlarged EU and the Council of Europe: Transfer of Standards and the Quest for Future" in Gabriel von Toggenburg (ed.), *Minority Protection and the Enlarged European Union: the Way Forward* (LGI/OSI, Budapest, 2004), 125-147. See also Tove Malloy, *National Minority Rights in Europe* (Oxford University Press, 2005), 259-276, and Patrick Thornberry and Maria Amor Estebanez, "Introduction: Perspectives on minorities and minority rights" in *Minority Rights in Europe: A Review of the work and standards of the Council of Europe* (Strasbourg: Council of Europe, 2004), 7-38. Kinga Gal, "The Council of Europe Framework Convention on the Protection of National Minorities and its Impact in Central and Eastern Europe," *Journal of Ethnopolitics and Minority Issues in Europe* (2000), 1-17.

15 Compare Gwendolyn Sasse, "Gone with the Wind?: Minority Rights in Central and Eastern Europe before and after EU Enlargement", paper presented at the conference Ethnic mobilization in the new Europe, 21-22 April 2006, Brussels, at <<http://soc.kuleuven.be/iieb/ethnismobilization/docs/proc-Sasse.pdf>>, 27. See also research outcomes of the project "Access to Education, Training and Employment of Ethnic Minori-

mostly concentrated. The Italian minority inhabits the western coastal part of the country, dwelling in great numbers on the Istrian peninsula that administratively forms Istria County, and also in Primorje-Gorski Kotar County. The Italian minority contains roughly 20,000 members. In those municipalities and cities in which Italians make up one third of the population, the Italian language is the second official language.

The biggest of the autochthonous minority groups, the Serbs, have traditionally constituted a majority in the Krajina region surrounding the south western city of Knin (Zadar-Knin County) and represent a significant portion of the population in the eastern part of Croatia (Osijek-Baranja County and Vukovar-Srijem County). Nowadays, the largest number of Serbs live in the counties of Vukovar-Srijem, Osijek-Baranja, Sisak-Moslavina and Karlovac. A certain number of the Serb minority also dwell in Primorje-Gorski Kotar County, Lika-Senj County and in the City of Zagreb. The latest census witnessed a sharp drop in the Serb population, reporting that approximately 202,000 of them dwell nowadays in Croatia. The Serbs used to make up 12% of population in the 1991 census, but their share in the population was drastically reduced to 4.5% in the 2001 census. Their numbers dropped due to the exodus of the Serb population in the beginning of 1990s, when smaller numbers of Serbs left Croatia straight after the country's declaration of independence in 1991. The biggest exodus took place in 1995, following two military actions undertaken by the Croat government to re-integrate the occupied territory in the spring and summer of 1995. There are estimates that approximately 300,000 Serbs left Croatia in the 1990s. The majority of them became refugees in neighbouring Serbia and Bosnia-Herzegovina. Even though the government has been reiterating that the country will accept the return of ethnic-Serb refugees who were driven out of their homes in 1995, to date merely 123,000 Croatian citizens of Serbian nationality have returned, constituting 40% of the total number of Serb refugees.¹⁶ Returnees are deterred by a number of factors including uncleared minefields in some areas, questions about their eligibility to receive state benefits, and the possibility of some being indicted for war crimes. The process of the return of refugees is moreover hampered by a lack of employment opportunities in the areas of return. The general level of security in Croatia has improved. Nevertheless, ethnically motivated incidents are still occurring in the areas of return.¹⁷

About 15,000 Albanians dwell in Croatia, they originate mostly from the current Republic of Macedonia and the province of Kosovo. They are distributed throughout

ties in the Western Balkans", conducted by the European Academy of Bolzano/Bozen for the European Training Foundation, at <http://www.etf.europa.eu/web.nsf/opennews/D79A5C29DF030091C125718C0055F1D0_EN?OpenDocument&VER=TEXT>.

16 Official data of UNHCR, 27 December 2005.

17 For a list of examples of ethnically motivated crimes see section "Security situation / Ethnically motivated incidents" in the Shadow report on the implementation of the Framework Convention of Council of Europe on Protection of Minorities in Republic of Croatia, prepared by the Center for Peace, Legal Advice and Psychosocial Assistance, Vukovar and Community of Serbs, Rijeka, at <http://www.vsnm-ri.org/izvjescje_2_engl_7.htm>.

the country, but the biggest number dwell in the City of Zagreb, in the coastal regions such as the County of Primorje-Gorski Kotar and in Istria. Approximately 20,000 persons declared themselves members of the Bosniak minority in the latest census. The majority of the Bosniaks in Croatia had been declared as Muslims in the previous census while they opted for the term Bosniak in the latest census, after the Bosniak ethnicity was ascertained in neighbouring Bosnia and Herzegovina. Most Bosniaks live in the City of Zagreb, in the County of Istria and Primorje-Gorski Kotar. 13,173 members of the Slovenian national minority were registered in the Republic of Croatia in 2001. Most Slovenians live in the City of Zagreb, in the County of Primorje-Gorski Kotar and Osijek-Baranja. 4,270 members of the Macedonian national minority were registered in the 2001 census, with a majority of them living in the City of Zagreb. Members of the Bosniak, Macedonian and Albanian minorities reside in bigger cities, since they have come to Croatia in greater numbers in the last fifty years as a result of economic immigration.

Circa 10,000 Czechs and Slovaks inhabit cities in the Podravina region (Bjelovar-Bilogora County). Slovaks are also found in Osijek-Baranja County. Approximately 16,000 Hungarians dwell in several towns and villages in the eastern region of the country bordering the Serbian region Vojvodina, which as well has a significant number of inhabitants of Hungarian ethnic origin. Most Hungarians live in the Counties of Osijek-Baranja, Vukovar-Srijem and Bjelovar-Bilogora. Members of the Ukrainian and Ruthenian minorities live in the Vukovar-Srijem County. The largest number of Ruthenians live in the Counties of Vukovar-Srijem and Osijek-Baranja. Most Ukrainians live in the County of Vukovar-Srijem, Zagreb and Slavonski Brod-Posavina.

There are almost 10,000 registered Croatian Roma who predominantly dwell in several cities in the continental part of Croatia. The largest number of registered Roma live in the County of Međimurje, in the City of Zagreb and in the County of Osijek-Baranja. However, a great number of Roma tend not to report their ethnic origin in the census, therefore the official number is very likely wrong. The NGOs dealing with Roma estimate that there might be 40,000 Roma members in Croatia. Unofficial data, for example, say that there are about 9,000 Roma living in Zagreb. Data collected by NGOs estimate that around 6,000 Roma (or slightly more than 30% of the entire Roma population) live in 16 mostly non-urban settlements in the town of Čakovec, situated in northwestern Međimurje County. This group of Roma predominantly faces segregation due to their language difference and their lack of knowledge of the official language. Roma in Eastern Slavonia are more proficient in the official language and, therefore, are able to integrate more easily. As there is no standardized Roma language, it is not used for teaching, and pupils from the Roma population are included in the regular educational system in the Croatian language. 2,902 members of the German national minority and 247 members of the Austrian national minority were registered in the Republic of Croatia in 2001. Most Germans live in the County of Osijek-Baranja, Zagreb and Split-Dalmatia. Most Austrians live in the City of Zagreb, the County of Primorje-Gorski Kotar and Istria. 576 members of the Jewish national minority were registered in the Republic of Croatia

in 2001. Most Jews live in the City of Zagreb, in the County of Split-Dalmatia and Primorje-Gorski Kotar.¹⁸

D. Participation of Minorities in State Authorities and Public Sector

I. Political Participation in the Parliament

The Constitutional Law on the Rights of National Minorities guarantees members of national minorities the right to be represented in the Croatian parliament (Sabor). In accordance with the Law on the Election of Representatives into the Croatian Parliament (Article 16), out of 152 members of Parliament, eight are elected into parliament as minority representatives.¹⁹ The Serbian national minority group elects three members, the Hungarian and Italian national minority groups one member each, the Czech and Slovak national minority group one member. The Austrian, Bulgarian, German, Polish, Roma, Romanian, Ruthenian, Russian, Turkish, Ukrainian, Vlach and Jewish national minority groups elect one member in total and the Albanian, Bosniak, Montenegrin, Macedonian and Slovenian national minority groups also elect one member for the Croatian parliament.

The right to propose candidates as national minority members is ensured for political parties, voters and national minority associations. There are no limitations (election thresholds) for the election of national minority members into the Croatian parliament, and the candidate with the most votes is elected, which in practice means that national minority groups may gain a parliamentary seat with significantly less votes than the majority population candidates. In addition to these guaranteed seats, national minority members may be candidated and win parliamentary seats through the political parties' lists.

Eight national minority members have been elected into the Croatian parliament. The national minority members have founded a National Minority Members' Club. In addition to this club, the Club of the Independent Democratic Serbian Party has been founded, since the members of this party elected into the parliament fulfil the criteria from the Rules of Procedure of the Croatian Parliament regarding the founding of a club.

The rules of procedure prescribe that a member of parliament can only be a member of one club, while a national minority parliamentary member may also be a member in his party's club, upon its approval. In regard to this, members of the In-

18 Official data of the Central Bureau of Statistics, 2001 Census of Population, at <<http://www.dzs.hr/Popispercent202001/popis20001.htm>>.

19 Law on the Election of Representatives to the National Parliament, Official Gazette 116/99, 109/00, 53/03 and 69/03-consolidated version.

dependent Democratic Serbian Party are members of two different parliamentary clubs, enabling them to more actively participate in decision-making.

The Rules of Procedure of the Croatian Parliament establish the working bodies of the Croatian parliament. The Committee on Human Rights and Rights of the National Minorities, with rights and obligations of a central working body in regards to the fulfilment of national minority rights as established by the Constitution of the Republic of Croatia and the relevant acts, is to propose measures for the fulfilment of these rights. The Rules of Procedure additionally prescribe that the committee must have at least one member elected from the list of each national minority with a member in the parliament.

A special legal framework is in place regarding the rights of the Serb minority in the Danube region; this was established by the Erdut Agreement (signed in 1995), which provided a legal basis for the peaceful reintegration of the region of Eastern Slavonia, Baranja, and Western Sirmium into the constitutional and juridical system of the Republic of Croatia, and the Government Letter of Intent of 1997. The Erdut Agreement granted assurances for minority representation, among them “the right of Serbs in Eastern Slavonia to be represented in local self-government, the right to have Serb sub-prefects in both counties of Eastern Slavonia and proportional representation in local health, police and judiciary”. The agreement additionally foresaw four assistant minister positions for members of the Serb minority. In accordance with the agreement, the Serb minority is entitled to assistant minister positions in the Ministry of Interior, the Ministry of Justice, the Ministry of Culture and the Ministry of Science, Education and Sports.²⁰ Most of the rights guaranteed under the Erdut Agreement were transposed into the Constitutional Law on the Rights of National Minorities. Nevertheless, some specific rights that arise from the letter of intent, such as proportional representation in the police force and the judiciary and rights to minority schools, still have a legal ground only in this document.

The agreement on cooperation of the ruling HDZ (Croatian Democratic Union) with the SDSS (Independent Democratic Serbian Party) signed in December 2003, in advance to a vote of confidence to Ivo Sanader’s government, assured four additional assistant minister positions for the Serb minority; in the Ministry of Economy, Labour and Entrepreneurship, the Ministry of Health, the Ministry of Agriculture and Forestry and in the Ministry of the Sea, Tourism, Transport and Development.²¹ Nevertheless, the current government has failed to implement the coalition agreement with the Serb representatives in the parliament and therefore has not nominated

20 Basic Agreement on the Region of Eastern Slavonia, Baranja, and Western Sirmium signed in Erdut on 12 November 1995. The agreement requested that the UN Security Council establish a transitional administration to govern the region during the transitional period of 12 months and to authorize an international force to maintain peace and security during that period and to otherwise assist in the implementation of the agreement.

21 Sporazum o suradnji buduće Vlade Republike Hrvatske i zastupnika Samostalne Demokratske Srpske Stranke u Hrvatskom Saboru (Agreement on Cooperation between the Future Government and the Independent Serbian Democratic Party in the Croatian Parliament), at <<http://www.sdf.hr/korisno/sporazum.html>>.

deputy ministers of Serb origin in the Ministry of Labour, Economy and Entrepreneurship and the Ministry of Health and Social Care in the two years of its governing. Similar agreements were signed with the representatives of the Bosniak minority and the Italian minority MPs.²²

“Symbolic gestures and positive statements on reconciliation from senior State officials, mutual visits between leaders from both Croatia and Serbia, and events such as the celebration of the 150th anniversary of the birth of the Croatian Serb inventor Nikola Tesla, have contributed towards an improved atmosphere [in 2006].”²³ In spite of the fact that “[...a]t the political level, the coalition between HDZ and the Serb party SDSS seems to function well [...]”, “[...]positive leadership does not always filter down to the rest of society, however, and many problems remain.”²⁴

II. Participation at the Local Level

In line with the provision of Article 20 of the Constitutional Law on the Rights of National Minorities, national minority members are guaranteed the right to representation in the representative bodies of the local self-government and representation bodies of the regional self-government. When at least one member of a national minority has not been elected into the representation body of a local self-government based on the general voting right, assuming this minority represents more than 5% and less than 15% of the population of the local self-authority, the number of representation body members for the local self-government will be increased by one member. Furthermore, the national minority member not elected as the first one on the list based on the proportional success of each list at elections will be considered elected, unless a special act establishes the rules for appointment of representation body members for a local self-government differently.

If the representation of national minority members in a regional self-government authority has not been secured for a minority representing more than 5% of the population, which would ensure representation proportional to their percentage in the overall population of the regional self-government, the number of members in the representation body will be adequately increased to the number needed to achieve adequate representation. Those members of a particular minority who have not been elected in order of the proportional success of each list at elections will be

22 The two minorities were not provided with any positions in the state administration but the agreements do contain a number of points essential to each of these ethnic groups, reflecting the different concerns that they have. For example, Bosniaks were assured that a certain number of members of the Bosniak minority, who had lost their status rights in 1990s, could acquire citizenship.

23 European Commission, Progress Report on Croatia, COM(2005) 561 final, 09.11.2005, at <http://ec.europa.eu/enlargement/pdf/key_documents/2006/nov/hr_sec_1385_en.pdf>, 22.

24 *Ibid.*

considered elected, unless a special act establishes the appointment of representation body members for a local self-government differently.

Self-government authorities where national minority members do not constitute the majority of the population may determine by their statutes to elect national minority members into the representation body of these authorities, or even a larger number of national minority members than their percentage in the overall population of the territory. In addition to the right to representation in the representative bodies of the self-government authorities, national minority members also have the right to representation in the executive bodies of the local authorities.

III. Councils of National Minorities

According to the Constitutional Law on the Rights of National Minorities (Arts. 23-34), two new institutions that operate at the local level have been introduced with the aim of participating in public life and the management of local activities—councils and national minority representatives. By establishing minority councils, the Constitutional Law on the Rights of National Minorities extends “beyond ‘conventional’ minority rights by affirming the collective nature of minority rights (in addition to the individual rights and need for protection from discrimination) and acknowledges the need to involve minorities themselves in the implementation of these laws.”²⁵

The criteria to decide which national minority members may exercise their right to appoint the council or national minority representatives have been established by Article 24 of the Constitutional Law on the Rights of National Minorities. The right to appoint a council can be exercised in the local self-governments of territories in which members of a particular national minority represent at least 1.5% of the total population, the self-government of a territory in which more than 200 members of a particular national minority live, as well as in regional self-governments in territories where more than 500 members of a particular national minority live. Ten members are elected into a municipality council, 15 members into a city council and 25 members into a county council. When none of the criteria described are fulfilled in the territory of a local self-government, and at least 100 members of a particular national minority live there, they have the right to appoint a representative who has equal rights and obligations to the national minority councils.

Associations of national minorities, or at least 20 national minority representatives from the territory of a municipality, 30 from the territory of a city and 50 from the territory of a county, have the right to propose candidates for council members and national minority representatives. Members of national minority councils and the representatives are elected by direct secret ballot for a term of four years.

25 Florian Bieber, “Minority Rights in Practice in South Eastern Europe”, *Balkan Yearbook of Human Rights 2004* (Balkan Human Rights Network, 2005), 53.

The council and national minority representatives in a local self-government have the right to: (i) propose measures to the local authorities for improving the position of a national minority, including proposals of general acts regarding the issues of significance for national minorities; (ii) promote candidates for functions in state administrative bodies and local self-government authorities; (iii) be informed about all issues to be discussed by working bodies of the representative self-government authority pertaining to the national minority position; and (iv) provide opinions and proposals regarding programmes of radio and television stations intended for national minorities.

Both the executive and legislative organs of the local self-government authority have the obligation to request the opinion and proposals of the national minority council regarding all acts determining the rights and freedoms of national minorities.

IV. Council for the National Minorities

Another recently established body is the Council for the National Minorities. It was founded at the state level with the aim of having national minorities participate in the public life of the country, and in particular for the analysis and proposals to determine and resolve issues regarding exercising and protecting the rights and freedoms of national minorities.

The Council has the right to: (i) propose to state authorities a discussion regarding certain issues of importance for national minorities, or measures for improving the national minority position; (ii) submit proposals and opinions regarding programmes of public stations and public television intended for national minorities; and (iii) propose economic, social and other measures in the areas inhabited by national minority members. The Council for the National Minorities allocates funds secured by the state budget for the needs of national minorities.

The Council for the National Minorities members are appointed by the Government of the Republic of Croatia as follows: seven members of the national minority group from the list of candidates proposed by the national minority councils and five members of the national minority group proposed by associations and national minority members among renowned cultural, scientific, professional and religious persons. Members of the Council for the National Minorities are also eight national minority representatives in the Croatian parliament.

V. National Minorities Assembly

The National Minorities Assembly was founded on the basis of the Constitutional Law on the Rights of National Minorities, and has the right to propose to the parliament and the government debates on the issues significant for the implementation of the constitutional law, as well as that of special acts establishing national minority issues. One of the important duties of this assembly is the allocation of funds se-

cured by the state budget for the needs of national minorities, while the users of these funds have the obligation to submit reports to the assembly on the spending of these funds. The assembly, in turn, then informs the Government of the Republic of Croatia and the Croatian parliament.

E. Right to Education of National Minorities in Minority Language and Script

Being a signatory party to the Framework Convention, Croatian authorities are obliged to promote equal access to education at all levels for persons belonging to national minorities and to ensure, in areas traditionally inhabited by persons belonging to national minorities or in which substantial numbers of national minorities live, that minorities have adequate opportunities to be taught the minority language or to receive instruction in this language.²⁶ It is important to allow for the fulfilment of the right to education to all national minorities in Croatia since minority education allows for the safeguarding minority languages, history, culture, religion and other related elements of the minority identity. The tradition of education in languages of national minorities is indeed deeply rooted in the Croatian educational system, dating back to communist times. Minorities are given the chance to take part in educational programmes where the entire curriculum is taught in the minority language (Hungarian, Italian and Serbian, but only in Western Slavonia). Some minorities only receive additional classes (on history, culture, music) in the minority language. For this reason, Hungarians, Italians, Czechs, Slovaks, Ukrainians and Ruthenians in general do not criticize existing educational models for the education of minorities. The education of pupils of Serb ethnic background has been improved in the last five years and some new minority educational programmes have been initiated. Nevertheless, at the local level there are still examples of hesitance to provide pupils from the Serb minority with instruction in their language (e.g. education in the minority language of the Serb minority in Knin) and to integrate them into the mainstream educational system (e.g. the example of separate classes for Roma in Međimurje). Other problems that burden the educational process of most minorities are the inadequate training of teachers and the lack of teaching materials in minority languages.

There were several cases of Roma minority segregation in Međimurje County in the northwest of the country, when Roma children were placed in separate classes in local schools in Macinec, Kursanec, Orehovica, Mala Subotica, Podturen and Pribislavec. Poor Croatian language skills are often used by the authorities as an excuse for the segregation of Roma children within the Croatian educational system. In addition, the teaching in such classes is significantly reduced in scope and volume as compared to the officially prescribed teaching plan and, indeed, the quality of

26 See Arts. 12-14 of the Framework Convention, the European Charter for Regional or Minority Languages and The Hague Recommendations Regarding the Education Rights of National Minorities.

education delivered in the non-Roma classes. Because of such practices, a legal representative of 15 Roma has filed a complaint with the European Court for Human Rights.

Since Roma often lack formal education, it is difficult for them to gain access to the labour market. Data from 2006 indicate that among Roma aged 15 and over, only 18% are employed and 32% have no formal education. Apart from launching the National Programme for the Roma in 2003, the Croatian Government has joined the Decade of Roma Inclusion, which will last from 2005 to 2015. The objective of this multilateral initiative is to take steps to speed up and scale up social inclusion and the economic status of Roma by setting a limited number of quantitative national goals for improvements in education, employment, health, and housing, and the establishment of the necessary information base to measure the progress towards these goals. It is estimated that 60 million kuna will be spent for the implementation of the goals foreseen by the decade.

F. Linguistic Rights

Persons belonging to national minorities are guaranteed the right to use their language in the private and public, orally and in writing, and freely and without interference by numerous international legal sources.²⁷ The private and public use of minority languages is free (Art. 15, para. 4 of the Constitutional Law on the Rights of National Minorities), and its official usage is determined by the Law on the Usage of Language and Script of National Minorities.

The latter law prescribes criteria for the introduction of a minority language for equal official usage. A minority language is therefore recognized as official when one third of the national minority members reside in the territory of the municipality or city, if this is foreseen by an international agreement, or if a municipality or city introduces a minority language into official usage by a statute regardless of the first two criteria.

National minority members have the right to the usage of their own name in the script of their mother tongue in all official records, as well as to obtain a bilingual identity card in Croatian and in a minority language throughout the entire territory of the Republic of Croatia.

Minority languages in judicial or administrative proceedings may be used when a member of a minority community approaches the competent court in a minority language, unless s/he does not declare this intent after the procedure has already been initiated. A party belonging to a recognized minority community must be informed about the right to use his/her language and script. If a party's request for the

²⁷ Art. 10(1) of the Framework Convention for the Protection of National Minorities, Art.2(1) of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, the Oslo Recommendations Regarding the Linguistic Rights of National Minorities.

usage of his/her language and script is not granted, this constitutes a serious procedural error, meaning that solely this event represents sufficient appeal grounds for a renewal of proceedings. This protection refers to both civil suits and to criminal and administrative proceedings. Conducting proceedings in a minority language means that a party belonging to national minority may give his/her statement in the minority language and the proceedings are interpreted in the case of a public hearing, while all acts and communications are delivered to the party in the minority language. Nevertheless, in spite of constitutionally guaranteed right, less than 1% of judicial proceedings are conducted in minority languages.

G. Media Rights

Persons belonging to national minorities are free “to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers [...]” whereas a signatory to the Framework Convention must “[...] ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media”.²⁸ The linguistic rights of national minorities are assured in the programmes of a public broadcaster: the Croatian Radio and Television. The Croatian Radio and Television broadcasts a special weekly multinational TV show, *Prizma*, lasting 55 minutes. It covers activities of all national minority associations and related news. Documentaries, concerts and study-related shows regarding the folklore creativity of national minorities are broadcast as part of the cultural programme. The educational programme of the Croatian Radio and Television broadcasts shows on the languages and customs of national minorities. The children's programme broadcasts a programme adapted to the children of national minorities. The Croatian Radio broadcasts programmes for national minorities within the first programme of the Croatian Radio and at regional radio stations (Radio Banska Kosa, Radio Našice, Radio Osijek, Radio Ilok, Radio Dunav, Radio Pula, Radio Pitomača, Croatian Radio Baranja, Croatian Radio Karlovac, Radio Borovo, Radio Daruvar, Radio Petrinja, Radio Dubrovnik, Bjelovarsko-bilogorski Radio, Radio Nedelišće, Radio Visočica, Radio Grubišno Polje, Mandula Radio from Beli Manastir and Radio Kornati). Croatian Radio has regular hourly shows for national minorities, while the regional radio stations of Rijeka, Pula and Osijek broadcast regular shows for national minority members in these areas. Associations of national minorities participate in the production of shows accompanied by radio programmes. The Council for the National Minorities co-finances radio programmes at the regional and local level intended for providing information to national minority members in the languages of national minorities. Funds for this purpose have been allocated through a public tender since 2003.

28 Art. 9 of the Framework Convention for the Protection of National Minorities. Compare also OSCE Guidelines on the use of Minority Languages in the Broadcast Media.

H. Economic Rights of Minorities and Returnees and Discriminatory Practices towards Minorities in Access to Employment

The general unemployment rate remains high in Croatia (app. 14.3% in June 2007 compared to 7% EU average in May 2007) and the economic underdevelopment of areas of return inhabited by national minorities (Serbs mostly dwell in such areas, but also Roma, Czechs, Slovaks, Hungarians, Ukrainians and Ruthenians) affects both the majority population and the minorities.

Croatian Serbs and Roma continue to be discriminated against in access to employment and in realizing other economic and social rights. The Constitutional Law on National Minorities has prescribed proportional representation of minorities in the state administration and the judiciary, as well as in the executive bodies and the administration of self-government units.²⁹ Nevertheless, these constitutional provisions were not implemented since in most areas of refugee return there are no Serb returnees in the police, the judiciary, or the regional offices of the state ministries. Discriminatory employment practices towards the Serb minority were found in Knin and Vukovar as well as in Dvor, Benkovac, Korenica, Gvozd, Vojnić and Hrvatska Kostajnica, all towns in the area of return.³⁰ Members of the Roma minority are also excluded from the state administration at all levels.

According to the new Law on Civil Servants, it is anticipated that the adoption of plans for the employment of national minority members will represent an integral part of wider employment plans in a certain area. This will enable the possibility of effecting higher employment rates of national minority members in all areas where they live.

Based on data from the Central State Office for Administration, some 4% of employees in state administration bodies are national minority members. However, as there is no obligation to declare one's nationality, it has been assessed that a certain number of employees do not want to declare their nationality, and the actual number of employed national minority members has been estimated to be higher.

In order to consistently implement the provisions of the Constitutional Law on the Rights of National Minorities in the Republic of Croatia, the Law on Courts adopted

29 Kristina Ratković, "Politika osiguravanja zastupljenosti pripadnika nacionalnih manjina u hrvatskoj državnoj upravi", 7(2) Hrvatska javna uprava: časopis za teoriju i praksu javne uprave (Croatian public administration: a journal for theory and practice of public administration) (2007), 273-287.

30 The Serbian Democratic Forum reported that there are no Serbs employed in the police and the court in Vojnić, although Serb returnees outnumbered local Croats and Croat settlers by 3,500 to 2,500. Judicial vacancies have remained unfilled in some instances in which Serbs were the only candidates considered by the State Judicial Council (e.g. in Dvor, Gvozd, Vojnić and Hrvatska Kostajnica). In 2003 66 judges were hired and 65 of them were ethnic Croats whereas no Serb candidate has been elected. All 23 State Attorneys elected in that year were ethnic Croats. Information obtained from the International Helsinki Committee, "Annual Report on Croatia", 2002; Minority Rights Group International, "Minorities in Croatia", 2003, and Human Rights Watch, "Broken Promises: Impediments to Refugee Return to the Republic of Croatia", 2003.

in December of 2005 contains a provision prescribing the means of fulfilling the rights of national minority members by ensuring priority in employment under identical conditions. Since the law has been in force for only nine months, it is still not possible to indicate the statistical data regarding its effects. Moreover, in December of 2005 the Law on the State Judiciary Council was amended as well, by which this institution must take into consideration securing the representation of national minorities in the process of appointing judges. The same provision has been incorporated into the Draft of the Law on Amendments to the Law on the State Attorney's Office, which is currently in parliamentary procedure.

During 2006 an analysis of the number national minority justice officials and advisors in judicial authorities was prepared: data on the national level regarding the representation of national minorities in the judicial authorities showed that in 2006 4.8% of minority members were employed in the courts and 4.6% in the state attorney's offices. Among the employees in the courts and the state attorney's offices, national minority members represented a total of 3.8%. As regards the national structure of judges, a total of 4.8% of minority members were employed by the courts and 4.6% in the state attorney's offices. Among the employees in the courts and the state attorney's offices, national minority members represented a total of 3.8%.

Monitoring documents by international organizations and NGOs have also pointed towards the implementation gap with respect to the non-accomplishment of proportional representation of minorities in administration and the judiciary, particularly at the local level. Private entrepreneurs, although not bound by the law to hire members of national minorities, have proved to be more willing to do so than government agencies. The issue of employment discrimination needs further investigation and monitoring since equal access to employment opportunities for all minorities, including returnees, is essential if Croatia is serious about an effective return programme that is sustainable and democratic.

I. Refugee Returns and Restitution of Property

According to the UN High Commissioner for Refugees, some 200,000 Croatian refugees, mostly Croatian Serbs in Serbia, Montenegro, and Bosnia and Herzegovina, are still displaced. Many of the Serb refugees, especially those who formerly lived in urban areas, cannot return because they have lost their occupancy rights to socially owned apartments (*stanarsko pravo*). Namely, it is alleged that Croatian authorities terminated the tenancy rights of up to 30,000 Serb families who fled their apartments in the first half of 1990s. In June 2003, the government adopted a set of measures to enable former tenancy rights holders in Zagreb and other big cities to rent or purchase government-built apartments at below-market rates. As of early November 2005, only a dozen former tenancy rights holders had benefited from the 2-year-old program. The absence of results only exacerbated the scepticism among refugees that the program would eventually deliver benefits. Only 3,628 former

tenancy rights holders had filed applications under the program as of September 2005.

The bleak prospects for receiving an adequate substitute for lost tenancy rights made many refugees place their hopes in the European Court of Human Rights (ECtHR). Many of them became discouraged in their attempts, after the European Court of Human Rights and Fundamental Freedoms ruled in July 2004 that the rights of an applicant who had argued that Croatia had breached her right to respect for her home, as provided in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), and her right to peaceful enjoyment of her possessions (Article 1 of Protocol No.1 to the ECHR) had not been violated because the Court ruled the application was incompatible *ratione temporis*.³¹

J. Ethnically Motivated Violence

Violent ethnically based incidents directed at ethnic Serbs have become more and more frequent in the last few years. Such racially motivated attacks threaten to additionally discourage the return of Serbs to Croatia.³² In one case, the attack resulted in the death of eighty-one-year-old Dušan Vidić in his house in Karin, near Benkovac on 18 May 2005. Two months later, on 19 July 2005, two elderly Serb returnees were beaten in front of their house in the village of Oštrovica, also near Benkovac. There were several attacks on vehicles with Serbian registration plates registered, as well as on Serbian bus and train passengers. In 2005 incidents of demolition of the premises of a Serb political party in Vukovar, the municipal assembly buildings in the majority Serb villages of Borovo Selo and Trpinja, near Vukovar, and the Serb Orthodox Church in Drniš were also reported. While these attacks were investigated by the authorities, it appears that the investigations have not produced results in identifying and prosecuting the perpetrators. The number of apparently ethnically motivated attacks against the Serb minority and the Orthodox Church remained in 2006, but the police interventions were more vigorous. "However, there is still insufficient police investigation and prosecution in relation to such incidents."³³ Ethnically motivated incidents occurred again in parts of Croatia populated by returnees (Knin, Benkovac, Biograd, Gospić). Such incidents continued to bear messages of intolerance and to intimidate members of the Serb minority, as very often incidents included both verbal insults and physical threats. Official data

31 ECtHR Case of *Blečić v. Croatia*, application No. 59532/00.

32 Comapre Antonija Petričušić, "Pre-Accession Human Rights Record: Assessing the Scope of Conditionality in the Field of Human Rights Promotion and Protection in Croatia", *Yearbook of the Balkan Human Rights Network 2006: EU Accession and Human Rights - Consequences, Tendencies and the Role of Civil Society* (Sarajevo: Balkan Human Right Network), 72-101.

33 European Commission, Croatia 2006 Progress Report, at <http://ec.europa.eu/enlargement/pdf/key_documents/2006/nov/hr_sec_1385_en.pdf>, 22.

report that the public prosecutor decided to pursue 44 of such cases of ethnic violence in 2005, and 27 up to October 2006. Unlike top officials, local politicians and media rarely condemn such incidents.

Probably as a result of this increase in such crimes, the parliament, acknowledging a proposal of the Serb minority MP Milorad Pupovac, accepted amendments to the criminal code that now includes a provision on hate crimes. The amendment permits the imposition of greater sentences for ethnically aggravated forms of offences against person, property, public order and similar offences. These provisions entered into force as of 1 October 2006. The State Attorney's Office disseminated instructions as regards the code of conduct to lower instance state attorney's offices in order to allow for immediate implementation of the amended Criminal Code provisions.

The Race Discrimination Directive 2000/43/EC forms part of the *acquis* as well, and its transposition into national legislation falls under the third Copenhagen criterion. Since the Race Directive represents "the EU's furthest reaching 'constitutional resource' for minority-sensitive policies"³⁴ it is expected that its transposition and implementation into the Croatian context will additionally improve the country's minority rights record. However, the Anti-Discrimination Strategy and/or an anti-discrimination single piece of legislation are yet to be adopted in the course of accession negotiations. The authorities have already been warned in the Commission Progress Report for 2005 that "the level of protection against discrimination is still far from the EU standards"³⁵, whereas Progress Report for 2006 stated that "[a] comprehensive anti-discrimination strategy has yet to be developed and implemented".³⁶

K. Conclusions

A number of the above enumerated improvements in the field of minority rights protection and promotion bear witness that Croatian authorities have seized a path of democratic consolidation. The process of European integration that started in 2000 has played a crucial role in convincing both politicians and public servants to alter their nationalistic attitudes and to embrace pro-Western, democratic standards. First of all, the change of government in 2000, as well as the endeavours of the current government that assumed power in 2003, have introduced a different, more tolerant and inclusive policy towards national minorities. At the declaratory level, but more and more at the practical as well, cooperation with national minority organizations

34 Gwendolyn Sasse, "Gone with the Wind?: Minority Rights in Central and Eastern Europe before and after EU Enlargement", paper presented at the conference Ethnic mobilization in the new Europe, 21-22 April 2006, Brussels, at <<http://soc.kuleuven.be/iieb/ethnicmobilization/docs/proc-Sasse.pdf>>, 25.

35 European Commission, *op. cit.* note 23, 19.

36 European Commission, *op. cit.* note 33, 13.

(political parties and civil society organizations) is seen as a factor in political stability. Secondly, it is possible to conclude that an undeniable correlation between the EU conditionality and monitoring and the improvement in policy-making in the field of minority rights has been recognized in the last seven years.

Nevertheless, the improvement can be ascribed mostly to the central level of governance, as the local governments, particularly in areas of former ethnic conflicts, persist in pursuing nationalistic features. The usual excuses for the non-implementation of prescribed minority rights refer to a lack of financial resources. Both in the field of education, where units of regional self-governments (counties) are responsible for the management of schools, and in the field of the employment of minorities in areas of return (known also as areas of special state concern), this justification is habitually used.

Another problem related to such local politics is the exclusion of Serbs from public services, and discrimination against Roma, who are also denied mainstream educational and employment opportunities in several areas. Therefore, there are still areas in which the human rights of Croatian citizens of minority origin could be better dealt with. To name some of them; changing general attitudes in society towards minorities, speeding up refugee return, discouraging ethnically motivated violence and assuring impartiality of the Croatian judicial system when investigating and prosecuting war crimes and crimes against humanity.