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Constitutional Law on the Rights of National Minorities in the Republic of Croatia

I. INTRODUCTION

This article explores the disposition of the new Croatian Constitutional Law on the Rights of National Minorities (hereinafter “the Constitutional Law” or “the Law”)¹ adopted on 13 December 2002. The legislation previously governing the protection of minority rights was politically an extremely controversial and much-discussed law, and was amended and suspended quite a number of times in its existence of just over ten years. The adoption of the Constitutional Law was one of Croatia’s international obligations upon entry into the Council of Europe (CoE),² as well as an imperative for implementation of the European Union Association and Stabilization Agreement.³ Even at the Law’s drafting phase, the European Commission for Democracy through Law (hereinafter “the Venice Commission”) concluded that it constituted “an important step forward in the protection of national minorities in Croatia. It provides a comprehensive and coherent framework for further legislative and regulatory action in the field of minorities’ protection”.⁴ The Law was drafted on the blueprint of the Framework Convention for the Protection of National Minorities (FCNM), and therefore applies the most generally accepted standards in minority protection.

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- 1 Constitutional Law on the Rights of National Minorities in the Republic of Croatia in Croatian language can be found in the *Narodne Novine* (hereinafter “Official Gazette”) 155/2002.
- 2 The Republic of Croatia joined the CoE on 6 November 1996. For the text of the Law, see the Minority Rights Information System (MIRIS) at <http://www.eurac.edu/miris>.
- 3 Croatia signed the Stabilization and Association Agreement (SAA) with the European Union on 29 October 2000. This policy combines the development of privileged political and economic relations with the countries in the region, supported by substantial financial assistance.
- 4 Report adopted by the Venice Commission at its 47th Plenary Meeting (Venice, 6-7 July 2001) CDL-INF (2001) 14, at <http://www.venice.coe.int/>.

The objectives of the present article are: first, to introduce briefly some background as to the need for minority protection in the Republic of Croatia and, second, to comment on the provisions of the new Constitutional Law. In this light, the article sets out to analyze the normative provisions of the Law, identifying the improvements of the new Constitutional Law that endow Croatian minorities with better conditions for participation in public life, both on the local and regional levels. The conclusion reached is that the new Law indeed has created new institutions for minority participation, but since among the majority population the need for minority protection in Croatia is still not perceived as a necessity, its implementation will most probably fall short when it comes to realization of the prescribed rights. Finally, the article points out the shortcomings and possible inconsistencies in the Law. Applying predominantly a descriptive method, it analyzes certain provisions of the Constitutional Law and points towards the provisions of related by-laws that prescribe minority protection. At the same time this article takes into consideration the obligations that the government has undertaken to apply in the implementation of minority rights granted by the Law, noting that some deadlines set in the new Constitutional Law have not yet been met.

II. CONSTITUTIONAL FRAMEWORK OF MINORITY PROTECTION IN CROATIA

In 1991 when independence from the Socialistic Federal Republic Yugoslavia was declared, Croatia had a noteworthy minority population, comprising 12% Serbs, 0.9% Bosniaks, 0.5% Hungarians, 0.5% Italians, 0.5% Slovenes, 0.4% Czechs and several other numerically smaller ethnic groups. Even though the historically troublesome Italian minority inhabiting the western coastal part of the country manifested no separatist attempts in the newly established state, Serbs making up the majority in Krajina, the southeastern region of the country, found the country's declaration of independence and sovereignty threatening to their existence. Armed by the federal military, Serbs established the breakaway state Republika Srpska Krajina (RSK) inside Croatia and took control of about one-third of the country. RSK comprised of the region surrounding the city of Knin in which Serbs constituted a majority, but also the region of Eastern Slavonia, Baranja, and Western Sirmium, where Serbs were not a numerical majority but gained the dominance over the territory in 1991. Backed by the Yugoslav army, by the end of 1991 Serbs controlled almost one-third of Croatia until spring and summer 1995 when some parts of the RSK were regained by Croatian authorities through military actions, while the he region of Eastern Slavonia, Baranja, and Western Sirmium was peacefully incorporated into the constitutional and juridical system of the Republic of Croatia. Croatian authorities were accused for the 'ethnic cleansing' of approximately 300,000 Serbs that left Croatia in 1995 following military actions when the Croatian army regained control in Krajina, out of which only approximately 90,000 have returned.⁵ Post-conflict migration of Serb population probably resulted as a fear on the side of Serb minority population after Croatian territory was returned to the

⁵ The official data of the Croatian Government Office for Expellees and Refugees. See <http://www.vlada.hr/>.

state control. *Government's position* is that Serbs have left Croatia after being organized by their leaders and before Croatian troops arrived. Nevertheless, the lack of official efforts to stop the expulsion of the Serb population in that time put the burden of responsibility on the Croatian state. Results of the 2001 census indicate the sharp drop of the total number of persons belonging to national minorities who constitute 7.47% of the population, half of the 1991 total number, while nowadays Serbs constitute 4,5% in the total population.⁶

Ethnic minorities in Croatia are primarily entitled to the protection of human rights prescribed by the Constitution. The Constitution⁷ established the Republic of Croatia as "a nation-state of the Croatian people and a state of the members of other nations and minorities who are its citizens: Serbs, Czechs, Slovaks, Italians, Hungarians, Jews, Germans, Austrians, Ukrainians, Ruthenians and others." In the preamble of the Constitution, minorities are guaranteed equality with citizens of Croatian nationality plus the realization of their rights as members of national minority groups. Article 15 of the Constitution stipulates that "members of all nations and minorities shall have equal rights" and they "shall be guaranteed freedom to express their nationality, freedom to use their language and script, and cultural autonomy." All constitutionally prescribed rights (civil and political freedoms along with economic, social and cultural rights) are guaranteed regardless of a citizens ethnic background. Everyone is constitutionally guaranteed the right to freedom of association for the purposes of protection of interests or promotion of social, economic, political, national, cultural and other convictions and objectives.⁸

The Constitution guarantees the right of every citizen, under equal conditions, to take part in the conduct of public affairs, and to have access to public services.⁹ The political participation of minorities stipulated in the Constitution, is additionally prescribed by both the new Constitutional Law and more comprehensively by the amendments to the Law on Elections for the Representatives in the Parliament of Republic of Croatia (hereinafter "Electoral Law"). The Constitution prescribes the Croatian language and the Latin script as the official ones to be used.¹⁰ However, in individual local units, other languages

6 According to the official results of the 2001 census, Croatia has a total population of 4.437,460 representing a 6% decrease of the total population since 1991. Ethnic Croats represent approximately 90% of the total population in comparison to 72% ten years ago. The total number of persons belonging to national minorities was announced at 7.47%, half of the 1991 total number. The most drastic reduction in this regard was seen within the Serb minority, which now only represents 4.54% of the total population, representing a two-thirds decline since 1991. Many people of mixed Serbo-Croatian marriages now prefer to register themselves as Croats, which may be another reason for a sharp drop of their numbers since the last census. The results of the Organization for Security and Cooperation in Europe census are available on the website of the Croatian Bureau of Statistics, at <http://www.dzs.hr/>.

7 The Constitution of the Republic of Croatia has been amended on several occasions. Official Gazette 56/1990, 135/1997, 8/1998, 113/2000, 124/2000, 28/2001, 41/2001, 55/2001. For example, the Constitutional Law on Amendments to the Constitution of the Republic of Croatia (Official Gazette, No. 135/1997) acknowledges the existence of 'autochthonous national minorities' instead of 'other nations and minorities'. The latter term was introduced in the first Constitution of the Republic of Croatia (Official Gazette 56/1990).

8 Constitution of the Republic of Croatia, Article 43(1).

9 *Ibid.* Article 44.

10 *Ibid.* Article 12.

and Cyrillic or other scripts may be introduced into official use along with the Croatian language and the Latin script under conditions stipulated by a special law.

Religious freedoms, which are related to minority rights, are prescribed in Article 41 of the Constitution which states the equality of religious communities before the law and the secularity of the state. Religious communities are free, in conformity with the law, to perform religious services publicly, to open schools, educational and other institutions, social and charitable institutions and to manage them, while at the same time are entitled to the protection and assistance of the state.

Even though Croatian independence was recognized by the majority of the international community during the first months of 1992, Croatia had to provide assurances on the protection of human rights relating to national minorities, which it subsequently fulfilled when it promulgated the Constitutional Law on Human Rights and Freedoms and the Rights of National and Ethnic Communities or Minorities in the Republic of Croatia (hereinafter “the former Constitutional Law on Minorities”).¹¹ Some minority rights and freedoms have been additionally regulated by special by-laws. In 1991 the Croatian parliament passed the Charter on the Rights of Serbs and Other Nationalities in the Republic of Croatia,¹² guaranteeing that “all nationalities in Croatia enjoy legal protection against any and all activities which may endanger their existence, and have the right to respect, self-preservation and cultural autonomy.”

In late September 1995, as a consequence of the military operations that reincorporated parts of the occupied territory,¹³ parliament ‘temporarily’ suspended provisions of the former Constitutional Law on Minorities relating to the Serb minority while general provisions and provisions relating to political participation of smaller minority communities remained in force. The CoE’s Parliamentary Assembly adopted a resolution in April 1999 calling on the government to “adopt a Constitutional Law revising the suspended provisions of the 1991 Law in compliance with the recommendations made by the Venice Commission and taking into account new realities, by the end of October 1999 at the latest.”¹⁴ On 11 May 2000, the Croatian parliament amended the former Constitutional

11 Constitutional Law on Human Rights and Freedoms and the Rights of Ethnic and National Communities or Minorities in the Republic of Croatia, Official Gazette 65/1991, 70/1991, 27/1992, 34/1992, 68/1995, 105/2000. The Croatian Constitutional Court ruled in one of its decisions that “one of the important auxiliary functions of the Constitutional Law was to incorporate the European Convention on Human Rights into Croatia’s legal system in 1991, six years prior to Croatia’s ratification of the European Convention for Human Rights.” Decision of the Constitutional Court of the Republic of Croatia, U-I-745/1999, 8 November 2000.

12 Charter on the Rights of Serbs and Other Nationalities in the Republic of Croatia, Official Gazette 31/1991.

13 The General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Peace Agreement) signed by Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia on 13 November 1995, brought an end to the conflict in the region and provided for the reestablishing of Croatian sovereignty over the region of Eastern Slavonia. That was integrated in 1998.

14 Resolution no. 1185 (1999) honouring of obligations and commitments by Croatia, April 1999, at <http://www.coe.int/>. For further reference see also “Background Report on Constitutional Law on National Minorities of the OSCE Mission to Croatia”, 20 August 2002, at <http://www.osce.org/croatia/>.

Law on Minorities reintroducing some suspended provisions relating to the proportional representation of the Serb minority, but annulling the vast majority of provisions relating to minority self-government. Nevertheless, renewed government efforts to introduce a draft Constitutional Law into parliament were terminated several times. In late April 2000, parliament considered a revised Constitutional Law, but when its draft was examined by the Venice Commission it found that “the draft Constitutional Law, as such, did not seem to offer an adequate response to the political needs of minorities in Croatia.”¹⁵ Finally, after several delays, the new Constitutional Law was passed in December 2002. In accordance with Article 82(1) of the Constitution, emphasizing the importance of the issue of minority protection, “the organic laws regulating the rights of national minorities must be passed by the Croatian parliament with a two-thirds majority vote of all representatives.”¹⁶

III. COMMENTARY ON THE CONSTITUTIONAL LAW

A. Basic Provisions

1. Non-Discrimination Principle (Articles 1–4)

In its very first provision the Constitutional Law reaffirms the country’s commitment to a number of international instruments dealing with human rights and minority protection, undertaking an obligation to respect and protect the rights of national minorities and human rights, the rule of law and all the other highest values of its constitutional and international legal system, with respect to all its citizens. Croatian legislation is mainly in accordance with international standards set for minorities since Croatia has ratified a number of international documents that deal with minority protection.

Article 2 contains a non-discrimination clause, following the reiterated intention of the legislator to commit itself to respect for the ratified international documents.¹⁷ This provision clarifies the fact that rights prescribed by the Constitutional Law are to be applied equally¹⁸ to everyone. In accordance with Article 3, minority rights and freedoms

15 Opinion on the Croatian Constitutional Law Amending the Constitutional Law of 1991, adopted by the Venice Commission at its 43rd Plenary Meeting (Venice, 16 June 2000) CDL-INF (2000) 10, at <http://www.venice.coe.int/>.

16 “The other laws which elaborate the constitutionally-defined human rights and fundamental freedoms, as well as laws that prescribe the electoral system, the organization, authority and operation of government bodies and the organization and authority of local and regional self-government shall be passed by the Croatian Parliament by a simple majority vote of all representatives”. Article 82(2) of the Constitution.

17 This provision derives from Articles 14 and 17(3) of the Constitution of the Republic of Croatia.

18 The Constitutional Court of the Republic of Croatia in one of its rulings decided on the principle of equality related to national minorities in Croatia. Relying on both the Constitution and the FCNM, the Constitutional Court stated that “it is evident that the application of the principle of equality does not always provide for sufficient protection. If the principle of equality was immediately applied alone, ... the special characteristics and specific interests of the minority national and ethnic communities in the society would be neglected, which might, in certain cases, lead to discrimination. Therefore, the exclusive individual protection, limited to the protection of classic fundamental rights of individuals, is no longer considered

are an inseparable part of the democratic system of the Republic of Croatia and enjoy necessary support and protection, including positive measures that national minorities should benefit from.

According to Article 4 every citizen of the Republic of Croatia is entitled to the right to express freely that s/he is a member of a national minority in the Republic of Croatia; the right to exercise, alone or together with other members of the national minority or with members of other national minorities, the rights and freedoms stipulated by this Constitutional Law and other minority rights and freedoms stipulated by special laws. The Law forbids any discrimination based on affiliation to a national minority. Members of national minorities are guaranteed equal treatment before the law, before the courts and equal legal protection. Furthermore, the preservation of minorities is secured in a way that the Law forbids the undertaking of measures which would change the proportion among the population in the areas inhabited by persons who belong to national minorities and which are directed at hindering the exercise of or restricting the enjoyment of minority rights and freedoms. The Constitutional Law and special laws construct the exercise of certain rights and freedoms depending on the numerical representation of members of national minorities in the Republic of Croatia or in one of its areas.

2. Definition of a National Minority (Article 5)

Article 5 aims at defining the persons who have specific 'constitutional' rights enshrined in the new Constitutional Law. A 'national minority' is, in the sense of this Constitutional Law, 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 from those of other citizens, and who are guided by the wish for the preservation of those characteristics. According to the definition, the concept of national minority - i.e. benefiting from certain rights endorsed by the Constitutional Law - is restricted to citizens of Croatia. For this reason the definition was criticized by the High Commissioner on National Minorities (HCNM), because it "can be particularly problematic when it works in tandem with Croatia's Law on Citizenship, since the Law imposes stricter eligibility criteria for naturalization of non-Croats than Croats (such as a five-year period of continuous residency)."¹⁹ Furthermore, the Law restricts the definition of a national minority to groups that are 'traditionally settled' and it is unclear which minorities currently residing in the country should be considered to belong to this category and which should be excluded from the Constitutional Law's guarantees.

sufficient. In accordance with that, the application of the principle of positive discrimination contained in Article 15, Paragraph 3 of the Constitution, points at the detachment from the strictly individual concept of the protection of minority members in Croatian society, i.e., at the acceptance of the constitutional and legal concept of minority rights as the collective rights of minority communities." Ruling Constitutional Court of the Republic of Croatia, 12 April 2001. U-I-732/1998.

19 See Background Report of the OSCE Mission to Croatia on Implementation of the Constitutional Law on the Rights of National Minorities (CLNM) and Related Legislation, at <http://www.osce.org/croatia/>.

The new Constitutional Law on Minorities, contrary to the former one, does not contain a provision stipulating the groups of Croatian citizens which constitute national minorities. Previously, specific national minorities were defined as such by the Constitutional Law on Amendments to the Constitution of the Republic of Croatia,²⁰ those being Serbs, Czechs, Slovaks, Italians, Hungarians, Jews, Germans, Austrians, Ukrainians, and Ruthenians, while at the same time some minority groups, that were numerically bigger although not considered to be “autochthonous national minorities”, were not mentioned in the text of the Constitution (among them Bosniaks, Albanians and Slovenes). The Venice Commission welcomed the abolition of the list of minorities in the new Law, but noticed that a list of minorities is still mentioned in the preamble of the Constitution itself. The Commission warned in some of its remarks on the amendments to the Constitution of Croatia that listing minorities “runs contrary to the practice generally advised by both the CoE and the HCNM, as it tends to create legal problems related to the protection of the rights of minorities (in particular, those that may exist in fact but do not appear on the list) that far outweigh the political benefits gained from the recognition of specific minority groups, which may be better accomplished at the moment when minorities seek to claim the exercise of a specific right.”²¹

3. Bilateral Cooperation and Realization of Minority Rights (Articles 6-8)

Prescribing bilateral cooperation, the Law in Article 6 stipulates that the Republic of Croatia may conclude international agreements with other countries whereby it shall regulate the issues of the rights and freedoms of members of national minorities within the Republic of Croatia. Nevertheless, when officials conclude international agreements they should create and promote the conditions necessary for the preservation and development of the culture of members of national minorities, and the preservation of significant components of their identity; i.e., their religion, language, tradition and cultural heritage. So far, Croatia has concluded bilateral agreements on the protection of minorities with Hungary and Italy, while Croatia is in the process of negotiation with Serbia and Montenegro.²² A treaty on friendship and co-operation with Romania contains also a provision on the protection of minorities.

The effort of the legislator to preserve the intellectual-cultural heritage of minorities is stipulated in Article 7 guaranteeing that the Republic of Croatia shall ensure the exercise of special rights and freedoms of members of national minorities, enjoyed individually or collectively. All of those rights are more thoroughly discussed in the following articles of the Constitutional Law. Article 8 states that provisions of this Law and the by-laws regulating minority rights have to be interpreted and applied with the purpose of respecting the members of national minorities and the Croatian people, and the development of

20 *Supra* note 5.

21 Draft opinion on the Amendments of 9 November 2002 and 28 March to the Constitution of Croatia, adopted by the Venice Commission on 29 June 2001, CDL (2001) 69, at <http://www.venice.coe.int/>.

22 For more information see Arie Bloed and Peter van Dijk, *Protection of Minorities through Bilateral Treaties. The Case of Central and Eastern Europe* (The Hague, Boston, London, 1999).

understanding, solidarity, tolerance and dialogue among both the majority population and the minorities. Later in Article 41, it is prescribed that the rights of national minorities determined by international agreements, which according to the Constitution are a constituent part of the internal legal system of the state, may be neither changed nor cancelled when interpreting the provisions of the Constitutional Law.

B. Minority Rights and Freedoms

1. Use of Minority Language and Education in Minority Language (Articles 9–11)

Members of national minorities are guaranteed, in accordance with Article 9, the right to use their first name and surname in the language which they use, and to its official recognition for them and their children through its entry into the registers of births, marriages and deaths as well as in other official documents, in compliance with the regulations of the Republic of Croatia.²³ They also have the right to have the form for their personal identification card printed and filled out in the language and script which they use. Article 10 prescribes that members of national minorities are furthermore entitled to the right to freely use their language and script, privately and publicly, including the right to display signs, inscriptions and other information in the language and script which they use, in compliance with the law. Article 11 prescribes the right for minority members to be educated in the language and script of the respective national minority. The education of members of a national minority shall be conducted under the conditions stipulated by a special law on the education in the language and script of national minorities.

Special measures adopted by the state to actively implement minority language education rights to the maximum of their available resources are expressed in two special laws, one of them being the Law on the Use of Language and Script of National Minorities²⁴ (hereinafter “Minority Language Law”) and the other the Law on the Education in the Language and Script of National Minorities²⁵ (hereinafter “Minority Education Law”). These laws were passed in 2000,²⁶ prescribing that persons belonging to national minorities, like others, have the right to establish and manage their own private educational institutions.

The Constitutional Law foresees the possibility of establishing school institutions with education in the language and script of a national minority for a smaller number of pupils than the number which is stipulated for state school institutions, and in this way promotes education in the minority language. The curriculum in the language and script of a national minority shall contain subjects related to a specific aspect of that national minority (its mother tongue, literature, history, geography and cultural achievements). However, pupils educated in the languages and scripts of national minorities have the

23 Law on Registries of Births, Deaths and Marriages, Official Gazette, 47/1990, 39/1992.

24 Law on the Use of Languages and Scripts of National Minorities, Official Gazette 51/2000.

25 Law on Education in the Language and Script of National Minorities, Official Gazette 51/2000.

26 These two laws were passed only after moderate political establishment gained power in January 2000. One of the first declarations after the election was the promise that the country will accept the return of ethnic-Serb refugees who were driven out of their homes in 1995.

obligation to learn the Croatian language and Latin script.²⁷ Teachers conducting education in the language and script of a national minority should originate from members of that national minority and should have an excellent command of its language and script. Teachers that do not originate from the national minority may be allowed to conduct education for minority pupils as long as they have an excellent command of the minority language and script. Universities are encouraged to organize the training of teachers teaching in the minority language and script in subjects relevant to the mother tongue, literature, history, geography and cultural creativity of a given national minority.

2. *Use of Minority Language in Administration and Preservation of Identity (Articles 12–16)*
Article 12 deals with the equal official use of the language and script of national minorities in local self-government units, but only when members of a particular national minority comprise at least one third of the population of a given unit. This is one of the rights whose implementation depends on the results of the 2001 census. The equal official use of the minority language and script must be stipulated by the statute of a local or regional self-government unit in compliance with the provisions of the Minority Language Law. The latter law regulates the other conditions and manner of the official use of the language and script used by members of a national minority in representative and executive bodies and in procedures before both administrative bodies of local self-government units and regional self-government units. This by-law also regulates the procedure before the state administration bodies of first instance, the procedure before judicial bodies of first instance; the procedures conducted by the state prosecutor's office and notaries public, and legal entities having public authorities. The Advisory Committee on the Framework Convention (ACFC) considered that the numerical threshold for the obligatory introduction of minority language in contacts with municipal and town authorities, as stipulated by the Minority Language Law, is high and "uncertainties persist since it is unclear whether this obligation applies to municipalities and towns where the persons belonging to a given national minority constitute an absolute majority of the population or whether it is enough that persons belonging to a specific minority constitute a relative majority."²⁸

Article 13 opens an obligation for self-administration units to take care of the preservation of traditional names and signs and the giving of names of persons and significant events in the history and culture of a national minority in the Republic of Croatia to settlements, streets and squares in the areas traditionally, or to a considerable degree, populated by members of national minorities. The Minority Language Law as well as the Law on Local Self-government Units and the statutes of those units are required to stipulate the measures providing for the preservation of the linguistic elements of minorities, as well as for the safeguarding of their culture and political and cultural figures (Article 13).

Minorities are allowed to use insignias and symbols of national minorities and to celebrate their national holidays (Article 14). The Law on Holidays, Memorial Days

27 Article 8 of the Law on Education in the Language and Script of National Minorities.

28 See para. 43 of the opinion of the ACFC, adopted on 6 April 2001, at http://www.coe.int/t/e/human_rights/Minorities/.

and Days off in the Republic of Croatia²⁹ stipulates that national minorities may display appropriate signs and symbols of national minorities along with the official use of signs and symbols of the Republic of Croatia. When the national anthem and a solemn song of a national minority are being performed, the national anthem of the Republic of Croatia shall be obligatorily performed beforehand. Local self-government units and regional self-government units shall be obliged to stipulate by the statute the official use and manner of use of the flag and symbols of national minorities.

For the purpose of preservation, development, promotion and expression of their own national and cultural identity, members of national minorities may establish associations, endowments and foundations, as well as institutions for the performance of public information activities, cultural, publishing, museum, archival, library and scientific activities. The basis for the aforementioned right can be found in Article 43 of the Constitution which provides for the formation of minority associations, while at the same time the regulations of the Law on Associations³⁰ entitle members of national minorities to establish trading companies, institutions, associations, endowments and foundations, religious communities, political parties in the same manner and under the same conditions stipulated by law to which other Croatian citizens are entitled to those rights. The favourable stipulation of the Constitutional Law is the obligation prescribed for local self-government units and regional self-government units to participate in the financing of activities of the aforementioned minority associations, according to their financial possibilities. This rather vague provision does not actually provide for an appropriate funding of minority associations. Furthermore, since the article does not directly refer to any of the specific laws, it is not very likely that minority associations, endowments, foundations or institutions will benefit from it.

Article 16 prescribes the set of rights that facilitates cross-border cooperation of minorities.³¹ The Constitutional Law encourages minorities to keep in contact with the people of their ethnic homeland and prescribes the right to maintain contacts with kin-states, stipulating that members of national minorities, their associations, national minority councils or representatives shall freely maintain contacts with the nation with which they share the same ethnic, linguistic, cultural and/or religious characteristics and with juridical personality with the seat in the area of the state of that nation that handles the fields of education, science, culture, publishing and humanitarian activities. This kind of

29 Article 3 of the Law on holidays, memorial days and days off in Republic of Croatia stipulates that Citizens of Republic of Croatia who celebrate Christmas on January 7, those of Islamic religious affiliation during the days of Ramazan bayram and Kurban bayram as well as those of Jewish religious affiliation in a days of Rosh Hashanah and Yom Kippur have the right to be absent from work. However, this Law does not prescribe the right to be absent from work for the non-Muslim, and non-Jewish population in Croatia and therefore does not treat equally all minority groups living in Croatia. Law on Holidays, Memorial Days and Days off in Republic of Croatia. Official Gazette 33/1996, 96/2001, 13/2002.

30 Law on Associations, Official Gazette 70/1997, 88/2001.

31 Compare for example similar provisions in Article 6 of the Law on Protection of Rights and Freedoms of National Minorities of the Serbia and Montenegro and Article 3 (2)(a) of the Constitution of Bosnia and Herzegovina. Existing norms prescribing the right to interact with compatriots constitute an adequate framework for the maintenance of relations between minorities and kin-states in the region.

cooperation is subjected to certain special treatment, since minority associations, national minority councils and representatives are allowed to receive from the state bodies of the kin-state without paying the custom duties and in a limited number of copies newspapers, magazines, books, movies, videotapes, recordings which they may use for their needs and which they can distribute to members of a national minority without paying compensation. The associations of members of national minorities may organize guest performances by professional and amateur cultural and artistic groups and may organize other cultural and art performances and exhibitions which contribute to the enrichment of the culture and identity of a national minority. In such cases, foreign persons participating in the conduct of performances and exhibitions shall not need a work permit.

3. The Role of the Media in Promotion of Minority Issues (Articles 17-18)

The Constitutional Law foresees that the laws and implementing rules which regulate the activities of public information, the production and broadcasting of radio and television programmes, education, museum, archival and library activity and the protection and preservation of cultural assets, should create conditions for the acquaintance of all citizens of the Republic of Croatia, especially of children and young people, through the content of educational work and through obligatory, as well as optional educational subjects, with the history, culture and religion of national minorities.

Radio and television stations at the national, regional and local level have the task to promote understanding for the members of a national minority (Article 18). Furthermore, they are obliged to produce and/or broadcast programmes intended for the information of members of national minorities in their specific language.³² It was noted that the recent changes in the Law on Croatian Radio-Television (HRT)³³ constituted “a clear step forward towards an acceptable legal framework for the transformation of HRT into a genuine public service broadcaster.”³⁴ This recent reform of Croatian media legislation provides the basis for the democratic organization of both a public service and private broadcasting. Nevertheless, a recent study funded by the Organization for Security and Cooperation in Europe (OSCE) pointed out that HRT pays insufficient attention to “important post-war issues such as refugee return, treatment of minorities and human rights.”³⁵ Additionally,

32 In practice implemented this legislative provision has been implemented by a weekly one-hour information program for national minorities ‘Prizma’, that is broadcast on Sundays in the national television. The program is produced in minority languages with subtitles in Croatian. However, coverage of minority issues still not a regular component of news programmes, as reported recently in a monitoring programme conducted by the Croatian Helsinki Committee for Human Rights (HHO). See “Politics in HTV Programming,” at <http://www.hho.hr/english/politicsonhtv.htm>. HTV has, recently informed the OSCE Mission in Croatia that it envisions having regional studios broadcast programmes in minority languages by the latter half of 2003. See OSCE Mission to Croatia Background Report Implementation of the Constitutional Law on the Rights of National Minorities (CLNM) and Related Legislation, at <http://www.osce.org/croatia/>.

33 Law on Croatian Radio-Television, Official Gazette 25/2003.

34 “OSCE sees progress in draft law on Croatian Radio-TV”, 18 December 2002, at <http://www.osce.org/croatia/>.

35 *Ibid.*

media enterprises have an important role in the production and broadcast of programmes which stimulate and improve the preservation, development and expression of the cultural and religious identities of national minorities. Members of national minorities should become acquainted with the work of their councils and their political representatives through media. With regard to this, media enterprises (press, radio and television) are obliged to enable the minority associations and institutions to participate in the creation of programmes produced for national minorities. However, this provision does not make clear whether only the state-owned media enterprises are obliged to publish programmes produced for national minorities or if it is the obligation of all of media enterprises.

4. *Political Participation of Minorities (Articles 19-22)*

The political participation of minorities in Croatia³⁶ has been guaranteed as a right since 1991.³⁷ The new Constitutional Law represents the foundation for political participation of national minorities by guaranteeing a certain number of seats in the parliament and in the bodies of local self-government to minorities. The Constitutional Law provides a possibility for minorities to elect a minimum of five and a maximum of eight of their representatives to parliament in the special electoral units. However, the implementation of this right has not been completely prescribed in the Constitutional Law. This has been left to be prescribed by the new electoral law which *inter alia* regulates the election of minority representatives to the Croatian parliament.³⁸

Members of national minorities, in accordance with Article 19 of the Constitutional Law, constituting more than 1.5 % of the total population of the Republic of Croatia are

36 In accordance with the Law on Elections for the Representatives in the Parliament of Republic of Croatia (Official Gazette 22/1992) members of national minorities who constituted more than 8% of the population of the Republic of Croatia on the basis of the 1991 census, had the right to be represented in parliament in accordance with their share of the total population. Those rights, together with Serb minority self-government, originally granted by the 1992 Electoral Law in the areas where Serbs formed majority of the population (those administrative units were called *kotarevi*, and there were two of them: Glina and Knin) were annulled in September 1995. Amendments to the Electoral Law made in October 1995 provided for a total of eight minority representatives in the parliament. (Official Gazette 68/1995). In October 1999 amendments to the Electoral Law (Official Gazette 116/1999) specified that the five representatives (for minorities constituting less than 8% of population) would be distributed as follows: Italians, Hungarians, and Serbs each entitled to elect one, Czechs and Slovaks together are entitled to one, and Ukrainians, Ruthenians, Jews, Germans, and Austrians together are entitled to one. This scheme for minority representation was implemented in the 2000 parliamentary elections and shaped the current assembly. The 2000 Electoral Law reintroduced proportional representation in parliament, government and supreme judicial bodies for minorities that account for more than 8% of the population. However, the law provided that implementation of this provision would be suspended until after the official results of the 2001 census and therefore had neither concrete effects on the formation of the assembly, nor on the formation of other official bodies.

37 Minorities were guaranteed political participation by the former Constitutional Law on Minorities passed in 1991, and by later Electoral Laws. For further information see Snezana Trifunovska (ed.), *Minorities in Europe. Croatia, Estonia and Slovakia* (The Hague, 1999), 21-63.

38 The amended law regulating the election of representatives to the Croatian Parliament did include the requirements put forward by the Constitutional Law on Minorities regarding their right to political representation. It was passed on 2 April 2003, published in the Official Gazette 53/2003.

guaranteed a minimum of one and a maximum of three representative seats for the members of that national minority.³⁹ The Serb minority is the only one satisfying the threshold of 1.5% of the population, as reflected in the 2001 census, guaranteeing it the political participation stipulated in the Constitutional Law. The other minorities are guaranteed in accordance with the Constitutional Law the right to elect a minimum of four representatives. The amendments of the Electoral Law prescribed five parliamentary seats for this group of minorities, granting them the collective right to elect representatives who in some cases would represent several minority groups. In accordance with this provision, Italian and Hungarian minorities are each guaranteed one seat for their representatives while one representative will represent Austrians, Bulgarians, Germans, Jews, Roma, Ruthenians, Ukrainians and Vlachs, while Czechs and Slovaks together will elect one. Members of Albanian, Bosniak, Montenegrin, Macedonian and Slovenian minorities will elect a common representative.⁴⁰

Members of national minorities have the right to representation in the representative bodies of local and regional self-government units (Article 20).⁴¹ If at least one member of a national minority is not directly elected to the representative body of the self-government unit in which the minority forms more than 5 % and less than 15 % of the population, the number of members of the representative body of the self-government unit should be increased by one member, and the member of a national minority who was not elected initially but has gained the most votes will be considered elected. Where a national minority constitutes at least 15 % of the population in the local self-government the Law prescribes proportional representation in the representative body of the unit.

In order not to exclude those members of minorities that did not register in the last census (held in 2001) due to the fact they had left the territory of Croatia as refugees in 1995, the official census results on the number of members of national minorities in a local

39 The exact reason the extreme rightist parties denied their support to the amended Electoral Law centers around the fact that Serbs are given the right to have three political representatives. The rightist parties claimed that Serbs should be given a right to elect one representative to parliament, while eventually, in accordance with the turnout; they would have a chance to elect additional representatives. If this proposal was accepted, the so called non-fixed quota system would be applied for the election of Serb representatives. The number of additional minority representatives elected would be determined through the following formula: the number of voters of the Serb national minority that participated in the election would be divided by the average number of voters required to elect one member to parliament.

40 Although the earlier versions of the draft of the Constitutional Law contained an option which provided a dual vote for minorities for the election of minority representatives to parliament, the draft submitted by the government to parliamentary procedure in July 2002 eliminated this dual voting option.

41 Units of local and regional self-government have the constitutional right (Article 135 of the Constitution), within the limits provided by law, to regulate autonomously by their statutes the internal organization and jurisdiction of their bodies and accommodate them to local needs and potentials. In performing the affairs within their jurisdiction, units of local and regional self-government are subjected only to the review of their constitutionality and legality by the authorized governmental bodies (Article 136 of the Constitution). The system of regionalization of Croatia is set by the Law on Local and Regional Self-government, Official Gazette 33/2001. This law prescribes that cities and municipalities are local self-government units, while counties (županije) are regional self-government units. There are twenty self-government units and the capital of Croatia is also given the status of one.

or regional self-government unit shall take into account possible changes registered in the last confirmed voters' list of that unit prior to each election that takes place in the regional self-government units. This adjustment was proposed by the Venice Commission,⁴² the ACFC⁴³ and advocated by Serb political parties.

Article 21 stipulates the possibility of the self-government units, in which members of national minorities do not constitute the majority of the population, to determine by their statutes that members of national minorities should be elected to the representative body of the respective units resulting from their share in the total population of the unit.

In Article 22 it is stipulated that minority members are ensured proportional representation in the executive bodies of self-government units. Until the Constitutional Law was passed, providing for the proportional representation of minorities in the representative bodies of self-government units, the Article 9 Law on Election of the Members of Representative Bodies of Local and Regional Self-government Units⁴⁴ (hereinafter "Electoral Law for Self-government Units") had been prescribing minority participation in the executive bodies of those self-governments. However, this provision has never been applied, even though it is supposed to happen within 90 days after the census results are published.⁴⁵

The members of national minorities are additionally ensured representation in the state administration and judicial bodies, taking into account acquired rights and the share of members of national minorities to the total population at the level at which the state administration or judicial body is established. Article 22 contains a kind of 'positive-discrimination' measure in view of the fact that when there are several candidates with equal qualifications the minority member applicant is to be selected for the vacancy in the state administration's and self-government unit's posts.

C. Councils and Representatives of National Minorities in Self-Government Units

The Constitutional Law has introduced institution of national minority councils, minority self-governments in which each minority represented in the population of the self-gov-

42 See para. 27 of the opinion adopted by the Venice Commission on 6 November 2002, CDL-AD (2002)30, at <http://www.venice.coe.int/>.

43 See para. 20 of the opinion of the ACFC, adopted on 6 April 2001, at http://www.coe.int/t/e/human_rights/Minorities/.

44 Law on Election of the Members of Representative Bodies of Local and Regional Self-government Units, Official Gazette 33/2001. The Constitutional Law has prescribed in article 20(6) that the nomination and election of minority members of the representative body of the local and regional self-government units should be done in accordance with this by-law.

45 Consolidated Opinion on the Law on the Election of Members of Local and Regional Self-Government Units of Croatia, adopted by the Venice Commission at its 50th Plenary Meeting in Venice 8-9 March 2002, published on 12 March 2002. "A serious failing of this Law is that, while it provides, under Article 9, that the statutes of local and regional authorities shall determine the number of seats to be held by 'Croatian citizens, members of ethnic and national communities or minorities, in accordance with the proportional share of their members in the total population of the unit', there is a remarkable absence of clear provisions governing how such a composition of the relevant bodies is actually to be achieved."

ernment unit is entitled to vote for his/her minority member's council. These national minority councils were qualified by the Venice Commission as "a significant aspect inspired by the Hungarian model with some territorial aspects as well."⁴⁶ The Commission has noted that the institution of minority councils embodies "a viable and adequate substitute for the abolished special status regime provided for by the Constitutional law in 1991 and never implemented."⁴⁷ The right of minority members prescribed in Article 23 to elect their representatives to the national minority councils within self-government units has implications for the improvement, preservation and protection of the place of national minorities in society.⁴⁸ This right facilitates minority participation in public life and management of local affairs. Elected minority councils can make proposals to local government bodies on how to improve the situation of minorities and can propose candidates for local offices. At the same time, governments at the local and regional levels are obliged to consult these councils with regard to acts affecting the rights of minorities.

Article 24 provides the right of national minorities to elect a national minority council for the self government units in which they constitute at least 1.5% of the population. In the self-government units with less than 100 members of national minority inhabitants, a minority representative will be elected instead of the council, and have the latter's role in the respective self-government unit. The Law furthermore stipulates that groups are entitled to propose candidates as members of these councils and as minority representatives. Elections for the councils are direct and done by secret ballot, while the provisions of the Electoral Law for Self-government Units are appropriately applied in both election procedures and other issues related to the councils elections. Members of the councils each serve a four-year mandate. Article 24(6) also contains the adjustment clause which is used in determining of the number of members of a national minority in order for the mandate of the national minority councils to be carried out. The adjusted census results that have registered voters for the election of members of representative bodies of local self-government units are to be applied in the elections. The first elections for minority councils were held on 18 April, 2003 for less than half of the 470 councils and 140 representatives to which minority groups were entitled (221 councils and 42 representatives respectively). Prior to the elections for minority councils, the government was accused of providing a less-than-adequate level about the importance of these elections as well as less-than-adequate level of support to the minority organizations that were expected to nominate their candidates' lists.

The organizational issues concerning the national minority councils prescribed in Article 25 established councils as non-profit legal persons responsible with their total

46 See para. 8 of the report adopted by the Venice Commission on 3 July 2000, CDL (2001) 74.

47 *Ibid.* See also *supra* note 31.

48 Similar institutions have been already introduced in the neighbouring countries. For example, self-governing ethnic communities for the members of Italian and Hungarian minorities have been established by the Slovenian Law on Self-governing Ethnic Communities. The National Councils of National Minorities with the purpose of exercising rights of self-government regarding the use of language and script, education, information and culture whose establishment was prescribed by the Law on Protection of Rights and Freedoms of National Minorities of the Serbia and Montenegro (Article 19).

property for their obligations. Article 26 stipulates the duty of national minority council members to elect a president for each council by secret ballot. Each national minority council elects in addition a deputy to the president, who replaces him in his absence and in all situations when he is prevented from performing his duties. Article 30 prescribes that all members of the national minority councils should perform their duties voluntarily and wisely.

Provisions as contained in Article 31 on the responsibilities of councils functioning in self-government units specify that they are authorized to propose improvements of both the position of a national minority within the state or within the self-government unit itself. Council are empowered to submit proposals of general acts concerning minorities to the legislative bodies of their respective self-government units. The councils furthermore propose minority candidates for posts in state administrative bodies and bodies within self-government units. Moreover, the councils have the right to be informed about minority-protection related issues which the working groups of the representative bodies of self-government units discuss in their sessions. The Councils also provide opinions and proposals regarding programmes on radio and television stations on the local and regional level tailored especially for national minorities or other programmes dealing with minority issues. The bodies of self-government units are obliged to prescribe in their legal acts the deadlines, methods and procedures that put into effect the aforementioned rights of these councils.

Article 32(1) concerns matters relating to the participation of minorities on a local level through the consultative role of national minority councils. The authorities of self-government units have an obligation to seek opinions from these councils when they draft any law that concerns the rights and freedoms of national minorities. If a national minority council considers a general act by a self-government unit or some of its provisions to be at odds with the Constitution, the Constitutional Law or some of their by-laws, it is obliged to inform the Ministry of Justice and Administration immediately. Concerning the same issue, the councils have a duty to inform the authorities of their respective self-government units as well as the National Minorities' Committee (Article 32(2-6)).

Article 33 prescribes the possibility of establishing the co-ordination of the national minority councils founded in the same or different local or regional self-government units. Councils are encouraged to interact for purposes of conformation and promotion of mutual interests. Each of the respective councils can authorize the co-ordination of the national minority councils to undertake the execution of rights belonging to those councils in accordance with Article 31 of the present Constitutional Law. If more than half of the national minority councils of regional self-government units agree on the founding of this co-ordination, these councils are thus considered to have established the co-ordination of national minority councils at the national level. This co-ordination of national minority councils at the national level is entitled to take decisions, with the consent of the National Minorities' Committee, on the insignias and symbols associated with national minorities and on the manner in which holidays of national minorities are celebrated.

The minority representative performs his/her duties using both the Croatian language and Latin script in correspondence, as well as both the language and script used by the

national minority that has elected him. Any official communication from the minority representative should contain the emblem of the self-government unit for the area where he was elected. The law also stipulates the responsibilities of the minority representative (Article 34).

D. The National Minorities' Committee

The other institution newly introduced institution by the Constitutional Law is a National Minorities' Committee⁴⁹ (hereinafter "the Committee") for the purpose of facilitating the participation of minorities in the public life of the country (Article 35). It should discuss, propose, regulate and resolve issues related to the exercise and protection of minority rights. Therefore the Committee is expected to co-operate with competent state and self-government units, national minority councils and/or minority representatives, associations of national minorities and nongovernmental organizations dealing with minority rights. It submits opinions and requests to parliament and to the government and co-operates with all government bodies and the bodies of the international community regarding minority protection. This constitutes an improvement since the preceding institution responsible for the same matters was not obliged to include any minority members.

The Committee pursues international co-operation in the issues of interest for national minorities in the Republic of Croatia. The Committee fosters cooperation with institutions within Croatia dealing with national minority issues as well as with the competent bodies of kin-states of Croatian national minorities. The National Minorities' Committee distributes funds provided in the budget for the needs of national minorities.⁵⁰ The beneficiaries of the funds are asked to submit annual reports to the Committee on their operating costs as subsidized by the state budget. The Committee informs the government and the parliament about the expenditures of the minority organizations. If the Committee fails to pass a decision on the allocation of funds within 90 days of the adoption of the state budget, the government is obliged to pass such a decision.

The composition of the Committee shall reflect the identities of all national minorities, their specific qualities, historical values; ethnic, cultural and every other diversity, taking into account the proportion of a particular national minority within the total population of Croatia. Since the Committee does not have legal personhood similar to that provided for local and regional national minority councils and therefore is granted limited compe-

49 In May 1997, the Government agreed with the Venice Commission to establish a Council of Ethnic and National Communities or Minorities in the Republic of Croatia, with the purpose of creating a counselling body in which minority representatives could regularly meet with the government. The first Council was constituted on January 23, 1998. In the first years of its existence it has been very passive in the implementation and promotion of minority rights. The Council for National Minorities can be considered as its successor.

50 Similar competences are conferred in Serbia and Montenegro to the Federal Fund for National Minorities that allocates financing activities from the budget related to the improvement of the status and development of cultural creative work of national minorities. See Law on Protection of Rights and Freedoms of National Minorities of the Serbia and Montenegro, Article 20 (2).

tences and given merely a consultative role (Article 35 (2))⁵¹ its actual power is dubious. The working programme of the Committee, its financial plan and the annual financial statement of its funds must be published in the Official Gazette in order to demonstrate that the Committee allocates appropriately the funds provided in the budget (Article 37). The government is in addition obliged to establish the Expert Office of the National Minorities' Committee,⁵² which could be treated as a successor to the Office for National Minorities. Until the Expert Office will be established its duties will be carried out by the Government's Office for National Minorities (Article 42 (3)).⁵³

E. Implementation of Minority Rights

The means of implementation of the rights to which minorities are entitled are laid down by Articles 37-45. However, some of the prescribed rights in order to be realized require financial resources from the budget of the state or self-government units. For example, Article 18(2) stipulates that the state budget and the budgets of local and regional self-government units shall provide funds for co-financing programmes of radio and television stations which minority groups own and for programmes produced for national minorities, in compliance with their economic possibilities. Financial support will be distributed according to the criteria established by the government, upon the proposal of the National Minorities' Committee. Article 28 furthermore stipulates the responsibility of the self-government units to provide funds for the work of the minority councils. On a voluntary basis, the self-government units are encouraged to provide the funds necessary to carry out the specific activities proposed in the councils' working programmes. The article also provides for the possibility that funds may be granted from the state budget for the exercise of specific programs of a particular national minority council.

The rights guaranteed in the Constitutional Law are exercised in accordance with by-laws which must be proved compatible with the general provisions as established in the Constitutional Law itself. Therefore two special laws regulating both education and the use of minority language and script are directly relevant to the implementation of Articles

51 This lack of governing power of the National Minorities' Committee was criticized by the OSCE HCNM and the Venice Commission. See OSCE Mission to Croatia Background Report Implementation of the Constitutional Law on the Rights of National Minorities (CLNM) and Related Legislation, at <http://www.osce.org/croatia/>. Also see Opinion on the Constitutional Law on the Rights of National Minorities of Croatia, adopted by the Venice Commission at its 54th Plenary Session (Venice 14-15 March 2003), CDL-AD (2003) 9, at <http://www.venice.coe.int/>.

52 Decree on the Expert Office of the National Minorities' Committee. Official Gazette 77/2003.

53 The Office for National Minorities served as a consultative body of the Government of Croatia with the principal role of providing expertise regarding policy undertaken in respect of national minorities. This was established by government decree in December 1990, prior to Croatia's international recognition as an independent state. It is remarkable that representatives of minorities were not involved in the concrete work of the Office, even though the Office dealt with minority issues. This was corrected in the new Constitutional Law, and although the members are about to be elected, it was prescribed that the president of the National Minorities' Committee shall also be the Head of the Expert Office. Decree on the Office for National Minorities, Official Gazette 70/2001.

9-13 of the Constitutional Law. The provisions of Article 19 of the Constitutional Law have been in force since the day on which the Electoral Law came into effect (2 April 2003). The other relevant by-law is the Electoral Law for Self-government Units which must be applied when electing minority councils.

Even though the elections for minority councils were finally held almost two months later than the text of the Constitutional Law had foreseen, they constituted the actual implementation of the Constitutional Law on the Rights of National Minorities and created a basis for the participation of minorities in political life at local and regional levels. The low turnout of voters for minority councils could negatively impact the legitimacy of their elections. The OSCE Mission has urged the government to organize additional elections in areas where they were not held, warning that the next time minority organizations should be given more time for the preparation of campaign.⁵⁴

It is prescribed in Article 39(2) that the representative bodies of self-government units have to be filled by an appropriate number of members of national minorities within 90 days of the Constitutional Law entering into force in all those self-government units with on-going mandates, and where the right to representation of members of national minorities has not been implemented in accordance with Article 20 of the Constitutional Law. Elections for minority representatives in those self-government units in which minorities are under-represented should happen after such self-government units adjust their respective statutes to prescribe the exact number of minority representatives for each of their units. OSCE's Report on the Implementation of the Constitutional Law has noted that the clarification by competent government bodies is needed in a manner so that particular guarantees can be implemented, such as minority representation in the state administration and judiciary.⁵⁵

Article 42 establishes the time framework for the formation of the institutions established by the Constitutional Law. It imposes certain obligations on the government to appoint members of the National Minorities' Committee, its president and deputies within 90 days of the day on which the Constitutional Law comes into effect. In addition, the Law provides for the possibility that even if elections for the members of national minority councils had not taken place within the 90 days (by 23 March 2003), the government itself is obliged to appoint five members of the Committee. This was indeed done on 27 March 2003⁵⁶ and five members of the Committee appointed by the government

54 The OSCE Mission was concerned about low voter turnout at minority elections in Croatia, 19 May 2003, at <http://www.osce.org/croatia/>.

55 See OSCE Mission to Croatia Background Report Implementation of the Constitutional Law on the Rights of National Minorities (CLNM) and Related Legislation, at <http://www.osce.org/croatia/>.

56 Minority organizations, religious communities and members of national minorities propose candidates that are distinguished in cultural, scientific, professional or, religious spheres. From this group the government has appointed following individuals, members of respective minorities: Aleksandar Tolnauer (Jewish), Sinisa Tatalovic (Serb), Zef Mirdita (Albanian), Sead Berberovic (Bosniak), Dragutin Lalovic (Montenegrin). In addition, the Government appointed the following minority representatives in the Parliament as members of the Council: Zdenka Cuhnil (Czech); Milan Djukic (Serb); Borislav Graljuk (Ukrainian), Furio Radin (Italian), Tibor Santo (Hungarian). Pronouncement on the Appointment of the Members of the National Minorities' Committee. Official Gazette 52/2003.

together with the five current elected minority representatives in the parliament constitute the current National Minorities' Committee. Seven additional Committee members have to be nominated by the not yet operational local and regional minority councils. The Committee held its constitutive session on April 16, 2003. Its members are each expected to serve a four-year mandate. The Committee has a president (Aleksandar Tolnauer) and two deputy presidents. One of deputies must be coming from the Serb minority (Sinisa Tatalovic). The Expert Office of the National Minorities' Committee has not yet been formed. Until the Expert Office is established, the responsibilities of the expert body serving the Committee shall be performed by the Office for National Minorities of the government of Croatia. It is however expected, according to the information from the Government's Office for National Minorities, that the Expert Office will start performing its duties at the beginning of the year 2004. According to the head of the Government's Office, the main reason for this delay is the Expert Office's lack of financial resources.

Articles 37 and 38 lay down the supervision of the implementation of the Constitutional Law. The governmental bodies (meaning competent ministries and the Office for National Minorities) are obliged to supervise the implementation of the minority rights and freedoms. The government co-ordinates the work of governmental bodies in issues related to minority protection and has the obligation to submit to the Croatian parliament an annual report on the implementation of the Constitutional Law and on the expenditure of funds provided for in the state budget for the needs of national minorities. Correspondingly, the Committee is required to submit to parliament or to its working body responsible for the exercise of the rights of national minorities,⁵⁷ a bi-annual report on the issues which fall within the scope of its activities and a quarterly report on the expenditure of funds provided for in the state budget for the needs of national minorities.

The councils and minority representatives in the self-government units are entitled to request the supervision by the competent government bodies of the implementation of the Constitutional Law and special laws regulating minority protection in the self-government units in which they function. The national minority councils and minority representatives, as well as the Committee itself have the right to file a constitutional complaint⁵⁸ before the constitutional court of the Republic of Croatia if they are of the opinion that the rights and freedoms of national minority members, stipulated by the Constitutional Law and special laws, have been violated. However, the exercise of this right requires an amendment of the Constitutional Law on the Constitutional Court since the current pro-

57 The Committee on Human Rights and the Rights of Ethnic and National Communities or Minorities is a parliamentary body that proposes laws concerning human rights issues, monitors the implementation of ratified international legal acts which stipulate the protection of human rights, and promotes the realization of human rights entitled to minorities established by the Constitution and laws. This parliamentary body should propose measures for the realization of minority rights, should assist in signing bilateral and multilateral treaties and programmes of international cultural, educational and other cooperation when this is of special interest to a particular minority.

58 Each constitutional complaint should be submitted in compliance with the provisions of the Constitutional Law on the Constitutional Court of the Republic of Croatia, Official Gazette 99/1999, 29/2002, 49/2002.

visions do not provide for the right of non-legal persons (such as the National Committee is) but only legal and physical persons to submit a constitutional complaint.⁵⁹

Article 43 of the Constitutional Law addresses the redundancy of certain provisions of extant special laws regarding minority protection. As a result, Article 4(1) of the Minority Language Law⁶⁰ ceased to be valid the day that the Constitutional Law came into effect. Moreover, the provisions of both Article 9⁶¹ and Article 61⁶² of the Electoral Law for Self-government Units regarding election of minority representatives to bodies of local and regional self-government units ceased to be applied.

IV. CONCLUSION

Proper accommodation of minorities has been Croatia's long-standing commitment to the international community. The Constitutional Law, which was passed in December 2002, contains a number of provisions that guarantee the full respect of the rights of ethnic minorities in Croatia and contributes towards building a comprehensive framework for the protection of national minorities. The Law ensures proportional representation for minorities in the Croatian parliament, in the representative bodies of the local self-government units and in the state administration and judicial bodies.

The achievement of minority participation at local level is realized through the establishment of the national minority councils, and the regional and local minority self-governments that each minority is entitled to organize. Another achievement of the new Constitutional Law is the National Minorities' Committee, a specialized consultative body dealing with minority issues. The improvement of the present Constitutional Law is demonstrated in the obligation of the government to take into account the percentage of members of particular national minorities within the total population of the country when appointing new members to the National Minorities' Committee.

The change in the number of national minorities in relation to the total population of Croatia over the last decade has influenced the exercise of the rights of certain national minorities. The 2001 census results are relevant for the determination of the number of minority members who are able to participate in political life. Nevertheless, the Consti-

59 See OSCE Mission to Croatia Background Report Implementation of the Constitutional Law on the Rights of National Minorities (CLNM) and Related Legislation, at <http://www.osce.org/croatia/>.

60 The provision that was abolished does not modify any of the acquired rights to use the language of a national minority. It was simply eliminated because it had implication for the previous Constitutional Law on National Minorities that ceased to be valid with the promulgation of the new Constitutional Law, in accordance with the principle *lex posterior derogat legi priori*.

61 The abolished provision stipulated that the number of members of the representative body from among the ranks of the members of national minorities shall be determined by the statutes of self-government units, in compliance with their proportional share in the total population of the self-government unit.

62 This removed article stipulated the proportional representation of the minority members in the units of self-government units. This provision is laid down in detail by the provisions contained in the new Constitutional Law in the Article 20.

tutional Law prescribed the adjustment of the 2001 census data.⁶³ The major critique of the Serb politicians was in the drafting period of the new law when they claimed that many Serb refugees were not given a chance to register in the census, as the census applied the United Nations methodology of census taking, according to which only those citizens who have not been absent from a country for more than one year are listed among the population of the country. It was therefore essential that the Constitutional Law prescribed that the official census results on the number of members of national minorities in a local or regional self-government unit shall conform to the possible changes registered in the voters' list of the respective units prior to each election for the minority representatives in representative bodies of self-government units and for national minority councils. Realistically, the minority issue in Croatia is linked with the return of the Serb minority population in the Eastern Slavonia and Krajina regions.⁶⁴ Realizing the need to speed up the refugee return process, Croatian president Stjepan Mesić has decided to encourage the process of return by proposing a trilateral agreement between Bosnia and Herzegovina, Croatia and Serbia and Montenegro. The aim of the trilateral agreement would be the expression of governments' willingness to foster refugee return. Unfortunately, recent attempts to sign the agreement have not had the desired results since the three presidents have failed to agree on the issue of the abolished tenancy rights of the returnees. However, the presidents have announced that the declaration might be signed after legal experts have been consulted on this disputed issue.

In the last couple of years, the "improvements in the statements and attitudes of the government *vis-a-vis* the protection of national minorities" were acknowledged by the ACFC.⁶⁵ Those improvements have resulted in "certain positive developments in the legislative sphere"⁶⁶ and the new Constitutional Law definitely follows this line of progress. However, no matter how technically advanced this law might be, it will not have any effects if it is not consistently implemented on all levels of government, particularly in areas where minorities form a significant part of the population. The Constitutional Law provides a comprehensive and coherent framework for supplementary legislative and

63 It is still however unclear what methodology will be used and which body will be responsible to adjust the 2001 census results to the voters' lists (citizens 18 and older have passive and active voting right). The amendments to the Local Election Law did not provide any clarification on this issue.

64 The former High Commissioner on National Minorities Max van der Stoep pointed out that "the right of return to one's place of origin and home, both voluntarily and in conditions of safety, is of fundamental importance. The primary responsibility lies with the state of origin to create and ensure conditions of return. The right of return also has a bearing on regional peace and security since the prolonged displacement of large numbers of persons can be destabilizing. Of course, conditions of return also imply respect for all other human rights in order to integrate societies and avoid the recurrence of displacement." Max van der Stoep, "Minority Rights, Participation and Bilateral Agreements", Address to an international seminar on Legal Aspects of Minority Rights: Participation in Decision-Making Processes and Bilateral Agreements on Minority Rights. 4 December, 2000. <http://www.osce.org/hcnm/>.

65 See para. 70 of the opinion of the ACFC, adopted on 6 April 2001, at http://www.coe.int/t/e/human_rights/Minorities/.

66 *Ibid.*

regulatory action in the field of minority protection which may also explain the absence of detailed mechanisms for the political participation of minorities that was prescribed in the amendments of Electoral Law. Additionally, the passing of the new Constitutional Law was a kind of 'political bargain' between the current establishment and right-wing parties in the parliament. As the Constitutional Law is an organic law and therefore requires two thirds of the votes in order to pass, even right-wing votes were necessary to pass the law. Only the extreme right-wing parties opposed the Constitutional Law, casting merely four votes against and two abstentions to the proposed law.

The provisions of the Constitutional Law are reflected in the Electoral Law that was amended in March 2003, ensuring the fair procedure for minority representation in parliament. In accordance with the new Electoral Law, minorities are guaranteed eight places in parliament, as compared to the five seats that minorities were granted under the previous Electoral Law. Amendments to the April 2003 Electoral Law constitute an improvement in the manner in which they foresee the right for Albanian, Bosnian and Slovene minorities to vote for their own representatives. They had not previously been considered to be autochthonous national minorities and thus had not granted minority protection *per se*, even though they constitute relatively numerous communities in Croatia.

However, even the most advanced minority protection foreseen by the legal instruments will not be sufficient without the creation of a climate of mutual respect, tolerance and understanding for the need of supplementary protection of minorities. Therefore, the main conclusions of the present commentary can be summed up as follows: The Croatian Constitutional Law on the Rights of National Minorities has established a good legislative framework for the protection of minorities in Croatia, granting them greater political participation on both state and local levels, as compared with prior legal regulations in the same sphere. The elections for the national minority councils held in May 2003 are a good example that the provisions of the Law can be implemented, but its low turnout indicates that more information on the rights of minorities would be required. Certainly, the implementation of the existing provisions is the most important aspect of minority protection. However, the country's pro-western orientation serves as an additional stimulus to fulfilling the realization of minority protection on both legislative and implementation levels.

