

**BALKAN HUMAN RIGHTS NETWORK
REGIONAL PROJECT "PROMOTING THE RIGHTS OF MINORITIES
AND ENHANCING INTERCOMMUNITY UNDERSTANDING IN SEE**

**SERBIAN DEMOCRATIC FORUM
Coordinator for Croatia**

**SHADOW REPORT ON THE IMPLEMENTATION OF THE FRAMEWORK
CONVENTION OF COUNCIL OF EUROPE ON PROTECTION OF
MINORITIES IN REPUBLIC OF CROATIA**

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I Introduction

The compilation of this report has been limited by several factors such as: lack of organized and coordinated approach of non-governmental organizations to the monitoring of the implementation of the Framework Convention; lack of funds that would financially back up education of NGOs in systematic monitoring of the status of national minorities and creation of organizational prerequisites for the competent and continuous work on this problem; very short time available for in-depth evaluation of the enforcement of the new Croatian legislative framework regulating the rights of national minorities; the change of ruling parties at the end of 2003, whose real attitude towards the rights of national minorities is yet to be assessed.

Therefore, at this stage the available resources did not allow either the preparation of the comprehensive report on all minority rights set up in the Framework Convention, or the report on Roma minority, as it has been decided previously.

Although all Croatia's minority groups do not exercise whole range of their minority rights, which is especially true for Roma minority, the aim of this report is to review the position of Serbian minority only, as specific minority group. The report focuses on the most urgent issues regarding basic rights guaranteed by Framework Convention on the Rights of National Minorities stipulated in Articles 3,4,10,11,15 and 19.

II Background

The legislative regulation of national minority rights in Croatia and their actual position in the society in the last decade of twentieth century took place in the environment shaped by the specific events in the recent history and the resulting consequences for national minority populations. The greatness of those consequences by far surpassed the violation of rights protected by the Framework Convention and it determined the priorities in the activities of non-governmental organizations. Under the circumstances in which individual minorities were denied elementary human rights (the right to life, the right to citizenship, the right to home, the property/ownership right) and when the enforcement of the laws regulating the minority rights was suspended, the non-governmental organizations were objectively unable to focus their activities on those minority rights that at the time did not have paramount importance for the position of minorities (such as right to education, access to media, the right to use of own language and script) nor there were any prerequisites for it. The attitude towards minorities can be observed as a process in which the barriers set after the disintegration of Socialist Yugoslavia and establishing of independence of states on its territory very slowly declined. Although Croatia before 1990 was relatively multiethnic and multi-religious state, where the minorities accounted for 21,1% of the population, the ruling party in its euphoria of creating a national state, burdened with nationalism, ethnocentricity, ethnic prejudice and intentions to build a state which would be ethnically as homogenous as possible, was not ready to define the status of minorities in the spirit of European standards, and not even in line with principles written in their own 1990 Constitution. This has been strongly supported by propagandistic and media mechanisms in the service of this politics, as well as reinforced by war trauma, and therefore the considerable share of general public favoured these policies; only few media, non-governmental organisations and individuals opposed to them. The centralistic concept of the state organization and inadequate legislative solution of the participation of minorities in local administration and self-government greatly limited the space for articulation of minority policies at the local level. Not only that state and local bodies and various state institutions, failed to be more active in the creation and protection of their rights and enhancement of their position, non-governmental organisations did it, as well.

It is rather difficult to give an unambiguous overview on the minority rights in Croatia, as the position of specific minorities varies and greatly depends of their historical background, traditional status, organisational level, and their numerousness at a specific territory. Except for Roma community, as a very special issue in the context of minority policies, the position of Serbian minority was the worst on all three accounts.

After the Croatian state gained its independence, the Serbs lost their status of constitutional nation and suddenly became the national minority. In such situation, the authorities faced the problem of solving the issue of the new minority and creating their rights in a way that could please nationalistic political leaders, Serbian population, and demands of the international community. On the other side, Serbs, as a new minority without any traditions and with rifts, were not able to articulate their minority rights, and to find the optimal balance of two basic goals: protection and preservation of their national identity, on one hand, and elimination of the danger of ghettoisation, on the other hand. Besides, general circumstances in society, war conflict, and strong anti-Serbian rhetoric did not leave much space for Serbian minority members to open dialogue with the Government and other social groups on their minority position.

Legislative position of the minority status had undergone changes between 1990 and 2002, and has reflected the state policy, aimed to restricting or denying minority rights. The majority of provisions of 1991 Constitutional Law on Human Rights and Rights of Minorities, which was precondition for Croatia's international recognition as an independent state, in 1995, were "temporarily" suspended. This act has been justified by the fact that the great part of Serbian population has left Croatia, and that the legal regulation of their minority rights would be possible only after population census foreseen to be held in 2001. After democratic changes in 2000, the Law has been amended and some suspended provisions were re-introduced, but majority of provisions related to the rights of Serbs were repealed. Finally, after several years of putting off its international obligations and long-lasting political disputes, under the pressure of international organizations and minority groups, it was only at the end of 2002 that the Croatian Parliament passed the Constitutional Law on the Rights of National Minorities. With that law, and previously adopted ones, as well as with ratified international documents (in particular Framework Convention, the Law on Use of Minority Languages and Script and Law on Education, adopted in 2000, and amendments of election legislature in 2003), Croatia reached important level of normative prerequisites for the protection of minority rights. However, positive legislature is just a legal prerequisite for the enforcement of the rights contained in it. Only the full practical enforcement of all laws, which visibly lags behind legislative solutions, and efficiency of institutions protecting those rights will legitimise Croatia as a state that treats its minorities in compliance with European standards.

Unlike other minorities, the position of the Serbian minority cannot be separated of the position of refugees because their minority rights were, and still are, determined and closely linked with refugee issue. In period between 1991 and 1995, estimated number of 300.000 to 350.000 Serbs fled Croatia. Their return to Croatia was either prevented or restricted for a number of years. One of the consequences was a demographic devastation of areas where, until 1990, Serbs constituted majority or relative majority of the population.

For all these reasons mentioned above, the position of specific minorities cannot be unequivocally presented – for example, traditional and well-organized Italian minority that has recognizable national identity with the different mother tongue, and Serbian minority, whose actual position is essentially different in comparison to other minorities because of previously mentioned reasons.

III Comments on the State Report

Generally, it could be stated that the shortfalls of the State Report, submitted to the Board of Ministers of the Council of Europe, in March 2004 can be seen from its contents – the Report mostly contains presentations of the constitutional and legislative provisions, and institutions engaged in the protection of minority rights, without any critical review of the enforcement of laws.

Furthermore, State Report provided only very limited information on number of central elements of the Framework Convention, in particular the relevant practice. Here are the comments of certain parts of the Report:

Page 1

One cannot dispute the Report's claim that the situation is much better when compared with the previous period, especially normatively and institutionally, but also in overall social and political climate. The incumbent authorities, particularly the Government of the Republic of Croatia, display positive attitude towards minorities, sending encouraging messages. Although the previous government greatly contributed to the democratisation of the society after 2000 elections, it failed to send a clear signal of the profound breakthrough in their minority policy. The radically changed attitude of actual Government in the minority policies should be evaluated in the context of the fulfilment of the conditions essential for realization of the primary goals of the new Government. Top of their political priorities was the issue of opening new paths for Croatian accession to European Union and to get positive avis and status of the candidate in the first 6 months of the ruling. On that path, Croatia has to satisfy certain criteria, among them protection of minorities and return of refugees. However, the proclaimed policies still have not produced convincing results in many areas important for the position of minorities, especially Serbian one. One cannot read about it in the State Report on the implementation of Framework Convention on the Rights of National Minorities. The rights of Serbian minority are inextricably linked with legislative solutions regulating the rights of refugees and displaced people or the rights of returnees, and those who might want to return to Croatia at any time, but also with practical enforcement of those laws. The consequences of years long violations of human rights of Serbian national minority must not be suppressed in the State Report.

Page 6

Failing to disclose depopulation of Serbian minority, causes that led to it and the consequences of previous policies as essential elements that define its present status, the Report does not give a fair picture of the enforcement of otherwise positive legislative solutions of the rights of national minorities.

Page 11

Provisions of the Article 140 of the Constitution of the Republic Croatia according to which international agreement concluded and ratified shall be part of the internal legal order of RC is not implemented in the practice.

Page 12

Law provision on protection of personal data is not always implemented in consistent way. For example, on the occasion of elections, there are special lists of voters belonging to minorities on election posts, and due to that, in some places, minority members experienced certain unpleasantness, and some even abstained from the election process.

Pages 13 to 15

According to the partially conducted monitoring of the law provision related to the use of official language and alphabet, in most number of cases it is not being implemented, with the exception of Italian minority on Istria county area.

The implementation of the Law on the Use of Language and Alphabet of National Minorities is mostly not monitored by the state administrative bodies and therefore the necessary measures pursuant to law were not undertaken in many cases in which it should have be done.

Pages 16 to 20

Part of the report related to representation of minorities in representative and executive bodies on local and regional level do not provide insight in the extent of implementation of all legal provisions, as data relevant for the assessment of the real situation are missing.

Possibility of more relevant influence on minorities' position and their rights' protection through national minorities' councils could not be realised until now, as not even several months after the elections, councils were not provided by conditions necessary for their activities.

Page 38

It is difficult to accept the excuse that the Central State Administrative Bureau, due to the ministries' reorganisation, was not able to create registry of all civil servants and to provide data on proportion of national minorities' representation in ministries and other governmental bodies. What is true, is that the publication of the data is being stalled, the same as it happened with making population census results public, which has been postponed for a year, as it would reveal the situation which is not even close to being in accordance with the law provisions.

Page 38

Part of the Report related to the Ministry of Exterior does not state the measures undertaken by Ministry in order to, for example, alleviate obtaining documents for entering Croatia in diplomatic missions, or to strengthen better bilateral co-operation with authorities in Serbia and Montenegro and Bosnia and Herzegovina.

Pages 53-55

As an answer to the Advisory Committee's third question, great diminution of proportion of national minorities in total population has been explained. However, this answer does not include certain key factors responsible for this decrease, and especially for drastic decrease of the proportion of Serbian national minority. Reasons which lead to minority depopulation were listed in seven points, and the last one was "consequences of war forced on Croatia", without explanation which minorities and why has been affected by those consequences.

Page 60

In answer to Advisory Committee's question, Ministry of Exterior has stated that the Government has decided to finish process of return "within the next four years". That should be understood as if the return of property, renewal of houses and securing housing should be conducted in next four years, which contradicts earlier established deadlines, according to which private property should be returned by the end of 2004, renewal should be finished by 2005, and housing should be provided by end of 2006.

The same answer does not include results, if any, achieved in two-way return of refugees on the basis of co-operation established with Bosnia and Herzegovina and Serbia and Montenegro. It also does not explain the reason for not signing the Draft Agreement on the Protection of National Minorities up to this date, although it has been drafted in 1996.

IV Legal Framework and Practice Review in Comparison with the Framework Convention Articles

1. Article 3 of FC

Free Choice to Belong or not to Belong to National Minority

Legal:

Framework Convention, Article 3:

«Every person belonging to a national minority shall have the right to freely choose to be treated or not to be treated as such and no disadvantages shall result from this choice or from exercise of the rights which are connected to that choice.

Person belonging to national minority may exercise the rights and enjoy the freedoms following from the principals enshrined in the present framework Convention individually as well as in community with others».

The Constitution of Republic Croatia

Article 3

«Freedom, equal rights, national equality, gender equality, social justice, respect for human rights, inviolability of ownership, conservation of nature and the human environment, the rule of law and a democratic multiparty system are the highest values of the constitutional order of the Republic of Croatia».

Article 15, Paragraphs 1 and 4

“Members of all nations and minorities shall have equal rights in the Republic of Croatia.

“Members of all national minorities shall be guaranteed freedom to express their nationality, freedom to use their language and script, and cultural autonomy”

The Constitutional Law on the Rights of National Minorities**Article 3**

“The rights and freedoms of persons who belong to national minorities (hereinafter: members of a national minority) as basic human rights and freedoms, shall be an inseparable part of democratic system of the Republic of Croatia and shall enjoy necessary support and protection, including positive measures to the benefit of national minorities.”

Article 4

“Every citizen of the Republic of Croatia shall have: the right to express freely that he is a member of a national minority in the Republic of Croatia; the right to exercise, alone or together with other members of that 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 actual situation:

This chapter of the State Report deals only with legislative solutions that guarantee the rights from Article 3 of the Framework Convention, without listing the rights from Article 4 of the Framework Convention.

Data on the 2001 population census are reported in the introduction of the Report, but failing to mention that the Croatian citizens of Serbian ethnic origin who fled Croatia during the war were not included in the census, contrary to the recommendations of the Advisory Committee of the Framework Convention on the Protection of National Minorities¹. According to the provisions of the Population Census Law and Methodology for executing the population census, the citizens who did not reside in Croatia for over a year before population census took place, were not included in the corpus of Croatian citizens. The explanation that Croatia has brought into accord the Law with the UN methodology could not be used as an excuse in the case of Croatian Serbs. The specific circumstances in which Serbian population left the state territory should have been taken into consideration, as well as course of events afterwards, e.g. their deregistration from the registers of permanent residence, conducted by relevant Croatian authorities “*ex officio*”, and prevention of refugees’ return for number of years due to different legislative restrictions.

According to 2001 population census, the portion of national minorities in Croatia, when compared with 1991 census, dropped from 21% to 7.47 in the total number of 4,437,460 inhabitants of Croatia. The largest decrease was noted for Serbian national minority. Comparing with the 1991 census the Serbian population dropped from 581,663 to 201,631 or from 12,02 percent to 4.5 per cent.² Such decrease of Serbian minority population was result of the policy led by the government that took power in 1990, followed with various restrictions of legal framework, lack of the appropriate measures regarding the return of the refugees after the political changes in 2000, but also of the impact of non-transparent policy led by Serbia and Montenegro and resistance to any regional cooperation.

¹ Council of Europe. ACFC/OPI/2001/2 April 6, 2001

² Source: The Republic Bureau of Statistic

Such an immense reduction of one national minority, to a third of its pre-war number, would require the demographic analysis, rather than repeating untenable “official” statement that Serbs left the country on voluntarily bases and that it was their choice.

The right to free choice of the people belonging to national minorities should be considered from two aspects – the legislative and the actual. There is no doubt that this rights is guaranteed by the Constitutional Law and the state bodies enforcing this law do not by any means question it. However, it cannot be denied that during the population census, many minority Serbs, despite their subjective will, declared to be the members of majority population or undecided, thinking they would thus avoid troubles that Serbian minority faced since 1990. Partly, that was the cause for “disappearance” of total of 400.000 Serbian minority members³. The government, despite some efforts to improve the position of Serbian national minority in Croatia, failed to create a political climate leading to return. It has never genuinely attempt to build a public atmosphere in which population at least would accept return of Croatian Serbs as their right based on domestic and international laws. On the contrary, declaring the right to return was often accompanied by mentioning that Croatian citizens would pay high price for that, and that State budget would suffer lack of funds for other purposes. Also, the Government did not take decisive measures to strengthen interethnic tolerance, and did not react to nationalistic and chauvinistic statements given by politicians, who expressed unacceptable attitudes considering Serb’s right to return⁴. There is still too much anti-Serbian rhetoric and lot of stereotypes and prejudices regarding this minority. The recent researches have shown significant social distance between Croats and the persons belonging to the minorities, which in the future might affect their free expression of national affiliation or even the “voluntary” assimilation.

The regional dimension of the process of return and issue of the minorities’ rights on the territory of former Yugoslavia were ignored and negotiations on certain bilateral agreements are very slow. Croatia delays signing the agreement with Serbia and Montenegro and Bosnia and Herzegovina on double citizenship and minorities’ rights⁵

2. Article 4 of FC

The Right to Equality Before the Law

The implementation of the Article 4 of Framework Convention is a cornerstone for Serbian minority because they do not exercise majority of the basic rights. Without the equal position in front of the law in protection of their rights to property, housing etc. they would not be able to exercise all other minority rights protected by Framework Convention. The current situation, particularly in relation to the legal framework and implementation of the legislation, is not compatible with Article 4 of the Framework Convention. The status of the Serbian minority rights is closely linked to the refugee rights, and therefore Government’s policy on refugee rights determines to the large extent minority rights. For more than a decade, the authorities denied the

³ For example, in Split only one citizen declared to be Serb although more realistic estimate could be made seeing full Orthodox Church during the services on the occasion of large religious festivities.

⁴ A weakly review financed by the Government has published appeal by Ivo Rojnica, known as creator of racist laws in Independent State of Croatia during the World War II, demanding that Croatian Government should expel all Serbs who settled in Croatia in the period from 1918 to 2000. The same review is continuously publishing articles with nationalistic content.

⁵ According the 2002 research made by Agency GFK about the tolerance of Croatian people to the toward the persons belonging to the national minorities, every fourth Croat would expel Serbs from Croatia, every seventh would expel Bosnians and Montenegrins This results do not reflect the situation in the specific regions. Thus in Dalmatia 44% of Croats would expel Serbs, in Slavonaa 35 would do the same, while the most tolerant region is northern part of Croatia (Istria, Gorki Kotar, primorje) (Source: . Agency “STINA” – Publication “National Minorities II)

Serbian minority wide range of human rights, i.e. right to citizenship, free return to Croatia from the places of their exile, property rights, pension rights and many other rights acquired before 1990. In spite of positive developments in last 2 years and the annulment of some discriminatory legislation, heritage of the previous regime is still very strong. Undertaken measures are inadequate and their results have fallen short of what was expected or of the declared policies that promised much more. Although the Government was aware that one segment of the restrictions impeding the return of refugees resulted from the inherited legal and administrative framework, perceptible amendments started appearing only at the end of 2000 and 2002. Instead of starting the process of developing concise and sufficiently transparent legislative context, already existing laws were amended and expanded, thus affecting their quality and transparency; consequently, when it came to practical enforcement, number of difficulties occurred. Also, in order to obtain some of their rights, Serbian refugees/returnees are subjected to separate laws, often containing discriminatory provisions. Their rights are often regulated with the set of sub-legal and by-legal acts, introduced in the regular legal system, and their rights are often not protected through regular remedies.

Due to different legislative, administrative or bureaucratic restrictions, which impede their sustainable return and reintegration, the return of Serbs is still limited. The official data released by the Government state that out of 350.000 Serbs who fled Croatia in the period 1990-1995, only 106.884 have returned, e.g. less than 1/3 in 8 years. However, the number of registered returnees does not correspond to their real number. According to some estimations, only 60% of all registered returnees are real returnees, the rest are so called commuters who travel between the location of their return and host country and are waiting for the repossession or reconstruction of their property, providing housing or settlement of other economic or social conditions essential for sustainable return. Among population of returnees, there is a small percentage of young people due to lack of employment or other possibility of interest for the young people. While the return of the Croat displaced people and reconstruction of their property has ended, and the "tenancy" right was not denied to them, the same rights are not granted or they are limited to the people belonging to Serbian minority. Such situation has been impeding their sustainable return and reintegration.

The most significant obstacles to sustainable return: (1) The citizenship issues and freedom of movement (2) rights on property; (3) the right on compensation for lost tenancy rights in so called "socially owned apartments" – right to home and housing care (4) social and pension rights; (5) problems in the implementation of the Amnesty Law and discriminatory treatment in procedure of those suspected for war-crimes based on ethnic origin.

2.1. Citizenship and Freedom of Movement

Legal

Article 4, Paragraphs 1 and 2, Framework Convention

The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.

The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.

Constitution of Republic of Croatia

Article 9, paragraph 2

“No citizen of the Republic of Croatia shall be exiled from the Republic or be deprived of citizenship.”

Article 14

“Citizens of the Republic of Croatia shall enjoy all rights and freedoms regardless of race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth, education, social status or other characteristics.”

Article 32 paragraphs 2

“Every person and citizen of the Republic of Croatia, who legally finds himself in the territory of the Republic shall have the right freely to move and choose a residence, as well as to leave the state territory at any time and permanently or temporarily to settle abroad, and at any time to return to his homeland”.

Law on Croatian Citizenship

Article 30

“A person who acquired the status of Croatian citizenship according to provisions valid until the day of coming into force of this law will be considered to be Croatian citizen”.

This regulation stipulated the principle of legal continuity of citizenship and all citizens of SFRJ who had the Republic of Croatia citizenship on October 8, 1991, regardless of where they actually resided, are considered to be citizens of the Republic of Croatia.

The actual situation

Free movement has been restricted for more than 300.000 Croatian citizens, who fled the country. Until 1998, the law did not recognize them as Croatian citizens, and they were not able to return to Croatia. Since 1998, they were subjected to the special procedure to verify and document the citizenship, as a precondition to return to the country and to acquire their rights.

Through the years, there has been progress in administrative procedures, but it is still slow and uneven. Croatian authority rejected to suspend the discriminatory provision in the Law on Croatian Citizenship, according to which ethnic Croats are eligible for acquiring citizenship without any conditions, even if they never have been in Croatia before. It is enough to submit written statement that they consider themselves Croatian citizens. Such regulations discriminate non-Croats. Due to this provision, the majority of Croats from Bosnia and Herzegovina, who came to Croatia after 1991, either as refugees or settlers, acquired Croatian citizenship. On the other hand, the law failed to produce satisfactory solution to the issue of naturalization into Croatian citizenship of non-Croat citizens with former long-term habitual residence in Croatia until 1991. Regulating the status is very difficult for these people. Unless they first manage to resolve and acquire their citizenship status, or status of the foreigner with permanent residency, they cannot return to Croatia. They can apply for the citizenship only if they can prove the permanent residence in Croatia 5 years before submitting the application. However, they cannot obtain this type of certificate from the police, as they were deleted from the register books of residence although they were lawful residents until 1990. Also they have difficulties to gain the foreigner status (what they became after 1991 Law on Croatian Citizenship came into the force), as they cannot meet conditions prescribed by the law (permanent income, housing possibility).

The new Law on Foreigners entered into force on January 1, 2004 in its transitional provisions enable former habitual residents to return and regularize their pre-war status if they return within 12 months since law entered into force. However, in the implementation of the new Law on Foreigners, it was noticed that applicants for the status of foreigners, still are facing difficulties. .

2.2. Right on Property

Legal:

Articles 4 (As above)

Article 19 of Framework Convention

“The Parties undertake to respect and implement the principles enshrined in the present framework Convention making, where necessary, only those limitations, restrictions or derogations which are provided for in international legal instruments, in particular the Convention for the Protection of Human Rights and Fundamental Freedoms, in so far as they are relevant to the rights and freedoms flowing from the said principles.”

Constitution of the Republic of Croatia

Article 32 (see above) – free movement

Article 14, Paragraph 2

“All citizens shall be equal before the law” (this also includes, per se, the right of a person to handle his/her property.”

Article 48

“The right to ownership shall be guaranteed.”

Article 50 Paragraph 1, 2

“Ownership may in the interests of Republic be restricted by law, or property taken over against indemnity equal to its market value”.

“Entrepreneurial freedom and property rights may exceptionally be restricted by law for the purposes of protecting the interests and security of the Republic, nature, the human environment and human health.”

The Law on Ownership and Other Property Rights

Article 30

«A proprietor is authorized to free disposal of his property and its profit. A proprietor can do what ever he wants and to exclude everyone else, if it does not converse to the law limitation».

Law on Reconstruction

Article 4 Paragraphs 1

“Right to reconstruction shall be enjoyed by owners, co-owners and protected leasers in the war destroyed or damaged residential houses as well as the owners of other destroyed or damaged property if they are Croatian citizens or they have had residence in the Republic of Croatia until 1991.”

Law on Retirement Insurance

Article 5

“Retirements and disability rights are inalienable and substantive rights, which cannot be transferred nor inherited by another person. Obtained retirement rights established by law may be annulled only in cases determined by the law”

Article 87, Paragraph 2

“The pensions and other money instalments, which were not paid due to the circumstances caused by the users, may be paid later on retroactively for one year” (since December 1998; according to the previous Law, not paid pension could be paid retroactively for three years)”.

Penal Code

Article 140

“Whoever denies or deprives a citizen of the right to social and retirement insurance shall be punished by fine or by imprisonment not exceeding one year”

According to aforementioned provisions: (a) the citizens of the Republic of Croatia shall not be prevented from having their property at disposal because they left the territory of the Republic of Croatia, either temporarily or permanently; (b) the right to ownership cannot be restricted without

compensation; (c) access to remedies cannot be restricted; (d) all citizens have the right on reconstruction of their houses and apartments destroyed or damaged from the beginning of the war, during the war and by the end of peaceful reintegration in the Republic of Croatia; (e) right on pensions cannot expire or be annulled.

The actual situation:

a) Repossession of houses and other immovable and movable property taken over in 1995

The ownership rights of Serb refugees are regulated by separate laws and decrees, which are not based on the Constitutional rights and rights guaranteed by the Law on Ownership and Other Property Rights. Their property (more than 22,000 houses and unknown number of business premises and non-movable property such as agriculture equipment) has been taken over on the basis of 1995 Law on Temporary Take Over and Administration of the Specified Property. Constitutional Court revoked several articles of that Law in its 1997 decision. The proponents of the procedure for an evaluation of constitutionality considered almost entire text of the Law to be in contradiction with the constitutional provisions and discriminating against citizens of Croatia belonging to the Serbian minority. However, the provisions of repealed articles existed for many years, although they were not in accordance with the Constitution. The Law was repealed in 1999, and since that time the state has no basis for taking over the property and allocating it to the temporary users. Also, the state has no right to prevent the repossession of property by the owner, as there is no legal base for that, either. Nevertheless, instead of regular remedies, according to which the issue of ownership and rights ensuing from it should fall within the judicial competence, the Croatian State Parliament adopted The Programme for Return in 1998, that *inter-alia* prescribed the long and complicated procedure for the property repossession. The Programme was legally controversial document in many aspects, particularly because according to it, the right of temporary occupant prevails right of the owner, and the owner's position has not significantly improved, when compared with previous situation. The owners had no access to the court and claims for the repossession of the property based on the provisions of Law on Property Rights.

Although the Government that took power in the early 2000 was fully aware that the 1998 legal and administrative procedures set in the Programme for Return and Housing Commissions, as executive bodies, represent completely inefficient legal tool and legally and technically incompetent bodies for the property repossession, it was not until August 2002 that the Croatian Parliament has passed the Law on the Amendments to the Law on the Areas of Special State Concern. That law, *inter alia*, regulates the repossession of property taken away on grounds of the Law on Temporary Take-over and Administration of Specified Property. The provisions regarding the repossession of property, apart from being rather vague, are legally questionable. Amendments do not address a number of issues, which have an impact on repossession of property. The right of temporary occupant is still above the right of lawful owner and it does not take into account the financial ability of the temporary occupant to rent the alternative accommodation and to vacant the occupied house. Owners who wish to start a trial against the occupant (what was not possible before 2002 Amendment) are about to face a very long lasting court process. The deadline prescribed by the law for the repossession of the property (end of 2002) related only to administrative procedure of cancellation of permissions granted to temporary occupants but not to physical repossession of property by the lawful owner. Actually, refugees were cheated because the law provision says that property shall be reposessed until the end of 2002, and they believed it would be returned to them within the deadlines set by the Law. This deadline has been extended to the end of 2003 but was not met. By the end of 2003, 3.500 houses were still occupied. If the deadline of the end of 2002 cannot be met the law foresees the compensation to the rightful owner but only from 2002 until the repossession takes place. Compensation for the years of unlawful occupancy was not recognise. Government approved very small compensation and only about 20 % have received compensation

payment of the potentially eligible beneficiaries, who are afraid that the agreement on compensation might prolong the repossession of their property

The government agreement with the Serb representatives stipulates that about 500 illegally hoses will be reposessed by the end of June, 2004 and the rest of property should be reposessed by the end of 2004.

The proceedings for property repossession are often slow and administratively complicated. The judges are unfamiliar with the initiated cases of property repossession. Majority of court cases remain pending without verdict of eviction and out of a small number of court ordered evictions only few have been implemented. There are difficulties in the eviction of temporary occupants. The owners are completely unprotected when temporary occupants vandalize the property before moving out and the claims for damage are not filed *ex officio* although prescribed by the law, resulting in prolonged displacement of the owners even after possession is regained. In some cases the owners of looted houses were even compelled to sell their houses to State Agency due to lack of financial means for their repair.

Nine years after property of Croatian citizens belonging to the Serbian minority was taken over, process of its repossession, despite new legal provisions, has not reached satisfactory and expected level. The owners are facing bureaucratic impediments at local/regional level, lack of state measures that would speed up the property repossession, slowness in handover of cases from the Ministry to state attorneys offices, very slow court proceedings that extend over lengthy period of time and failure to execute verdicts.⁶ The official statistic data on the rate of regained property are rather disputable and insufficient to draw conclusions about real results of the property repossession. Empty houses, are also included in the number of reposessed houses and it is presented as the result of enforcement of new legislative acts and efficiency of the bodies, In addition, a number of those houses registered as reposessed is devastated and unfit for living or they are located in the villages without any infrastructure.

Furthermore, temporary occupants often refuse to vacate the property demanding the owners to pay for their investments during temporary use. Although they did it illegally, and often under a permission (for what they were not authorized) or protection of competent local authorities, state bodies do not consider them responsible, and temporary users are filling the suits against the owners⁷. Increasing number of suits filed by occupants against owners to obtain payment for their investments and court practice in such cases could potentially have significant impact on property repossession. In number of cases courts have ordered such payments, while at the same time they did not allow the owners "counterclaims" for obtaining the rent during the period of occupancy owner's property.

b) Right on Reconstruction of Damaged and Destroyed Housing Units

The Law on Reconstruction, which came into the force in 1996, was discriminatory against Serbs and the possibility for reconstruction of their houses was almost non-existent. Although official statistic of ethnic composition of the beneficiaries is not available, according to data gathered by non-governmental organisations' monitoring, out of 118.580 housing units being reconstructed by the beginning of 2003, very few belongs to the Serbs. The owners of the destroyed houses caused

⁶ Examples that illustrate the judicial proceedings: (a) In one case an owner waited more than 29 months before the first hearing was conducted; (b) The applicant filed a civil action against the occupants in 1999. In January 2002, three years later, the court ordered the property to be vacated within 15 days, but the court order is not executed yet. (Source: OSCE Status Report No 13).

⁷ For instance, in 18 cases, owners are facing claims ranging from 5.000 to 120.000 Euros. However, there are more extreme cases – for instance, the case in which Municipal Court's has passed the order that has obliged the occupant to vacant the property within the 15-day period. The verdict has remained unexecuted for almost six years. Meanwhile, the owner has been ordered by the same Court to provide compensation to occupant in amount of 30.000 Euros. Another notable example includes the claim of over 185.000 Euros against an owner for the amount invested by the occupant into the property to run a restaurant (Source OSCE Status report, No. 13)

by “terrorist act” were not entitled to reconstruction. The situation began to change after Law on Reconstruction was amended in 2000 and most of discriminatory provisions removed. But still enforcement of the Law requires a large number of different by-laws and internal guidelines, which have made the Law non-transparent, and created difficulties beneficiaries faced in its implementation. Proper implementation the 2000 Amendments has only started during the year 2003, and assistance in the reconstruction to returning Serbs is advancing well. At the time, the reconstruction of Croats’ houses was almost completed and competent offices started to signed reconstruction contracts with a number of Serbs. Still, owners of houses destroyed by the “terrorist act” were not eligible for assistance in reconstruction due to the unclear law provision. A year later, the competent ministry has issued an instruction which has enable claims for reconstruction of the houses destroyed by acts of terrorism. However, for many Serbs, changes in policy came too late, after years of not being able to get a state assistance for the reconstruction of their homes and thus not being able to return.

Even when returnees have succeeded to repossess their property or realize reconstruction assistance, some of them, or their property in certain areas have been attacked, and the attacks have escalated over last several months. Not only that police protection was lacking, those who have committed these crimes never faced charges and were punished, as they were never identified⁸.

c) Compensation of property damaged or destroyed by “acts of terrorism”

According to the data gathered by non-governmental organisations in period 1990 - 1997 on the territory under Croatian government control or after military operations in summer 1995, more than 22.000⁹ houses were mined or set on fire. The owners of property damaged or destroyed by “terrorist act” were not qualified for the reconstruction under the 1996 Law on Reconstruction. The owners were allowed to file a civil claims according to the article 180 of the Law on Obligation for compensation from the State in case of personal injuries or property damages. However, this article was repealed in the beginning of 1996 and all pending cases were stopped until enactment of new pertinent legislation.

Eight years after Article 180 of the Law on Obligation was cancelled and all court claims for compensation of damage dropped, by mid-2003 the parliament finally passed pertinent legislation replacing the repealed Article 180. While the cancelled article ensured the compensation of damage for physical injury or death as well as for the damage or destruction of private property, the new Law on the Compensation of Damage Caused by Acts of Terrorism limits damage claims solely to the personal injury or death. The compensation for the destroyed property is possible to realize in accordance with the Law on Reconstruction.

Retroactive enforcement of the Law on Compensation eliminates the action for compensation of damages lodged before Article 180 was repealed, what makes this Law contrary to the Article 89 of the Croatian Constitution.

Practical implementation of the Law, judging from several pending cases showed that it will be very difficult to get compensation for death or injury because of the interpretation of State prosecutor what can be considered as a “terrorist act”.¹⁰

Second Amendment to the Law on Obligation, which was adopted in 1999, suspended all pending cases for compensation of damage caused by members of Croatian Army and police Forces. It was replaced in 2003 by the Law on the Compensation of Damage caused by the actions of Croatian

⁸ NN. 81-year-old man, returned to Croatia after 13 years of exile in Serbia. Soon upon his return, his house was attacked and he decided to leave it again and return to Serbia. In other case, the house of Serb returnee was reconstructed but set on fire and burned down before he was able to move in.

⁹ (Source: HHO and non-governmental organisations’ monitoring reports).

¹⁰ In two rejected complaints for the compensation the standpoint of The State Prosecutor was that state could not take responsibility because state bodies did not order committing of the terrorist act and although committers were uniformed persons and served Croatian Army/or Police they did not commit the criminal act during the “the working hours.”.

Army or police during the patriotic war. Its amendments refer only to damage that is not described as “war damage”. There are shortcomings and gaps within the law, and it would be very difficult to prove that damage is not “war damage”.

d) Pension and Social Rights

Among numerous administrative obstacles the refugees faced in the acquirements of their pension rights, is also restriction or reduction of certain rights established by positive laws. Instead of implementing the laws, various sub-legal acts or guidelines of questionable legality and content were issued by authorised state bodies and put into force.

(d.a) Validation of Working Service in Areas Under Protection and Temporary Administration of UN

In order to recognise legal facts and rights based on the acts issued by authorities in the area, which was under temporary protection or administration of UN, Croatian Parliament adopted The Law on Convalidation in 1997. Pursuant to the provisions of that Law, a party or a person with a legal interest could submit a request to the competent body in order to recognize the acts issued by aforementioned bodies. The Law itself was markedly of sub-standardized quality and, as such, could not have been directly implemented. The implementation was regulated through sub-legal acts, that contains provisions legally questionable. As much as 8 months have passed before the sub-legal acts were adopted and considerable number of the different instructions for its implementation was provided. However, due to lack of clarity and legal gaps in these acts, many open issues could not be solved and there was a possibility left for authorized administrative bodies to interpret them differently and in an arbitrary manner. Particular problem refers to the recognition of the employment status in Kraina because of difficulties in proving that applicants were employed and were making payments to the retirement fund in Kraina, and even in Croatian Retirement Fund. Regional retirement offices claim that documents proving payments had been destroyed or removed during the war and majority of requests were rejected. However, the same Regional offices are eager to admit as legally relevant the list of pension instalments between 1991 and 1995 that was found in retirement fund in Kraina, as a ground to deny back payment of pension for the war time period (see below for more details). Also, many refugees did not even have even a chance to submit request for the recognition of social and pension rights and length of service due to one-year deadline set out with Decree for submission of claims. In that time frame, the potential applicants could not meet residence requirement and could not prove their Croatian citizenship.

(d.b.) Unpaid Pension Instalments for the Period Between 1991 and the Year in which the person applied for a continuation of the payment of the pension.

At the first signs of the looming conflict on August 30, 1991, Croatia terminated all kinds of bank transaction and financial transfers, with legal persons in the part of territory later established as so called “Kraina”. Annulment of payment of pensions followed and all retired people in “Kraina” who acquired their pensions before the war on the basis of their payments to Croatian Pension Fund ceased receiving their pensions. The issue concerned the retirement insurance rights of almost 47.000 registered pensioners who lived in the above-mentioned territory and stroke socially the most endangered group. Upon their return to Croatia, Pension Fund continued the payments of the pension one month after application has been submitted, and at the same time rejected to pay unpaid pensions.¹¹

2.3. Compensation for Former Tenancy-right Holders

Legal:

Article 4, Paragraph 1 of Framework Convention:

¹¹ For more see the article printed in Balkan Human Rights Year-book , 2003

“The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.”

Constitution of the Republic of Croatia:

Article 34

“The home is inviolable”

Article 35

All citizens shall be guaranteed respect for and legal protection of personal and family life, dignity, reputation and honour.

Article 61

The family shall enjoy special protection of the Republic.

Article 14, Paragraph 2

All citizens shall be equal before the law

Actual:

All mentioned Constitutional rights were violated through discrimination of Serbian minority who lost their tenancy/occupancy right on the “socially owned apartment”. They have had no possibility to return to their apartments and thus they lost their homes and often all moveable property. Tenancy rights were mostly cancelled between 1990 to 1996 in several different ways: a) with discriminatory court practice when enforcing the 1995 Housing Law¹²; b) amendments to the Housing Law made between 1991 and 1996; c) the new laws adopted for the purpose of denial of tenancy right to fled Serbs; d) illegal, forceful evictions from apartments; (e) termination of the tenancy rights *ex lege* (forced by law) on the base of law enacted after military action in 1995.

In period from 1991 to 2002 there were 23.700 suits filed for the cancellation of tenancy right outside the areas of special state concern (the area under the Croatian jurisdiction during the war) giving no possibility to the majority of accused to participate in the court procedures. The courts passed total of 21.516 verdicts confirming the request for cancellation of tenancy right while an estimate of 800 cases is pending.

Additionally, the unknown number of apartments was seized *ex lege* on grounds of the Law on the Lease of Apartments on the Liberated Territories, enacted immediately after the military action in summer 1995 was over. The Law stipulated that tenancy rights would be terminated if the tenants did not return to the apartment within 90 days after the Law became effective. Since all of them were refugees, prevented to return to Croatia, they could not meet this deadline. They did not enjoy any court protection in reinstatement of their status as tenancy-right holders. In contrast, the state enables ethnic Croats who fled from the territories under Serbian control to preserve their tenancy rights.

All the refugees who lost their tenancy right were excluded from the housing stock privatisation i.e. to exercise their right to buy the apartments under favourable conditions.

After years of denying any rights to former tenancy/occupancy holders, and avoiding a discussion on the underlying legal and human rights aspect of termination of Tenancy rights, under the pressure of international organizations Government enacted provisions for housing assistance to former tenancy right holders who wish to return to Croatia. It has been implemented through two different possibilities of housing care:

a) Amendment of the Law on Areas of Special State Concern (2002) provides housing care to the former inhabitants in this territory, including tenancy right holders, if they want to return to Croatia and if they are not owners/co-owners of any property on the territory of former SFR Yugoslavia.

The several laws that regulate the eligibility of housing care for the former tenancy right holders, who decided to return, contain a lot of vagueness and contradictions. The eligibility of former

¹² Tenancy right as a legal institute ceased to exist after the Housing Law was repealed in 1996; it was one of the major arguments for denial of tenancy right to former tenancy right holders

tenancy right holders, almost exclusively exiled Serbs, is mostly theoretical, not yet implemented in praxis. In many by-laws, this category of returnees is excluded or at the bottom of the priority list. Therefore, the deadlines when they can expect one of the modalities of housing care prescribed by the law are completely uncertain.¹³

b) In August 2003 Government passed the «Conclusion on the Housing Care of the Tenancy Right Holders Living Outside the Areas of Special State Concern». The Governmental Conclusion is not a legislative act with legislative power regarding the rights and responsibilities or the protection of those rights at the administrative or judicial bodies of Croatia. The conclusion does not take into consideration legal aspect of the termination of the tenancy rights, and the specifics of that institute. Offered solutions are hardly acceptable for the majority of refugees due to their social status. This Conclusion puts in different legal position former tenancy right holders who were forced to abandon their apartments during the war and internally displaced Croats, or former tenancy right holders from the areas of special state concern.¹⁴

2.4. Justice and Judiciary – war crimes arrests and trials

Legal

Framework Convention, Article 4, Paragraph 1

As above

Constitution of the Republic of Croatia

Article 14

“All the citizens shall be equal before the law”.

Article 29, Paragraph 2

“Everyone shall have the right to the independent and fair trial provided by law...”

“In the case of suspicion or accusation for a penal offence, the suspected, accused or prosecuted person shall have the right to be informed in detail, and in the language he understands, within the shortest possible term, of the nature and reasons for the charges against him and of the evidence incriminating him”

Amnesty Law

Article 1

“This law grants the general amnesty from criminal prosecution and proceedings for perpetrators of criminal offences committed during the aggression, armed rebellion or armed conflicts and in connection with the aggression, armed rebellion or armed conflicts in the Republic of Croatia.”

Article 2.

“Criminal prosecution and criminal proceedings against perpetrators of criminal offences as stated in article 1 of this law shall not be undertaken.

If criminal persecution is undertaken it shall be stopped and if criminal proceedings were commenced, the tribunal shall suspend proceedings ex-officio.

If a person, granted amnesty according to paragraph 1 of this article is deprived of his freedom, by the decision of the court the person shall be freed.”

Actual situation:

Several thousands proceedings against Serbs were initiated during or immediately after the conflict. In 1996, The Law on General Amnesty has been adopted and in numerous instances where Serbs

¹³ According to the Government report, housing was provided for more than 7.000 Croats from Bosnia, and almost none to Serb returnees, although their pre-war apartments that became state property are either illegally occupied, or were given for housing to the others.

¹⁴ See more about legal aspect of the tenancy rights.” The housing legislation in Croatia and the consequences of its application on the status of internally displaced persons and refugees-tenancy/occupancy right holders” (see RAN CAP project – editor SDF Zagreb)

were originally charged with war crimes, the charge was later reclassified as one subjected to the Amnesty Law. At the same time, the number of cases was reclassified from "armed rebellion" to war crimes or common crimes. Some persons previously convicted of "armed rebellion" and granted amnesty continue to possess criminal record. It was not until middle 2001 that the State Prosecutor ordered review and modification of inappropriate indictments for war crimes to criminal acts, which are subject to amnesty and after that Minister of Justice stated that more than 21.000 persons have been granted amnesty. The information on the lists of persons who were amnestied should have served as re-assurance that there would be no charges pursued against them. In practice, many of those who were amnestied have no way of finding out about the status and getting information whether they would be arrested upon their return to Croatia.

Many arrests are based on long-standing indictments after years of inactivity. The scope of proceedings for war crimes since 1991 varies depending upon the sources but according to some general observations, final verdicts have been passed against 800 to 900 persons. Procedures are pending against another 1400 to 1500 people and judicial investigation is in the process against another 850 to 900 persons. Many of these proceedings involved criminal allegations against large groups of individuals, (ranging 100 or more persons in same cases) which fail to specify an individual defendant's role in the commission of the alleged crime. Therefore, many proceedings were characterized by notion of collective guilt rather than individualized guilt under generally applicable standard of due process. In numerous cases, conviction and lengthy prison sentence, many imposed in absentia trials, were based on lack of evidence or evidence of questionable quality.

There are many examples which illustrate that Croatian judiciary was not able to escape strong political influence and that some judges still had difficulties to act professionally.

For example, Gospic County Court found NN, Serb returnee guilty not only for crimes, but also for 500-year history of Serb crimes against Croats, and explicitly criticized the provisions of Government assistance to returned refugees.

The number of arrests on war crimes charges has increased in last three years and it has been a major deterrent for return of Serb refugees, and consequently for the members of their family. Significant number of arrested persons often does not reach the trial stage at all, because the evidence is lacking. In such cases prosecutors drop charges during investigation and release the prisoner. However, some of them spend two months or longer, in prison, and that also has negative impact on those who are willing to return.

Reports on monitoring war-crime trials show disadvantages of defendants of Serb ethnicity at all stages of judicial proceedings, when compared to Croats, and double standards of criminal responsibility are applied based on ethnic affiliation. Serbs are much more likely than Croats to be convicted when put on trial.¹⁵ It does not mean that equal number of Serbs and Croats should face prosecution, but the figures indicate that the standards are not equal for all who face war crime charges.

Since half of Serbs arrested for war crimes in 2002 were recent returnees there is no need to emphasize that the lack of even-handed administration of criminal justice in war crimes cases, continued to be an obstacle to refugee return.¹⁶

3. Article 10 of Framework Convention

¹⁵ While out of 57 Serbs, 47 persons were found guilty, only 3 Croats out of 17 were convicted. For example, in 2002, Serbs represented the vast majority of defendants at all stages of judicial proceedings: 28 of 35 arrested persons; 114 of 131 persons under judicial investigation; 19 of 32 indicated persons; 90 of 115 persons on trial; 47 of 52 convicted persons. This trend has continued in 2003 (Source: OSCE Monitoring Report on War Crimes Proceedings In Croatia)

Right of Persons Belonging to a National Minority to use Minority Language, Script, Preservation of Traditional Names and Use Of Minority Signs, Symbols and Solemn Songs

Legal:

Framework Convention

Article 10

“The Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing”.

In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities. The Parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter.”

Article 11. (Paragraph 2 and 3)

“The Parties undertake to recognise that every person belonging to a national minority has the right to display in his or her minority language signs, inscriptions and other information of a private nature visible to the public”.

“In areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavour, in the framework of their legal system, including, where appropriate, agreements with other States, and taking into account their specific conditions, to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is a sufficient demand for such indications”.

Constitution of the Republic of Croatia

Article 12 Paragraph 1

“The Croatian language and the Latin script shall be in official use in the Republic of Croatia. In individual local units, another language and the Cyrillic or some other script may be introduced into official use along with the Croatian language and the Latin script under conditions specified by law”.

Constitutional Law on the Rights of National Minorities

Article 10

“Members of national minorities shall have 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 9

“Members of national minorities shall have the right to use their surname and name in a language which they use, and to its official recognition for them and their children through the entry into

registers of births, marriages and deaths and other official documents, in compliance with the regulations of the Republic of Croatia.”

Article 13

“The law which regulates the use of language and script of national minorities, and/or the statutes of local self-government units shall stipulate the measures providing for the preservation of traditional names and signs and giving the names of persons and significant events for 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 number, populated by members of national minorities.”

Law on the Use of Language and Scripts of national Minorities

Article 4(1)

“Official use of language and script of national minorities on equal basis is realised in accordance with the provisions of the Constitutional Law on Rights of National Minorities, the Framework convention for Protection of National Minorities and this law, under following conditions:

- When members of certain national minority represent majority of inhabitants in municipality or town area, in accordance with the Constitutional Law...”

Actual situation:

The legal framework that regulates the use of language and script of national minority complies with the highest European standards. However, when it comes to the practice, to the great extent it is still not being implemented. This particularly refers to the Serbian minority rights caused, as already mentioned, by the problems of their identity as a minority, including the issue of language and script, but also because of the political and public environment. The use of Cyrillic script is often perceived as inappropriate or act of hostility. The books written in Cyrillic script were removed from public libraries and there are no such editions in bookshops. The law provisions are obstructed at the local authorities level, and there is no compliance of local proceedings with the Constitutional Law and The Law on Use Language and Script of national Minorities.

4. Article 15 of Framework Convention

Participation of persons belonging to national minorities in social, and economic life and in public affairs.

Legal:

Article 15 of Framework Convention

«The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life, in public and public affaires, and in particular those effecting national minority members.»

Constitution of the Republic of Croatia

Article 15

“Equal position of the national minorities in RC is guaranteed and protected”.

Members of all nations and minorities shall have equal rights in the Republic of Croatia.

Members of all nations and minorities shall be guaranteed freedom to express their national identity, freedom to use their language and script, and cultural autonomy.

Constitutional Law on the Rights on National Minorities

General Principle:

"The Republic of Croatia shall ensure the equal position of national minorities and their members in the society and shall encourage their overall development, when necessary, by taking special measures aimed at achieving a real equality»

Article 22 Paragraphs 2

«The members of national minorities shall have the right to participate in public affairs at all levels of governance and they shall have access to all professions and positions under equal conditions»

Actual situation:

The results of the law implementation so far are not encouraging. Full implementation will require related legislation to be put into accordance with the law, and true political will to speed up this process as well to implement all the rights from Constitutional Law on the Rights of National Minorities.

Currently, the representation of Serbian minority in state administration on central and local level is not in accordance with the rights guaranteed by the laws. In most areas of return, Serbs are virtually not employed in certain institutions, such as health centres, schools, post-offices, police, custom service, etc. However, it is not possible to argument it with numbers, as the relevant statistical data does not exist. Ministry of Justice is not able to provide statistical data on minority representation in state administration. The ministry has also expressed their concerns that it would be difficult to achieve appropriate level of representation, suggesting that only limited number of positions is available for new employees. At the same time, from January to April 2003, 900 positions in state administrative bodies were advertised in Official Gazettes.

Minority representation in courts, particularly in higher courts is very low. There are no Serbs or other minority judges either in Administrative Court or in Commercial Courts.

According to the information provided by the Government, 94.4 per cent of all court personnel are Croats, while 5.6 per cent are national minority members; out of which 2.6 per cent are Serbs (in comparison with proportion of 4.5 in population) and 3.0 per cent are other minority members (in comparison with proportion of 2.9 per cent in population.).

In some localities, Serb candidates were the only ones for judicial vacancies, but the announcements were annulled.¹⁷

The public announcement on way of securing minority representation in state administration, judicial and executive bodies in line with the Article 22 of the Constitutional Law on the Rights of National Minorities in the Republic of Croatia has not been made yet.

4.1. Participation in self-government units**Legal:****Article 20 (and 39 2 Paragraph) of the Constitutional Law**

«The Republic of Croatia shall guarantee members of national minorities the right to representation in the representative bodies of local self-government units and in the representative bodies of regional self-government units.»

“The representative bodies of local and regional self-government units, which term of office still runs, and in which the right to representation of minority representatives has not been exercised, in compliance with the provisions of Article 20 of this Constitutional Law, shall be filled in with an

¹⁷ B. Z., the only candidate for Municipality court in Korenica judge has not been appointed to the position due to the opposing by State Judicial Council member, with explanation that “military occupation judge” and “someone who has supported occupation and participated in genocide” can not be judge. Namely, the candidate was the president of the Municipality court in Korenica during occupation, and afterward public defender in Vukovar, before peaceful reintegration (source: Novi list, June 26, 2004)

appropriate number of representatives, members of national minorities within 90 days from the day of coming into effect of this Constitutional Law.

Actual situation:

a) Many issues related to the implementation of election rights remained unsolved. After local elections in 2001, minority representation did not reflect their percentage in the population, as it should be according the Law, in 5 counties and 78 municipalities and towns. More than two years after the local elections, under-representation of national minorities continues in one county and 18 municipalities and towns. Elections for remaining minority representatives, which have been required since September 2001, were re-scheduled three times.

During 2003, minority under-representation was brought to legally mandated level, as result of elections for minority representatives, in self-government bodies in 62 towns and municipalities, and four counties

b) The Constitutional Law has enabled establishing local and regional Councils of National minorities for the first time. As highlighted by Ministry of Justice, the formation of the Councils is an option for minorities that wish to do so, not an obligation. However, the formal mechanism by which minority communities can express their interest for founding such council to the Government is still unclear. Councils will be treated as non-profit legal entities, and will have only consultative power. Within such competence, Council can only make proposals to self-government units on ways of improvement of the minority position and for candidates running for local offices.

The Government announced elections for minority council for the first time at the end of April 2003, setting the date for elections on May 18. That has allowed only minimum legal period for organizing election. It was one of the reasons that many potential voters and candidates reframed from the participation at the election. Also, the Government did not prepare election properly, and did not make any effort to educate minority groups on importance of these new institutions for the minority rights, its competences etc. Turnout in the elections for the Minority Councils in counties, towns and municipalities (self-government) was only 13 per cent.

Considering the size of the councils, minority groups must put forward large number of candidates (approximately over 3000 for 240 councils throughout the country) and depopulated Serbian minority with large proportion of old people had difficulties identifying the candidates.

Not-proper preparedness of elections was one of the reasons for not electing all councils and representatives of national minorities. Therefore, the Government called for by-elections at the beginning of 2004, where additional 290 councils and 101 representatives were supposed to be elected. Local and regional minority councils are still not operational due to problems regarding their registration and some other preconditions for their work. It has blocked for rather long time nomination of seven additional members that they have to propose to the National Minorities Council (in addition to five members nominated by the Government several months ago).

The time will reveal the true role of National Minorities Council and if there is justification for introducing such large number of councils in minority rights protection system.

4.2. Minority representation in Parliament

Legal

Constitution of the Republic of Croatia

Article 15 (3)

“Besides general election right, members of national minorities may be provided by law the right to elect their representatives into Croatian Parliament”

Constitutional Law

Article 7 (8)

The Republic of Croatia shall ensure the exercise of special rights and freedoms of members of national minorities which they enjoy individually or together with other persons belonging to the same national minority, and together with members of other national minorities when it is stipulated by this Constitutional Law or a special law, in particular: Representation in the representative bodies at the state and local level and in administrative and judicial bodies;

Article 19 (1)

“The Republic of Croatia shall guarantee members of national minorities the right to representation in the Croatian Parliament.”

Actual situation

During the preparation of the Amendments to the Law on Election of the Representatives to the Parliament, minority representatives, supported by some other political parties, insisted to include to the Amendment “positive discrimination” because such possibility is allowed by the Constitution. It would enable the minorities to vote for the representative of the minorities and also for the lists of the political parties or independent candidates. However, after long discussion, two biggest political parties opposed to that proposal. Since the provision of 1999 Election Law under which voter from national minority could choose whether to vote for relevant minority representative or to vote instead in his/her regular constituency, was deleted, the State Election Commission decided to permit minority voters to choose a general or special ballot. This permission was not included in the “mandatory instructions”, but it was mentioned only in the “Reminders” on polling station procedures.

Because of shortcomings in Election Law and Instructions some important issues regarding the implementation of minority voting were raised, such as extract from voters register for use at polling stations, difficulties to obtain the voters certificate and other documents as proof of citizenship, identity and residential status required for voting, especially for persons residing abroad, the number of polling stations for minority voters in Serbia and Monte Negro etc.

After expressing dissatisfaction with the number of polling stations in Serbia and Monte Negro, it was increased from 3 to 6, but there were located in 3 cities only. In Bosnia and Herzegovina, where many Bosnian Croats were expected to vote, there were 30 polling stations in 15 different locations.

Therefore, many refugees concentrated in Serbia and Montenegro were particularly disadvantaged when accessing the electoral process because many of them could not meet all the requirements, or voting station was very far from the places of their residence.

To avoid the same situation regarding the implementation of minorities’ rights in next election, Election Law should be amended.

IV. Conclusion

Constitutional Law on the Rights of National Minorities and some other undertaken measures in many ways represent a significant improvement in the protection of national minorities in comparison with the previous period.

The Constitutional Law on the Rights of National Minorities, which has been adopted in December 2002, contains an updated list of international instruments, including Framework Convention on the Protection of National Minorities, under which Croatia is obliged to respect and protect minority rights.

However, there is still certain inconsistency between the Constitutional Law on the Rights of National Minorities and certain other laws, and without adjusting laws contradicting the

Constitutional Law on the Rights of National Minorities, its full implementation would not be achievable.

V. Recommendation

a) National level

1. The Government should compile an overview of legislation that is not in accordance with the Constitutional Law on the Rights of National Minorities and adjust it when necessary, in order to enable full implementation of minorities' rights;
2. The Government shall undertake the additional measures in order to remove the obstacles that minority are facing when exercising their rights, which are partially listed in this report.
3. In addition to the good legal framework, the general political and social environment, without stereotypes and prejudices toward any minority shall not be of less importance for full exercising the minorities' rights provided by legislation. Therefore the Government and politicians should take an active role in order to create the atmosphere of interethnic tolerance, to prevent speech of hate and raise awareness that will result with a more positive attitude of the majority population towards minorities.
4. The Government has to ensure minority representation in state administration and judicial bodies as well as executive bodies and non-discrimination when it comes to the employment.
5. The Government should provide necessary financial means to Councils of National Minorities and encourage them to take active part on national and local level in order to improve their position in the society.
6. Several provisions of the Constitutional Law on Education and on the Rights Regarding the Usage of National Language And Script remain to be fully addressed by relevant authorities.
7. The Government should pay closer attention to the reports on monitoring prepared by NGOs and international organizations and its recommendation rather than ignore them, as it was practice so far.
8. The Government should launch trainings and organizational measures for public administration, police and courts in order to remove existing impediments and strengthen their responsibility in administrative and court procedure, particularly preventing the discrimination.
9. The NGOs should prepare for comprehensive monitoring and reporting on the implementation of the minority rights set up in the Constitutional Law on the Rights of National Minorities and the Framework Convention, and should advocate for the improvement of their position. NGOs should continue to provide pro-bono legal assistance to individuals belonging to the minorities as well as to their minority organizations (*e.g.* Councils of the minorities).
10. NGOs shall improve their regional cooperation and information exchange relating to the rights of minorities and their experiences.
11. NGOs should launch different trainings on national and regional for the minorities , as well as for journalists willing to be specialized for the minority issues.

b) The regional level

In order to accelerate return of refugees and protection of minorities based on reciprocated regional and bilateral cooperation should be improved by:

1. Finishing negotiations on bilateral agreements on the rights of the minorities with Serbia and Montenegro, and Bosnia and Herzegovina.

2. Obligations coming out of agreements and other acts contracted between Croatia and Serbia and Montenegro and Croatia and Bosnia and Herzegovina, pertaining the sustainable return of refugees should be implemented in the practice. .
3. Temporary visa regime with Serbia and Montenegro should be replaced with permanent one.
4. Better transport communication should be established with capitals in the region.
5. NGOs within their regional projects should advocate for the rights on the minorities in all countries in the region and should aid their interacting communication.

c) The International level

Encouraging policy, as declared by the Government of the Republic of Croatia, in procedure of applying for membership in European Union to a great extent has not been confirmed in practice. Also, many of internationally accepted obligations regarding minority rights and return of refugees (who are mostly members of minorities) issues were not realised. International community should continue with stern demands on Croatia to fulfil its obligation in faster pace, and thus achieve compatibility of declared policy and the attitude in practice.