



Coalition for Promotion and Protection of Human Rights

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EXERCISE OF THE RIGHT TO REPRESENTATION OF PERSONS BELONGING TO NATIONAL MINORITIES IN REPRESENTATIVE, ADMINISTRATIVE AND JUDICIAL BODIES, WITH THE EMPHASIS ON THE PROBLEMS IN RELATION TO ETHNIC / MINORITY AFFILIATION

INTRODUCTION

Provisions of the Constitutional Law on the Rights of National Minorities (CLNM) guarantee the right to representation in representative bodies at national and local levels, and administrative and judicial bodies in the Republic of Croatia (RoC) to persons belonging to national minorities.¹ Exercise of these rights is important for the full integration of national minorities to Croatian society at all levels, and for their active participation in political life and public affairs. Further on, it contributes to the preservation of the RoC as a multiethnic and multicultural environment.

This document overviews existing problems in relation to the implementation of the provisions of articles 20 and 22 of the CLNM in practice, including very sensitive issue of collection of data on ethnic / minority affiliation, and, to certain extent, reflects the content of the round table discussion "Participation of persons belonging to national minorities in political life and public affairs in the Republic of Croatia with the emphasis on the issues in relation to the collection of data on ethnic / minority affiliation"² that was held on 17 November 2005, in Zagreb.

This document aims to raise public awareness on respect of the rights of persons belonging to national minorities in the RoC, and to contribute to efforts and initiatives aiming towards the implementation of the CLNM.

ARTICLE 20 of the CLNM

Article 20 of the CLNM says that "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."³ Paragraph 7 of the Article 20 says: "The official census results shall be relevant to the determination of the number of members of a national minority for the implementation of the provisions of this Article." Prior to each elections, the official census results are conformed with possible changes registered in the last confirmed voter's list of respective unit of local Self-government.

Statute of a unit of local Self-government establishes on the number of members in representative bodies of a local Self-government belonging to national minorities in accordance with the Article 20 of the CLNM.⁴ Representative bodies of units of local Self-government are obliged to, prior to each elections, amend their Statutes in order to ensure representation of persons belonging to national minorities in accordance with the provisions of the CLNM in time; and in case they do not do so, newly elected representative body is obliged to do it within 60 days as of the day of its establishment.

Last elections for the representatives in representative bodies of the units of local Self-government were carried out on 15 May 2005, in 20 counties, 123 cities and the City of Zagreb, and 426 municipalities. Since certain number of representative bodies of the units of local Self-government failed to coordinate their Statutes with the data from the

voters' lists, according to the provisions of the Law on Election of Representative Bodies of the Units of Local and Regional Self-government, this obligation was devolved upon newly-elected representative bodies.

The Government of the RoC warned about these failures in its Conclusion passed on 22 July, 2005 (the Conclusion was never publicly announced!). Paragraph 2 of the Conclusion says: "Since all units of local and regional Self-government failed to, prior to regular elections, in timely manner, amend their Statutes in accordance with the provisions of the Law on Elections and the CLNM, newly-elected representative bodies are obliged to do so within 60 days as of the day of being constituted", but "in such way that the official census results are respected taking into consideration the fact that the voters' lists were not updated since the records on permanent residence of voters have not been updated as well."⁵

Reacting to the Government's Conclusion, the representative of GONG Association said: "Instead of amending their Statutes in accordance with the provisions of the Constitutional Law, meaning in accordance with the changes registered in the last confirmed voters' list from local elections held in 2005, the Government instructed representative bodies to do this opposite to the regulations (CLNM); they were instructed to amend their statutes in accordance with the 2001 census results that do not correspond to changes within voters' lists."⁶ GONG Association addressed the Constitutional Court of the RoC submitting the Proposal for Initiating the Assessment of Constitutionality of the Government's Conclusion. The Constitutional Court accepted this Proposal in November, 2005. The Council for National Minorities rejected the Conclusion, while certain minority representatives in the Croatian Parliament considered it discriminatory in relation to national minorities.⁷

EXAMPLES OF DIFFERENCES BETWEEN DATA COLLECTED THROUGH THE CENSUS AND THOSE IN VOTERS' LISTS REGISTERS⁸

| Self-government unit | 2001 census – share of persons belonging to Serb minority | 2003 voters' list – share of persons belonging to Serb minority (only of age) |
|------------------------|---|---|
| Sisak-Moslavina County | 11,66% | 17,09% |
| Zadar County | 3,53% | 11,19% |
| City of Gospic | 4,82% | 30,46%* |

* Data from 2005

Implementation of disputable Conclusion questions the legality of Statutes of units of local Self-governments amended in accordance with the Conclusion. "However, the Government stated that they would compare participation of national minorities at local elections held in May, and, in case there are disagreements, would take measures to ensure appropriate minority representation."⁹ It remains unclear, how the appropriate minority representation, based on the findings, would be ensured, and, would it reflect the data from the voters' lists as the law anticipated?

ARTICLE 22 OF THE CLNM

Article 22 of the CLNM, in which the following is stated, establishes on the exercise of the rights of persons belonging to national minorities to representation in administrative and judicial bodies:

(1) In a local self-government unit and in regional self-government unit (hereinafter: self-government unit), in which, pursuant to the provisions of this Constitutional Law, proportional representation of members of its representative body needs to be ensured from among the ranks of members of national minorities, the representation of members of a national minority shall be ensured in its executive body.

(2) The members of national minorities shall be ensured representation in the state administration and judicial bodies in compliance with the provisions of a special law, taking into account the share of members of national minorities in the total population at the level at which the state administration or judicial body was established and the acquired rights.

(3) Members of national minorities shall be ensured representation in the administrative bodies of self-government units in compliance with the provisions of a special law regulating local and regional self-government and in compliance with the acquired rights.

(4) Members of national minorities shall have priority in the filling of posts as per Paragraphs 2 and 3 of this Article, under equal conditions.

Determination of the number of persons belonging to national minorities in executive bodies of Self-government units is directly linked with legitimate implementation of Article 20 of the CLNM. The same relates to the exercise of the right to representation in administrative bodies of Self-government units specified in the Article 56a paragraph 1 of the Law on Local and Regional Self-government: "Persons belonging to national minorities who according to provisions of article 20 of the CLNM have the right to proportional representation in representative bodies of units of local (regional) Self-government, have the right to representation in executive and administrative bodies of those units."¹⁰

Provisions of the Article 8 of the Law on State Administration System establish on the competency of the Government of the RoC in terms of supervision over the implementation of representation of persons belonging to national minorities in state administration bodies. The same article states that persons belonging to national minorities are guaranteed representation in ministries and state administration offices taking into account their share in the population of the RoC, and, that persons belonging to national minorities are guaranteed representation in the state offices of the units of regional Self-government taking into account their share in the population of respective County.

However, since the CLNM came into effect in December 2002, small steps forward have in relation to the implementation of the Article 22 paragraph 2 of the CLNM been achieved. Advisory Committee of the Framework Convention for Protection of National Minorities of the Council of Europe (AC FCNM) points at the issue of under-representation of minorities in the bodies of state administration and judiciary, and recommends the authorities of the RoC to "Address the remaining shortcomings in the implementation of the CLNM, paying particular attention to the guarantees regarding participation of persons belonging to national minorities in the state administrative and judicial bodies."¹¹

The AC FCNM underlines the lack of comprehensive data on representation of national minorities in state administration bodies as a problem in relation to the monitoring of the

exercise of the rights established by the Article 22, bearing in mind that such information are necessary for the exercise of guaranteed rights. Available official statistics on minority representation in judicial bodies are very general and provide separate information only on the percentage of Serbs, while representation of other minorities is presented collectively.

MINORITY REPRESENTATION IN JUDICIAL BODIES OF THE REPUBLIC OF CROATIA ON 31 December 2004¹²

| | Serbs | Others |
|--|------------|------------|
| <i>Percentage in the population of the RoC %</i> | 4,5 | 3,0 |
| Percentage of judges | % | % |
| Municipal courts | 2,6 | 2,5 |
| County courts | 3,7 | 4,8 |
| Commercial courts | 0,0 | 0,7 |
| Supreme Court | 2,4 | 4,7 |
| Administrative Court | 0,0 | 0,0 |
| High Commercial Court | 0,0 | 0,0 |
| TOTAL percentage of judges: | 2,5 | 2,9 |
| Percentage of State Attorneys | | |
| Municipal State Attorneys' Offices | 1,1 | 1,4 |
| County State Attorneys' Offices | 4,4 | 1,9 |
| State Attorneys' Office | 4,2 | 0,0 |
| TOTAL percentage of State Attorneys: | 2,4 | 1,4 |
| TOTAL: percentage of judges and State Attorneys | 2,4 | 2,5 |
| TOTAL: percentage of state officers and employees in the State Attorneys' Offices | 2,6 | 1,5 |

In the sense of overcoming the identified problems, AC FCNM recommended taking measures that would include "rapid completion of the central registry and other tools required to analyze the existing situation at various levels and sectors of administration, as well as legislative and other measures ensuring that the CLNM is fully taken into account in the judicial and other appointments and in the design and implementation of related policies and practices. Attention should also be paid to the participation of national minorities in those areas of public service that are not covered by the said guarantees".

Certain steps forward in the legislative plan have been made in 2005:

The Law on State Employees that has been adopted in July 2005, states the following in the Article 42 paragraph 2: "The plan on state service admission establishes on the complementing of the posts in state bodies by number of persons belonging to national minorities, and plans on the employment of required number of civil servants belonging to national minorities for the exercise of the right to representation in accordance with CLNM and the law on state administration system."

Earlier mentioned amendments on the Law on Local and Regional Self-government, adopted in October 2005, state the following in the Article 56a paragraphs 2 and 3: "Administration of a unit of local and regional Self-government establishes on the complementing of the posts in administrative bodies of the units of local and regional Self-government and plans on the employment of required number of civil servant belonging to national minorities referred to in the paragraph 1 of this article. When persons belonging to national minorities referred to in the paragraph 1 of this article apply for the admission to the service, they have the right to call upon the exercise of the right they are entitle to in accordance with the provisions of the CLNM".

The Law on Courts that has been adopted in December 2005, stipulates the following in its Article 74 paragraphs 7 and 8:

“Pursuant to the Article 22 paragraph 2 of CLNM, the representation of judges belonging to national minorities needs to be taken into account when appointing judges. When a person belonging to national minority applies for a vacant judge post he/she has the right to call upon the exercise of the right they are entitled to in accordance with the provisions of the CLNM”.

Article 22 of the CLNM presents positive example of adoption of high standards and affirmative measures aimed towards the provision of full and efficient equality of persons belonging to national minorities in the exercise of the right to representation in administrative and judicial bodies of the RoC. But, the implementation of these measures in practice, raise questions on, for example, many allegations on discrimination against ethnic Serbs in case of employment within the public sector. European Commission against Racism and Intolerance (ECRI) reports on this and claims:¹³ “The instances of discrimination reported by several sources occurred primarily, but not exclusively, in the war-affected areas. Discrimination apparently occurs at several levels, both when it comes to passing a competitive examination for entry into the civil service and when the person is to be reinstated in their posts following unfair dismissals. Some ethnic Serbs who applied for a post for which they were fully qualified did not obtain it, even when no one else met the requirements for the post. In such case the post remained vacant. In other cases it would appear that ethnic Croat candidates are given preferences over better qualified ethnic Serb candidates.”

Human rights activist, Mr. Ninko Mirić, presented following allegations on employment in public services related discrimination¹⁴: “... certain members of Serb national minority in the area of Sisak-Moslavina County, and Karlovac County, in which they belong to both absolute and relative majority population, they have applied for vacant judges posts; and, although they were the only candidates that met the criteria, the job announcements were cancelled. State Judicial Council (SJC), one member of the SJC, even claimed that since a particular member of a national minority who left Croatia in 1995, can not be a judge because she has worked in this particular area while it has been occupied... both the Administrative Court and the Constitutional Court did not clearly express their standing points on the issue of violation of the CLNM, European Convention, and the FCNM in this regard... I have applied for a vacant posts within the Ministry of Environment Protection, and was spoken to for 5 minutes, while other candidates were interviewed for 20 to 30 minutes... The job announcement was cancelled because I met all the criteria. After that, the announcement was repeated and I applied again. In the end, the Ministry employed two persons who even did not pass the Professional State Exam. And I met all the criteria... The President of the Municipal Court in Karlovac, among other issues, publicly, in the press, announced that judiciary will be revised and some courts closed. She said that Municipal Court in Vojnic needs to be closed since people are not interested to apply for vacant posts there. I was the President of that court before the war. I have been applying for vacant posts for the last 7 years, and was not hired only because I belong to a national minority. And, as a President of the Municipal Court in Vojnic, I worked in one of the best, promptest, courts in the RoC before the war.”

In their recommendations for the Croatian authorities, the ECRI, among the rest, encourages bodies in charge to

conduct investigations on discrimination allegations, and, in case these allegations are confirmed, to take all necessary measures. Further on, the ECRI emphasizes on the importance of the implementation of constitutional and other regulations on representation of persons belonging to national minorities, including ethnic Serbs, in public services such as the police, education, and judiciary.¹⁵

ETHNIC/MINORITY AFFILIATION DATA COLLECTION RELATED PROBLEMS

Collection of comprehensive data on ethnic affiliation for members of national minorities, but also for the authorities is significant for, at least, two reasons:

1. It is impossible to fully implement provisions of the CLNM and exercise the rights guaranteed within without such data. Production of implementation acts and adequate policies, and implementation of legally prescribed affirmative measures for exercise of the rights of persons belonging to national minorities to representation in administrative and judicial bodies of the RoC depend a lot on the collection of data on minority affiliation.

2. These records are necessary for monitoring of the level of exercise of guaranteed rights, as well as for establishment on the existence of discrimination against persons belonging to national minorities, and for taking adequate measures aiming to eliminate discrimination.

Official records on ethnic affiliation that are available in the RoC are either not updated (voters' lists), or are insufficiently detailed (statistics on minority representation in judicial bodies), or their reliability is questioned by certain minorities (2001 census results).

Collection and analyses of data are limited by provisions of the Article 8 paragraph 1 of the Law on Protection of Personal Data, that prohibit collection and further analyses of personal data related to racial or ethnic background, political, religious, and other affiliation, union membership, health or sexual life, and data on criminal and violation procedures.

The ECRI points at taking of certain measures in relation to data collection in their recommendation to Croatian authorities: “ECRI encourages the Croatian authorities to consider ways of setting up a coherent and comprehensive data collection system to assess the situation of various minority groups living in Croatia and the scale of manifestations of racism and racial discrimination. The data collection system will have to comply with domestic law and European regulations and recommendations on data protection and protection of privacy, as stated in ECRI's General Policy Recommendation no.1 on combating racism, xenophobia, anti-Semitism and intolerance. When data is collected, the Croatian authorities will in particular have to respect the anonymity and dignity of the person questioned and obtain their full consent. The system on collecting data on racism and racial discrimination should also take into account equality between women and men, especially in the light of the possibility of double or multiple discrimination.”¹⁶

Representatives of national minorities in the RoC also stress that special attention should be paid to data collection using positive experiences from other countries, with the full protection of privacy of the persons belonging to national minorities.¹⁷

AC FCNM recommends Croatian authorities to “support independent research, including the research launched by the Council for National Minorities, to analyze the census process and its results. Results of such research could be used to address concerns expressed in relation to the census and to identify ways to obtain increasingly reliable and up-to-date disaggregated data on national minorities in accordance with Article 3 of the FCNM. At the same time, the authorities should ensure that the census results are not given undue weight in the design and implementation of minority policies.”¹⁸

In certain local communities, national minorities are still seen as a disturbance factor, and their claims for exercise of certain rights are received with incredulity. Such a situation, and the fear of discrimination or expression of hostility towards them influences reluctance of some persons to express own minority affiliation. Therefore, it is necessary to take measures

for removing the “stigma” from expression of ethnic affiliation, and to work on the acceptance of multiculturalism as a permanent value of Croatian society.¹⁹ National strategy for the fight against all forms of discrimination, that is currently in the process of production, could be significant in overcoming of these problems.

REMARKS:

¹ Articles 19 – 22 of the CLRNM

² Round table discussion organized within two-year program “Minority Rights in Practice – National Strategy for Croatia” by Coalition for Promotion and Protection of Human Rights. Round table discussion was organized in cooperation with the OSCE Mission to Croatia. Round table participants, 27 of them, were the representatives of minority MPs, the Ministry of Justice, the Ministry of Interior, Office of the President of the Republic of Croatia, Central State Administration Office, Councils for National Minorities, OSCE Mission to Croatia, non-governmental organizations, national minorities, and Croatian representative / expert to the Advisory Committee of the Framework Convention for Protection of National Minorities of the Council of Europe

³ Article 20 paragraph 1

⁴ Article 9 paragraph 1 of the Law on Election of Representative Bodies in the Units of local and Regional Self-government

⁵ Quotation taken from the presentation of Mr. Dragan Zelić, representative of GONG association, from the round table “Participation of persons belonging to national minorities in political life and public affairs in the Republic of Croatia with the emphasis on the ethnic / minority affiliation”, held on 17 November, 2005, in Zagreb

⁶ Quotation taken from the presentation of Mr. Dragan Zelić, representative of GONG association, from the round table “Participation of persons belonging to national minorities in political life and public affairs in the Republic of Croatia with the emphasis on the ethnic / minority affiliation”, held on 17 November, 2005, in Zagreb

⁷ OSCE Mission to Republic of Croatia: Status Report no.17, page 24, from 10 November, 2005

⁸ Source: Mr. Dragan Zelić, GONG

⁹ OSCE Mission to Republic of Croatia: Status Report no.17, page 24, from 10 November, 2005

¹⁰ Article 20 of the Law on Amendments of the Law on Election of Representative Bodies in the Units of local and Regional Self-government, 18 October, 2003

¹¹ See: Advisory Committee for Framework Convention for Protection of National Minorities: Second opinion on Croatia accepted on 1 October, 2004

¹² See: Comments on the Advisory Committee for Framework Convention for Protection of National Minorities: Second opinion on Croatia, 13 April, 2005

¹³ See: European Commission against racism and intolerance: Third report on Croatia, adopted on 17 December, 2004

¹⁴ Quotation taken from the presentation of Mr. Ninko Mirić from round table discussion held on 17 November, 2005

¹⁵ See: European Commission against racism and intolerance: Third report on Croatia

¹⁶ See: European Commission against racism and intolerance: Third report on Croatia

¹⁷ See: Conclusions from the seminar on the implementation of the FCNM, held in Split, 16 September, 2005

¹⁸ See: Advisory Committee for Framework Convention for Protection of National Minorities: Second opinion on Croatia

¹⁹ Notes from the round table discussion, Zagreb, 17 November, 2005

CONCLUSIONS AND RECOMMENDATIONS

Exercise of the rights of persons belonging to national minorities to representation in representative bodies, administrative bodies executive bodies of the units of local Self-government, representative bodies of the units of regional Self-government, and State Administration and judiciary remain problematic in different segments.

Aiming to overcome existing problems in relation to the implementation of articles 20 and 22 of the CLRNM, Croatian authorities should, without any hesitation, consulting national minorities’ representatives and experts, take following measures:

- Work to make general public, including persons belonging to both minority and majority communities, state employees, and representatives of the Self-government units, more sensitive of the guaranties and exercise of the rights of persons belonging to national minorities to representation in representative, administrative and executive bodies of the units of local Self-government, and representative bodies of the units of regional Self-government, state administration, and judiciary;
- Work on adequate implementation of the CLRNM and other relevant laws, and adoption and application of implementation acts and policies at all levels;
- Build and establish unified and comprehensive separate data collecting system on national minorities in accordance with national laws and European regulations and recommendations on data protection and protection of privacy;
- Take measures aimed towards investigation of allegations on discrimination of national minorities, and efficient combat against all forms of discrimination.

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