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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**MEETING
OF THE VENICE COMMISSION RAPPORTEURS
WITH THE CROATIAN WORKING GROUP
DRAFTING THE CONSTITUTIONAL LAW
ON THE RIGHTS OF NATIONAL MINORITIES
IN CROATIA**

Zagreb 4-5 January 2001

**Meeting of the Venice Commission Rapporteurs
with the Croatian Working Group
drafting the Constitutional Law on the Rights of National Minorities in Croatia**

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On 4 and 5 January 2001, the Venice Commission Rapporteurs, Mr Matscher, Ms Suchocka and Mr Delcamp, met with the Croatian Working Group set up under the Chairmanship of the Minister of Justice, Administration and Local Self-Government Mr Ivanisevic, to draft the Constitutional¹ Law on the rights of national minorities in Croatia. Representatives of the Ministry of Foreign Affairs, of the Council of National Minorities and experts from the University of Zagreb took part in this meeting.

The Rapporteurs and the members of the Working Group considered the draft Constitutional Law (CDL (2001) 1) prepared by the Working Group as well as the implications of the Constitutional Revision of 9 November 2000 on the rights of minorities in Croatia.

The following topics were discussed at the meeting:

1. Effects of the entry into force of the new Constitutional Law

The Rapporteurs expressed their satisfaction that Article 41 of the new draft clarifies the situation as to the validity of various instruments guaranteeing rights of persons belonging to minorities at the level of the Constitution. It is now clear from this provision that the Constitutional Law of 1991, as amended in 2000, shall cease to be valid on the date of promulgation of the new Law. (Article 40 still provides that rights acquired before the date of the entry into force of the new Law are not restricted or amended by the latter. The Rapporteurs understand that this provision does not concern rights “acquired” under the regime of the Constitutional Law of 1991.)

2. List of Minorities

The Rapporteurs supported the abolition of the list of minorities in the new Law. They noted however that a list of minorities is still valid in the Preamble of the Constitution.

3. Definition of minorities

The Rapporteurs discussed the questions raised by the fact that under the draft Law the notion of minorities is restricted to citizens of Croatia, although such a restriction departs from recent tendencies of minority protection in international law (Article 27 of the UN Covenant on Civil and Political Rights and practice of the OSCE High Commissioner on National Minorities). The Rapporteurs understand that the definition in Article 1 of the draft Law does not purport to be a general definition of “national minorities” but aims at defining the persons who have the specific “constitutional” rights enshrined in the new

¹ The term « constitutional » appears in the draft discussed in the meeting. It is however understood that as a result of the Constitutional amendment to Article 83 and of the decision U-I-774/2000 of 20 December 2000 of the Constitutional Court (which found that the Constitution does not provide for any Constitutional Law other than the one on the Constitutional Court) the Law on the Rights of Minorities will be an “organic” Law (see also below point 4)

Constitutional Law. This does not prevent Croatia from granting persons belonging to minorities who are not (or not yet) citizens of Croatia the rights they are entitled to under international law and in accordance with the Constitution of Croatia.

The Rapporteurs note however that some of the rights enshrined in the Constitution are also restricted to citizens (e.g. the right to freedom of association; the right to petition); this may generate some problems for the effective enjoyment of these rights by persons belonging to minorities who are not (or not yet) citizens of Croatia.

4. Implementing Laws and hierarchy of norms

Most of rights guaranteed in the draft Law shall be exercised in accordance with specific implementing laws. The Rapporteurs understand that these implementing laws shall be compatible with the general provision in the Constitutional Law. Restrictions of the rights enshrined in the new Constitutional Law should be only for legitimate purposes (also in respect of international law) and proportionate to the aim pursued. They should not affect, in any case whatsoever, the very essence of the rights guaranteed. Furthermore, it must be understood that the compatibility of special implementing laws with the Constitutional Law must be subject to review by the Constitutional Court.

The Rapporteurs stressed in this respect the importance of the hierarchy of norms and the “constitutional” nature of the Law. They noted that the amendments to the Constitution provide that the Law on the rights of minorities shall be “organic laws” requiring a special majority in Parliament for their adoption. The Rapporteurs understand that the new Law will thus take precedence over implementing laws and that, consequently, the Constitutional Court of Croatia – which is entrusted with the task of reviewing not only constitutionality *stricto sensu* but also legality in general – will be able to review the compatibility of implementing laws with the new Law. The Constitutional Court found in a recent decision that an organic law “is a law which is below the Constitution, but above other laws, and its stronger force stems from the special majority by which it is passed”(Decision U-I-774 of 20 December 2000).

It remains however to be seen how the new provision of Article 83 of the Constitution shall be put into practice. This provision reads: “The laws (organic laws) regulating the rights of national minorities shall be adopted by a two-third majority of votes of all representatives”. The question can be raised whether all implementing laws should be regarded as “organic” laws in the sense of Article 83 of the Constitution. Such an interpretation will not only make the adoption of implementing laws extremely cumbersome but may also compromise the constitutional review process (as implementing laws will have the same legal force as the new Law).

5. Electoral rights

The draft Law clearly provides for a “plural” (double) vote system for citizens belonging to minorities. It is clearly stated that “members of national minorities shall have, along with the general and equal right to vote for members of the Croatian Parliament, the right to elect a certain number of members of Parliament in accordance with a special Law”. The Rapporteurs agreed with the idea of letting the legislator define the specific number of minorities’ representatives in the Croatian Parliament, as the principles for such representation are laid down in the Article 12 of the draft, i.e.: proportional representation for the Serb minority and 6 representatives (or another number to be defined by law) for other minorities.

6. Council of National Minorities

The Rapporteurs felt that there should be a specific statement, in the Law or in the explanatory report, that the special advisory body provided for in Article 35 of the draft Law is the successor of the present “Council of National Minorities”

7. Minority Self-Government

The question of the so called “minority self-government”² was the main object of discussions in the meeting. The new draft provides in a much more detailed manner, for a system of “personal autonomy”, inspired by the Hungarian model but with some territorial aspects as well.

The Rapporteurs stressed that the new text (Articles 20-32) is a substantial improvement in comparison with the previous draft. The new Articles should be read in conjunction with relevant provisions in the recently amended Constitution that grant local self-government units an important part of decision making power in local affairs. In addition, minority self-government units have the power to decide (independently) issues concerning the use of their national signs and symbols as well as local holidays. Other competences may be assigned to the minority self-government units by virtue of the Law on Local Self-Government. On other issues such as proposing constituencies, passing development plans, plans for the protection of the environment or other issues of special interest for national minorities, the local and regional self-government bodies must consult the minority self-government and, if they do not follow the opinion of the minority self-government, they must give the reasons in writing (Article 29). It is to be noted that minority self-government units have legal personality and can thus address the courts, including the Constitutional Court.

The Rapporteurs agreed that the system the draft aims at establishing is a viable and adequate substitute for the abolished special status regime provided for in the Constitutional Law of 1991 and never implemented. However, several points could be further clarified in the draft, in particular:

- the way a member of a local self-government body is denoted as having been elected “by one national minority” (Article 21 para.1);
- the percentage of members of a local self-government body that need to belong to a minority in order to be entitled to establish a “minority self-government” (Article 21 para. 2);
- the prerogatives of the “minority representative” in Article 21 para. 3;
- the possibility - or even necessity - for State financial support for the budget of local minority self-government units;
- the question of legal personality of minority self-government units at the level of the communes (mjesna).

² The term « Minority Self-Rule » has also been suggested. The term “autonomy” could be more accurate.

Future steps

The Rapporteurs wish to thank the Minister of Justice and the members of the Working Group for the excellent preparation of the meeting in Zagreb and for the quality of the exchanges of views, which took place in a spirit of genuine openness and co-operation.

They find that the new draft significantly improves the legal framework of minority protection in Croatia. It clarifies most of inconsistencies of the previous draft, in particular as regards the effects of the new law and the electoral rights aspects, and provides for the establishment of a system for minority self-government at local, regional and state level that can be regarded as an adequate response to the needs of minorities in Croatia. Several points still need some further clarification and in this regard the Rapporteurs are at the disposal of the Croatian authorities.