

SHADOW REPORT ON THE IMPLEMENTATION OF THE FRAMEWORK CONVENTION FOR PROTECTION OF THE RIGHTS OF NATIONAL MINORITIES IN THE REPUBLIC OF CROATIA

for the implementation period 1999 – 2004

submitted to

**Council of Europe
Directorate General of Human Rights
Secretariat of the Framework Convention for
the Protection of National Minorities**

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**Produced by: Center for Peace, Legal Advice and Psychosocial
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I Information on the organisations included in the production of the report

The Center for Peace, Legal Advice and Psychosocial Assistance, Vukovar is non-governmental, non-political, non-profit, humanitarian organisation established on the August 01, 1996.

Vision of the Center is a modern democratic society, society of the rule of law and respect for human rights and values, society of tolerance and equal opportunities for all regardless of their ethnicity or religion, language, culture or social status.

Activities of the Center:

- promoting and protecting human rights and freedoms;
- providing free counselling and relevant information;
- supporting civic initiatives and economic development;
- preparing and running public campaigns;
- organising different kinds of education;
- activities aimed towards interethnic and inter-religious tolerance;
- co-operating with relevant governmental and non-governmental organisations in the Republic of Croatia, foreign non-governmental and other international organisations.

The Center operates in wider Vukovar and former UNTAES area and deals with particular activities on national and international levels.

Center's programs are divided in the following fields:

1. Protection and promotion of human rights
2. Economic Development
3. Education / Informing
4. Democratisation
5. Peace activities
6. Co-operation

Beneficiaries of the Center's services are all citizens regardless of sex, culture, language, mental or physical abilities, ethnicity or religion.

The Center is a member of the Coalition for Promotion and Protection of Human Rights in the Republic of Croatia.

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Community of Serbs Rijeka (CSR) is non-governmental and non-political organisation that assembles citizens belonging to the Serb community in the areas of Rijeka and Primorsko-goranska County in order to preserve their cultural, religious and national identity and to protect human and minority rights in conformity with positive legislation of the Republic of Croatia and international standards, conventions and mechanisms, that Croatia adopted.

CSR was established at the end of 1991 working, at the time, within wider regional organisation, Community of Serbs of Rijeka, Istria and Gorski Kotar.

Since 1994, the CSR worked independently under its own name.

Community of Serbs Rijeka is one of the founders but also a member of the Serbian National Council, an umbrella institution of Serbian people in the Republic of Croatia.

Through its most important activity, Human and Minority Rights Protection Program (legal assistance, public stands, conferences, co-operation with international institutions), the Community of Serbs Rijeka built a broad co-operation initiating number of activities related to the field of interethnic communication with many NGOs in Croatia, B&H and Serbia and Montenegro but also other minority communities in Rijeka and the whole country. As a local partner to the MRGI, the CSR also organised three international conferences on position of national minorities in Middle and Southeast Europe in period 2000 – 2002. The Community of Serbs, Rijeka, developed excellent co-operation with local, executive and legislative authorities in Rijeka and also has one representative within the Rijeka City Council for National Minorities.

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The following organisations or their representatives provided suggestions and were included in the production of the report, data collecting and processing:

- Association " ZvoniMir ", Knin
- Association " ALTRUIST ", Split and Knin Offices
- Association " Civil Rights Project ", Sisak
- Association for Protection of Human Rights and Civic Freedoms " HOMO " Pula, Korenica Office
- Association " Hoću Kući (I want to go home)", Knin
- Serbian Democratic Forum Knin Office
- Dalmatian Solidarity Committee, Knin Office
- Centre for Peace Studies, Zagreb
- Association "Delfin", Pakrac
- MPDL, Knin

II Introduction

1. This report is the alternative report on the implementation of the CoE Framework Convention for Protection of National Minorities in the Republic of Croatia for the implementation period 1999 – 2004.

The Republic of Croatia, a member state of the Council of Europe, ratified the Framework Convention on October 11th, 1997. Pursuant to the article 29 paragraph 2 of the Convention, the Convention came into force on February 02, 1998. In February 1999, one year upon the ratification of the Convention, the Republic of Croatia was obliged (SECTION IV, article 25 of the Convention) to produce and submit an initial report on the implementation of the Framework Convention, the information on legislative and other measures taken in order to achieve the principles of the Framework Convention to the Secretary General of the Council of Europe, Committee of Ministers of the Council of Europe, for their consideration

2. In March 2004, the Republic of Croatia submitted its second regular report on the implementation of the Framework Convention to the CoE Committee of Ministers. This shadow report is an alternative source of information on the implementation of the Framework Convention for Protection of National Minorities and relevant national legislation and situation facing minority communities in the Republic of Croatia. The report, up to certain extent, follows the structure of the information elaborated in the official state report and to a degree complements it with particular examples on practical implementation of the provisions of the Framework Convention and the relevant national legislation. While producing this report, taken into account were also the First State Report, the Opinion of the Advisory Committee for the Framework Convention ref.no. ACFC/OP/I (2001)2 and the Resolution of the Committee of Ministers no. ResCMN(2002)1 on the implementation of the Framework Convention for Protection of National Minorities in Croatia.

3. While producing this report we have used the following sources: reports and statements by local and international non-governmental organisations; reports, documents and information by relevant governmental institutions; media information; relevant national legislation; reports, opinions, statements and documents by international organisations. Information provided by non-governmental organisations are based on data they collected through their everyday activities or collected while communicating with persons belonging to minority communities or their representatives.

III General remarks - 1999 – 2004

A) ETHNIC STRUCTURE OF THE POPULATION

4. The last census in the Republic of Croatia was conducted in 2001. The official census results were published one year later, in 2002. The importance of the last census results is in fact that this was the first official census conducted in the Republic of Croatia since its declaration of independence and disintegration of the former SFRY. The results of the census show approx. 7,25% (from 4.784.265 to 4.437.460) decrease in total number of inhabitants of the Republic of Croatia. According to the census results, the number of persons belonging to majority increased by approx. 11,53% (from 78,1% to 89,63%) while number of persons belonging to national minorities¹ decreased by approx. 50% and came down to 7,47 % or 331.383 of the whole population of the country.

5. Results from the 2001 census confirmed earlier speculations on the changes of the ethnic structure of the population in the Republic of Croatia in comparison to the results of the 1991 census. The 2001 census records data on 22 different ethnic minority communities.² The largest ethnic minority community is Serbian, which numbers 201.631 persons, which makes 4,54% of the population of the Republic of Croatia, Bosniaks - 20.755 or 0,5%, Italians – 19.636 or 0,4%, Hungarians – 16.595 or 0,4%, Albanians – 15.082 or 0,3%, Slovenians -13.173 or 0,3%, Czechs – 10.510 or 0,2%, Roma – 9.463 or 0,2%, Montenegrins – 4.926 or 0,1%, Slovaks – 4.712 or 0,1%, Macedonians – 4.270 or 0,1%, Germans – 2.902 or 0,1%, Ruthenians – 2.337 or 0,1%, and Ukrainians – 1.977, Russians – 906, Jews – 576, Polish – 567, Romanians – 475, Bulgarians - 331, Turks – 300, Austrians – 247 and Vlachs – 12. Additionally, 19.677 persons declare themselves Muslims.

6. Comparing the 1991 census with the data of the last census the size of the minority population has decreased. The most drastic decrease was registered among following minorities: Serbs – 65%, Montenegrins – 49%, Slovenians – 41%, Macedonians – 32%, Ruthenians – 28%, Hungarians – 25%, Ukrainians – 20%, Slovaks – 15%, Italians – 7%, while the increase was registered among Roma – 41%, Albanians 25% and Germans – 10%.³ In the 2001 census, a number of persons registered as Muslims in 1991, declared themselves Bosniaks. Muslims and Bosniaks registered by the 2001 census number 40.529 persons, which shows a 7% decrease comparing the number of Muslims registered in 1991.

7. Persons who spent over one year abroad were not registered by the 2001 census. Following Croatian international obligations, the 2001 census did register refugees who fled from other republics of former Yugoslavia and are currently living in the Republic of Croatia. Since the 2001 census the number of Serbs has increased. According to the data by the Office for Expellees, Returnees and Refugees from October 2003, 46.068 Serbian refugees returned, mostly from Serbia and Montenegro or Bosnia and Herzegovina to the Republic of Croatia in the period between the year 2000 and September 2003.⁴ In total, about 108.000 refugees and IDPs belonging to minorities have been registered as having returned, which is approximately 1/3 of all Croatian Serbs who fled from Croatia.⁵ It is possible that 10.572 returnees, who returned in 2001, 9.640, who

¹ “A national minority in the sense of this Constitutional Law shall be a group of Croatian citizens, whose members have been traditionally settled in the territory of the Republic of Croatia, and who have ethnic, linguistic, cultural and/or religious characteristics which are different than those of other citizens and who are guided by the wish for the preservation of those characteristics.”, (Article 5), Official Gazette no. 155/2002.

² Data by the State Institute of Statistics – www.dzs.hr

³ Data relating to minority communities with more than 1.000 registered persons belonging to a particular community

⁴ Office for Displaced Persons and Refugees (Expellees, Returnees and Refugees) – Report on Return of Displaced Persons in the Republic of Croatia from 2000 to September 2003, www.vlada.hr

⁵ It is impossible to precisely determine the number of refuge and displaced Serbs for the period 1991 – 1995. Estimations vary from 300.000 and 350.000. Human Rights Watch Report estimates the same in, for example, their report: Broken Promises – Obstacles to the Return of Refugees to the Republic of Croatia, September 2003, page 3

returned in 2002, and 8.826, who returned by November 2003, were not registered by this census.⁶ "Spot checks carried out by the UNHCR, the OSCE Mission to Croatia and NGOs at different times suggest that about two thirds of the registered returnees moved to Croatia on a permanent basis"⁷, and that "after a while, many returnees leave for Serbia or Bosnia"⁸. Referring to the data by Ministry of Public Works, Reconstruction and Construction / Office for Expellees, Returnees and Refugees from 01 November 2003, there were about 210.000 refugees from the Republic of Croatia (mostly ethnic Serbs). Out of total of 210.000 persons, 190.000 fled to Serbia and about 22.000 to B&H.

8. The 2001 census results caused loud protests of certain national minorities' representatives. Mr. Milorad Pupovac, the president of the Serbian National Council refused to accept the census results. He demanded a review so as to include all the Croatian Serbs who registered for the census abroad, as well as those who returned in the meantime. The Serbian National Council believed that a further 68.000 Croatian Serbs should be considered in this regard. The Chair of Parliamentary Committee for Human Rights and the Rights of National Minorities, Mr. Furio Radin demanded a further explanation of the census results and the reasons for the reductions in number of persons belonging to national minorities. He advocated a new program for the development and protection of minority rights. Mr. Zarko Puhovski, the president of the Croatian Helsinki Committee, said that census results only confirmed the need to prevent the assimilation and emigration of Croatian national minorities.⁹ Discussion on reasons for the reductions in number of persons belonging to national minorities, Serbs in particular, started. Unlike Milorad Pupovac, Zarko Puhovski accepted the census results as "correct and expected" and said "when an ethnic group shrinks to almost one third in a decade, it cannot be the result of natural migrations but movement under pressure, which we usually call ethnic cleansing"¹⁰. At the beginning of 2004, Mr. Furio Radin said before the Croatian Parliament that 300.000 Croatian Serbs were ethnically cleansed from Croatia.¹¹ In its report on implementation of the Framework Convention, the Government of the Republic of Croatia claimed weakening and breaking ties within national minorities' communities owing to the geographical division, migrations and urbanisation; interregional and overseas migrations (especially during and after the 1991 – 1995 war); higher social mobility caused by increased level of education; mixed marriages that divide ethnic component of the population, which is specially the case with Croatian Serbs in cities and areas which were not affected by the war; improved identification with professional or social group or the region and, in the end, 1991 – 1995 war consequences to be reasons for the reductions.¹² Evaluating the State Report, the Council for National Minorities notifies "incomplete interpretation of drastic reductions in the number of persons belonging to minorities (Serbs, Bosniaks and some other minorities) in period between 1991 and 2001. Therefore, there is a need for the scientific analyses of both censuses."¹³ But, in case of Croatian Serbs whose number reduced by approximately 400.000, it is somehow hypocritical to mention the 1991 – 1995 war consequences as the last reason for the reductions without mentioning possible justified fear to declare their ethnicity owing to the discriminative policy they are still facing. There is no doubt that some Serbs left Croatia willingly since they disagreed with the official Croatian politics and administration and also because of the war crimes committed during the war. Former president Tudjman used to say that number of Croatian Serbs would be reduced to 3 – 4 % by the end of the war. This was "accomplished with mathematical precision".¹⁴ Listing the reasons for the reductions, in their report on minorities in Croatia, the Minority Rights Group International places "the nationalistic policy mainly targeting Serbs, with Serbs exposed to denunciation, harassment, threats and killings, both inside or outside of the war zones" to the first place.¹⁵ Trying to explain the census results, the Government of the Prime Minister Racan

⁶ OSCE Mission to the Republic of Croatia – Status Report no. 13, December 2003, page 22, Notes 3

⁷ OSCE Mission to the Republic of Croatia – Status Report no. 13, December 2003, page 4

⁸ Human Rights Watch: Croatia – Progress Needed on Refugee Return, 14 May 2004, www.hrw.org/croatian/docs/...

⁹ See: www.osce.org/news_in_brief/archive/040602

¹⁰ Institute for War and Peace Reporting, 14. June 2002

¹¹ Identitet, no. 72, March 2004, page 8.

¹² See State Report of the Republic of Croatia on Implementation of Framework Convention for Protection of National Minorities, March 2004, page 45

¹³ See State Report of the Republic of Croatia on Implementation of Framework Convention for Protection of National Minorities, March 2004, page 60

¹⁴ Identitet, no. 72., March 2004, page 9.

¹⁵ Minority Rights Group International: Minorities in Croatia, September 2003, page 12.

showed the documents proving that Serbs left Croatia in an organised manner even before the Croatian armed forces liberated Serb controlled areas¹⁶ (this refers to the Storm Operation, August 1995). Mrs. Jelena Lovric, journalist of the Novi List comments the statements by the Government and says that "the Government carefully registers what happened on the Serb side but denies all known facts about the Croatian regime (at that time). There was a detailed plan that was implemented in order to reduce number of Serbs in Croatia." She added that with such a selective approach to the historical facts, the current regime (regime of the Racan's government) "defends Tudjman's policy and hides his crimes".¹⁷ Furthermore, the prosecutor in the indictment before the International Criminal Tribunal for Former Yugoslavia versus Croatian generals Ivan Cermak and Mladen Markac, states that "During and after Operation Storm, and at all times relevant to this Indictment, Ivan CERMAK and Mladen MARKAC, with others including Ante GOTOVINA and President Franjo TUDMAN, participated in a joint criminal enterprise, the common purpose of which was the forcible and permanent removal of the Serb population from the Krajina region, by the plunder, damage or outright destruction of the property of the Serb population, so as to discourage or prevent members of that population from returning to their homes and resuming habitation."¹⁸ All of the above support the position of the Council for National Minorities claiming that it is necessary to conduct scientific analyses and researches to establish the reasons that caused reductions in number of persons belonging to national minorities in order to find out what is required to normalise interethnic relations and trust disturbed during the conflict. But, considering numerous statements and views manifested on the Croatian political scene on impossibility of history revision and doubting already established facts, there are very few chances that the suggested analyses would ever be conducted with the support of important political structures or that it could have any influence whatsoever. Upon the finishing of the peaceful integration of the former UNTAES area and completion of the UN mandate in the Eastern Slavonia, thousands of people (mostly belonging to Serbian but also some other minorities), for different political, legal, economic and security issues, left the Republic of Croatia. Hundreds seek the asylum in different Western European Countries (Norway, Great Britain, Ireland...). For further information on possible reasons for the reductions in number of ethnic Serbs caused by the 1991 – 1995 war and after that, please, see under Items d) RESPECTING GENERAL (HUMAN) RIGHTS OF PERSONS BELONGING TO MINORITIES AND THE RULE OF LAW or IV.II.

B) POLITICAL ENVIRONMENT

9. The political situation changed after the death of president Tudjman at the end of 1999, the defeat of ruling HDZ in parliamentary election held in January, and presidential elections held in February 2000. These events ended a decade of nationalistically oriented Croatian Democratic Community (HDZ), the party of the late president. "Pro-reform" government headed by the Prime Minister Racan (Social Democratic Party), of 6 opposition, democratically oriented parties won the elections. "A democrat" candidate, Mr. Stjepan Mesic becomes the new elected president. It was assessed that the elections were "peaceful and tidy" and "significant improvement" in meeting the OSCE standards. " The government which came to power following the parliamentary and presidential elections in January and February 2000 inherited an unsatisfactory legacy of discriminatory laws and practices from its predecessor, to the detriment, in particular, of ethnic Serb displaced persons and refugees."¹⁹ General local elections held in May 2000 confirmed parliamentary elections' results and brought certain changes to local political scene. HDZ managed to keep strong power in several counties and municipalities. Parliamentary elections, held on 23 November 2003, opened a way back for the HDZ. On 23 December 2003, Croatian Parliament accepted newly formed Government and appointed Mr. Ivo Sanader, the HDZ president, to be the Prime Minister. Several smaller parties as well as a number of parliamentary representatives of national minorities supported forming of the new

¹⁶ World Press Review, Croatia: New Math (VOL.49.No.8), August 2002, (data from Novi List), www.worldpress.org/Europe/641

¹⁷World Press Review, Croatia: New Math (VOL.49.No.8), 7 June 2002, (data from Novi List), www.worldpress.org/Europe/641

¹⁸ International Criminal Tribunal for Former Yugoslavia, Prosecutor versus Ivan Čermak and Mladen Markač, Case no. IT-03-73-I, www.un.org/icty

¹⁹ International Crisis Group - A Half-Hearted Welcome: Refugee Return to Croatia, Balkans Report N°138, 13 December 2002, executive summary and recommendations

Government. This was necessary since for the election results the new government could not be formed independently because the HDZ had no majority of votes in the parliament.

10. The Government of the Prime Minister Račan initiated and started several programs of political and economic reforms although was, often, criticised by some social subjects for its insufficient decisiveness, courage, genuine will and persistency. Mr. Milorad Pupovac, the president of Serbian National Council and the Croatian Serbian member of the parliament, commented the Prime Minister's policy towards the Serbian community saying: "Račan ran away from the minorities, especially Serbs, but not from their votes. As soon as he got them voting for him they were no longer interesting" and emphasised that the policy towards other minorities was no different from that.²⁰ Co-operation with the International Criminal Tribunal for former Yugoslavia – ICTY, return of refugees, full respect for the rights of national minorities, judiciary reform and establishment of the rule of law and regulating certain open questions with the neighbouring countries were marked as open political issues in times of Račan's but also Sanader's rule. Račan's government, in relation to the elimination of discrimination and return of Serbian refugees, in the opinion of International Crisis Group, used to adopt "half-measures" aiming to calm international community, and to, at the same time, avoid fulfilling undertaken obligations.²¹ Both governments showed their intentions a wishes to join the European Union (if possible, in the next accession circle planed for 2007). They have started/continued with the processes of political and economic reforms and adjustments as well as intensive diplomatic campaigns in that direction, often being pressured by the international community. For this reason, Račan's government submitted answers to the Questionnaire of the European Commission in order to obtain the Opinion on the application of Croatia for a membership of the European Union. The European Union positively answered to the Croatian application on April 20, 2004.²² Based on this Opinion, the Republic of Croatia officially became a candidate for membership of the European Union on June 18, 2004.

11. Certain speculations and scepticism relating to devotion to the HDZ principles of human rights and possible continuation of negative policies in treatment of minorities started vanishing right after parliamentary elections. The Prime Minister Sanader and the Government signed several co-operation agreements with elected members of the parliament belonging to Serbian (representatives of Independent Serbian Democratic Party – SDSS) and Italian national minorities. Representatives of both minorities, for that reason, supported the new government before the Croatian Parliament. All other members of the Parliament representing different national minorities also supported the Government. Ivo Sanader, the HDZ president, during the pre-election campaign, invited refuge Serbs to return to Croatia. The agreement the Government and the SDSS signed included the intention of the Government to solve fundamental issues facing Serbian community in Croatia, such as refugee return, property repossession, implementation of the Constitutional Law on the Rights of National Minorities, development of "special state concern" areas, judiciary reform and co-operation with the neighbouring countries. During New Years holidays, the Prime Minister visited representative of Italian national minority in Istria and participated in the celebration of orthodox Christmas organised by political representatives of the Serbian community in Zagreb. The Prime Minister continues to emphasise how important it is to respect minority rights and establish understanding and trust between persons belonging to different ethnic groups. The OSCE Mission to Croatia also welcomes

²⁰ Identitet, no. 71, February 2004, page 12

²¹ International Crisis Group - A Half-Hearted Welcome: Refugee Return to Croatia, Balkans Report N°138, 13 December 2002, executive summary and recommendations

²² Conclusion "Croatia is a functioning democracy, with stable institutions guaranteeing the rule of law. There are no major problems regarding the respect of fundamental rights. In April 2004, the ICTY Prosecutor stated that Croatia is now co-operating fully with ICTY. Croatia needs to maintain full co-operation and take all necessary steps to ensure that the remaining indictee is located and transferred to ICTY. Croatia needs to make additional efforts in the field of minority rights, refugee returns, judiciary reform, regional co-operation and the fight against corruption. On this basis, the Commission confirms that Croatia meets the political criteria set by the Copenhagen European Council in 1993 and the Stabilisation and Association Process conditionalities established by the Council in 1997." – Data from the Opinion on the application of Croatia for membership of the European Union, April 20, 2004, www.vlada.hr

these efforts.²³ The Prime Minister emphasises that national minorities are the fortune of the Republic of Croatia, not a problem.

12. A great step forward in guarantee and protection of minority rights and efficient implementation of the CoE FCNM in the Republic of Croatia is also adoption and entering into force of new laws (see under paragraph 14), with the emphasis on the Constitutional Law on the Rights of National Minorities. The Law was adopted in December 2002 and was evaluated as a positive and quality document by which the Republic of Croatia fulfilled its obligation undertaken when joined the Council of Europe and ratified the CoE FCNM. Decision of the Government to exclude minority representatives from the Croatian Working Group Drafting the Constitutional Law on the Rights of the National Minorities in Croatia was disappointing but the compromise was found with the assistance and pressures by the international community.²⁴

C) RELEVANT LEGISLATION AND DOCUMENTS

13. "International agreements concluded and ratified in accordance with the Constitution and made public, and which are in force, shall be part of the internal legal order of the Republic of Croatia and shall be above law in terms of legal effects. Their provisions may be changed or repealed only under conditions and in the way specified in them or in accordance with the general rules of the international law." - Article 140 of the Constitution of the Republic of Croatia.

The most important ratified international multilateral agreements are enlisted in the Article 1 of the Constitutional Law on Protection of National Minorities. (See under Item IV.I).For bilateral and regional agreements, see under Item IV.XVI.

14. The most important relevant documents of the national legislation are: the Constitution of the Republic of Croatia, the Constitutional Law on Protection of National Minorities, the Law on Use of the Language and Script of National Minorities in the Republic of Croatia, the Law on Upbringing and Education in the Language and Script of National Minorities, the Law on Amendments to the Law on the Election of Members of the Representative Bodies of Local and Regional Self-Government Units and the Law on the Election of Members of the Parliament.

15. The documents which, among the rest, regulate and guarantee certain minority rights to Croatian Serbs in Eastern Slavonia, in particular, are the Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium – the Erdut Agreement (November 1995) and the Letter of Intent by the Croatian Government to the UN Security Council on completing the peaceful reintegration (January 1997). The Erdut Agreement is a bilateral agreement signed between the Republic of Croatia and the representatives of local Serbs in Eastern Slavonia. The ambassador of the USA Embassy to Croatia, at the time, Mr. Peter W. Galbraith and the UN mediator Mr. Thorvald Stoltenberg witnessed the signing of the Agreement. The Government of Croatia in the Letter of Intent to the UN Security Council (S/1997/27) agreed to ensure the proportional representation of Serbs in municipal life and guaranty all other rights of persons belonging to Serbian minority in Eastern Slavonia (UNTAES). The Erdut Agreement, on the request of the Croatian Government, circulated as the UN General Assembly and Security Council document (S/1995/951). The document has three parts: provisions for the establishment of a Transitional Administration by the UN Security Council to govern the region during the transitional period; provisions for the protection of human and civil rights; and provisions for the monitoring of human rights in the area by the international community after the transition period. Although the Agreement was of a great importance in establishment of permanent peace and re-integration of the region of Eastern Slavonia, Baranja and Western Sirmium into the legal and political system of the Republic of Croatia, the Croatian authorities and public bodies often ignore or manipulate the provisions of the Agreements. This had a negative influence on the full implementation of its provisions and related documents, particularly regarding human rights, property rights, minority return, discrimination against people who lived in the region during the war as well as the position and proportional representation of the local Serb community.

²³ OSCE Mission to Croatia, Background report: The new HDZ-led government pursuing a policy of ethnic reconciliation which will impact on the Mission's work, 20 January 2004

²⁴ European Commission – Stabilisation and Association Report 2003, page10

Individual referring to the implementation of the provisions of the Erdut Agreement in court and administrative procedures was, in most cases ignored with the explanation that the Erdut Agreement is not legally binding. In order to show a positive image, the Croatian Government used to from time to time, accept the provisions of the Agreement as valid (e.g. in the preamble of the Agreement on Stabilisation and Accession signed between the Republic of Croatia and the EU member states). The Government has asserted in its answer to the European Commission questionnaire (at the end of 2003) and elsewhere that the adoption of the Constitutional Law on Protection of National Minorities (CLNM) invalidated the Erdut Agreement. However, the United Nations and the Zagreb-based international community are of the view that, with the exception of the provisions specifically limited to the transitional period, the Agreement and the Letter of Intent continue to be legally binding obligations in force to the present day, even though some provisions thereof have been codified into the CLNM and other domestic law.²⁵

16. As a signatory of the Dayton Peace Accord for Bosnia in 1995, Croatia committed itself to promoting return throughout the region (almost all the relevant international (UNHCR, OSCE²⁶) organisations and NGOs put emphasis on the regional approach in solving refugee problems because in practice "there are clear practical linkages between return to and within different countries in the region".²⁷ According to the number and nature of the problems, the issues refer especially to creation of the preconditions for minority returns to the Republic of Croatia and exercising rights of the persons belonging to national minorities, Serbian minority in particular.

17. In October 2003, the Government adopted the National Programme on Roma. The Government adopted the program considering the specific position of Roma community, long-term living on the margins of the society and need for their comprehensive integration into Croatian society. The Government "believed that Roma could not surmount current difficulties and was decisively trying to change existing situation aiming to establish full exercise of the rights guaranteed by the Constitution and within the legal system of the Republic of Croatia and to eliminate all kinds of discrimination."²⁸

D) RESPECT FOR GENERAL (HUMAN) RIGHTS OF PERSONS BELONGING TO MINORITIES AND THE RULE OF LAW

18. Respect for (human) rights of persons belonging to certain national minorities, especially Serbs and Roma, remains the problematic result of war inheritance and long-term discriminatory policies. Discriminatory legislation were, in most cases, replaced with new legal solutions which, still, in certain areas do not influence the results of discriminatory policies, laws and their implementation and decisions passed in 1990s. Discrimination problems still exist in cases of recognition and exercising of wide spectrum of acquired rights such as status, property, pension, social, labour, tenancy and compensation rights. In most cases, the issues are faced by ethnic Serbs, refugees and displaced persons, who lived in former, so called, "Republic of Serb Krajina" during the war.²⁹ The fact that the judicial and administrative bodies do not recognise the existence of war (Homeland War 1991 – 1995) as legally relevant in exercise and recognition of the acquired rights of the above citizens is one of the main problems causing discriminatory treatment against those people and influencing their remaining in or/and sustainable return to the Republic of Croatia. Following that, the war as a "vis major" did not happen to some citizens (mostly ethnic Serbs) and, therefore, the legislative applied in

²⁵ OSCE Mission to the Republic of Croatia – Status Report no. 13, December 2003, page 10

²⁶ Three OSCE Missions (Croatia, B&H and S&M) adopted the "Common Principles of the Return", which was presented to the OSCE Permanent Council in October 2001

²⁷ International Crisis Group - *A Half-Hearted Welcome: Refugee Return to Croatia*, Balkans Report N°138, 13 December 2002, executive summary and recommendations

²⁸ The Government of the Republic of Croatia – National Roma Strategy, Introduction

²⁹ "There are no major problems over assuring the rule of law and respect for fundamental rights.

However, Croatia needs to take measures to ensure that the rights of minorities, in particular of the Serb minority, are fully respected. Croatia should speed up the implementation of the Constitutional Law on National Minorities and accelerate efforts to facilitate the return of Serb refugees from Serbia and Bosnia and Herzegovina." - Data from the Opinion on the application of Croatia for membership of the European Union, April 20, 2004, www.vlada.hr

certain cases concerning those people were those usually used under normal circumstances (peacetime). Referring to press release of the Human Rights Watch from January 09, 2004, "refugee return and responsibility for war crimes are the key human rights issues establishing Croatian way to Europe".³⁰ Roma in Croatia are the victims of discrimination in exercising wide spectrum of rights such as citizen status rights, housing, health protection, education, employment, access to public services and other. Referring to the reports by European Roma Rights Centre, Roma do not enjoy equal legal protection, they are facing discrimination within the legal system.³¹

19. State authorities in the Republic of Croatia are established on the principle of separation of powers into legislative, executive and judicial authorities (Article 4 of the Constitution of the Republic of Croatia). The Constitution guarantees the right to legal protection but "the courts were exposed to political influences, inefficient bureaucracy, lack of finances and large number of unsolved cases"³² (there were 1.382.867 delayed cases before courts in 2002³³) despite the continuous decrease of the political pressure. A proper functioning of the judiciary and an adequate implementation of the Law continue to be a serious problem whereas delays within certain segments of the judiciary jeopardise the rule of law.³⁴ There have been many complaints against the work of the judiciary related to discrimination; different approach concerning similar cases on the basis of national (ethnic) identity of the clients. The OSCE report on war crimes trials before national courts in 2002 confirms the above stated. It mentions that despite certain success being achieved, "procedural and contextual issues, especially those related to the national background of the defendants as well as the victims, continued to influence the processing of war crimes in Croatia".³⁵ Ombudsman for Human Rights and the Constitutional Court of the Republic of Croatia are the most important institutions for protection of human and minority rights. Governmental Human Rights Office, Office for National Minorities as well as Parliamentary Committee for Human Rights and the Rights of National Minorities are also dealing with the same issues. Since the Republic of Croatia has ratified the European Convention for Protection of Human Rights and Fundamental Freedoms in November 1997, certain individuals who believe that their human rights guaranteed by the Convention are being violated can appeal to the European Court for Human Rights. According to the opinion of the European Commission, many appeals and cases before the European Court for Human Rights indicate (also) procedural problems within Croatian judiciary including the scope of activity of the Constitutional Court as an effective remedy in the fields of human rights and/or real concern with the respect of human rights in particular laws, especially those regulating property rights related to the war period.³⁶ But, the European Court for Human Rights is not an adequate protection in the above cases of violations of acquired rights since, in most cases, the violations of those rights happened before the Convention was ratified (the institute "rationæ temporis"). Insufficient number of judges as well as the fact that some experienced judges, unfit for the regime of president Tudjman for their political affiliation or ethnicity lost jobs and were replaced by politically fit resources of a dubious quality and professionalism, negatively influenced the situation in judiciary.³⁷ For example, a verdict in a war crime case against one person belonging to the Serbian minority passed by the County Court in Gospić in August 2003 which was abolished confirms the above assertion. The verdict explanation says that the defendant was guilty not only of the war crimes committed in 1991-1995 war but also of crimes and genocide that Serbs have been committing over Croats for as long as 500 years, when Serbs, together with Turks (the

³⁰ Human Rights Watch: New government must address refugee return and war crimes, 9 January 2004, www.reliefweb.int

³¹ Written Comments of the European Roma Rights Center Concerning the Republic of Croatia - For Consideration by the United Nations Committee on the Elimination of Racial Discrimination at its 60th Session, March 4-5, 2002, www.errc.org/publications/indices/croatia

³² Country Report on Human Rights Practices -US Bureau of Democracy, Human Rights and Labour, The Report on Human Rights in Croatia in 2003, February 2004 page 1

³³ Ministry of Justice, Administration and local Self-government, Statistical review for 2002, April 2003

³⁴ EC Stabilisation and Association Report 2003

³⁵ OSCE Mission to Croatia, report – War Crimes Trials Before Domestic Courts in 2002, February 2004, page 1

³⁶ Data from the Opinion on the beginning of negotiations with the Republic of Croatia on application of Croatia for membership of the European Union, April 20, 2004, page 27, www.vlada.hr

³⁷ For details see International Helsinki Federation Report on 2002, www.ihf-hr.org/reports

Ottoman Empire) came to Croatia intending to destroy Croats and that "the defendant along with his predecessors set on the Croatian back for the last 80 years".³⁸

20. While the return of displaced Croats (expellees) has almost come to its end, the problem of minority refugees and displaced persons (mostly ethnic Serbs) continues to be the greatest and the most serious human rights violation issue related to the violation of the rights of refugees belonging to minorities and discrimination in the Republic of Croatia. The Resolution of the UN Human Rights Committee adopted in 2001 also recognises the link between minority and refugee problems.³⁹ The total number of the officially registered refugees in Serbia and Montenegro and Bosnia and Herzegovina is about 210.000 persons, which makes almost 1/3 of the whole minority population of the Republic of Croatia. The official number of displaced Serbs is 1.702 persons⁴⁰, but the real number is still under the question mark and presumably several hundreds higher than the official one. For example, Centre for Peace Vukovar, in mid 2003, collected information on about one hundred displaced persons currently living in two small villages near Vukovar who were not registered as displaced persons. (see paragraph 29. Statutory Rights)...

Field Code Changed

21. Representatives of local NGOs from Croatia, Bosnia and Herzegovina and Serbia and Montenegro included into "Regional Legal Assistance Programme" project, who work directly with clients, collect information on human rights violations in the field as well as analyse number and the nature of their cases concluded, among the other things great number of violations of acquired refugee and displaced persons' rights (mostly ethnic Serbs) come under category of human rights violations and discrimination on the basis of their nationality, ethnicity and religion. The Human Rights Watch came to the similar conclusion in the statement they published in September 2003 when promoting the report "Broken Promises: Impediments to Refugee Return to Croatia"⁴¹, establishing that "discrimination on the basis of ethnicity slows refugee return".⁴²

22. The European Commission, in its opinion on the Republic of Croatia, in April 2004, concludes that the Republic of Croatia needs to speed up and improve the implementation of the provisions related to housing for those refugees and displaced persons that decide to return. Croatia needs to make additional efforts to ensure sustainable return, which considers improvement of economic situation and general atmosphere in the areas of return, and to enable comprehensive integration of the Serbian community into Croatian society at all levels.⁴³ In its latest report dated May 14, 2004, the Human Rights Watch stated "The Croatian government has failed to take significant steps to facilitate the return of Serb refugees, despite pledges by the new prime minister and calls by the European Union as part of accession talks". "The Croatian government must take stronger measures to facilitate the return of Serb refugees," said Rachel Denber, acting executive director of Human Rights Watch's Europe and Central Asia Division. "The new government's statements are welcome, but they must be matched by action."⁴⁴

³⁸ Data from Jutarnji List, 26 September 2000, page 7

³⁹ Source: UN Guide for Minorities, Pamphlet No.12. Protection of refugees who belong to minorities: The UN High Commissioner for Refugees, page 2. Resolution relates to persons belonging to ethnic, religious and linguistic minorities; and the Commission, in its preamble, fears for "the growing frequency and severity of disputes and conflicts regarding minorities in many countries and their often tragic consequences, and that persons belonging to minorities are particularly vulnerable to displacement through, inter alia, population transfers, refugee flows and forced relocation..."

⁴⁰ UNHCR Statistical Summary, 31 march 2004

⁴¹ For the report see www.hrw.org This report is a detailed review of problems, examples and recommendations for Croatian Government and the international community aimed to find final solutions for refugee problems. For brief review and additional source of information see: International Crisis Group - A Half-Hearted Welcome: Refugee Return to Croatia, Balkans Report N°138, 13 December 2002

⁴² Human Rights Watch: Croatia Fails Serb Refugees – Ethnic Discrimination Slows Refugee Return, 3 September 2003

⁴³ Data from the Opinion on the beginning of negotiations with the Republic of Croatia on application of Croatia for membership of the European Union, April 20, 2004, page 26 and 29, www.vlada.hr

⁴⁴ Human Rights Watch: Croatia – Progress Needed on Refugee Return, 14 May 2004, www.hrw.org/croatian/docs/...

23. (Sustainable) minority returns and all issues related to that process present very complex matter. There are still a large number of political, legal and economical obstacles. The Government of the Prime Minister Racan had no strength, and, possibly, no will, to constructively approach solving of those problems and to reduce the influence of local extremists and right wing politicians on local levels. Controversial statement by the "reformist" Prime Minister Racan from 2002 was noted. He declared that "mass return of Serbian refugees to Croatia and Bosnian Croats to the Republic of Serbs is unrealistic."⁴⁵ Local NGOs dealing with the return issues and exercise of the refugee rights, on the occasion of the World Refugee Day, on June 20, 2003, concluded that the work of the main national institution dealing with the return, the Office for Displaced Persons and Refugees and its regional offices is the leading impediment to refugee return. They welcomed the invitation by the Prime Minister Racan to exiled Serbs to return but consider it insincere and frivolous considering missing return preconditions.⁴⁶

24. Commenting on the Human Rights Watch report dated May 14, 2004, Mrs. Jadranka Kosor, the vice president of the Government of the Republic of Croatia stated that the Government accomplished a lot in the last five months in relation to the exiled Serbs' return. She also said that a clear political decision was passed. "It is a sincere government's decision and I can assure you that they will seriously work on it" she said to the press. Mrs. Kosor emphasised that, together with the competent ministry, a special commission that works intensively on this issue was established and that it was certain that the results would be seen before the end of the Year.⁴⁷

25. According to the assessment by OSCE from December 2003 "The legislative and administrative framework for return continues to improve, albeit at a moderate pace and without the determined implementing efforts which are required to obtain significant results".⁴⁸ Although it is an internal political document, co-operation agreement signed between the Government and the SDSS representatives significantly contributes to the improvement of the general atmosphere and conditions for the refugees and displaced persons to return. Co-operation between the Government and the representatives of the international community related to the return issues is somehow difficult as the activities of the Working Group on Legislation stopped in January 2003, it being a joint body of the representatives of the Government and the international community.

26. The biggest problems in creation of preconditions for the physical return of refugees and displaced persons lay in a dispute over the repossession of the private property, solving of acquired rights of former tenancy rights holders who use to live in socially-owned apartments and statutory issues while the most significant progress was noticed in deciding on the applications and provision of assistance in the reconstruction of war damaged or destroyed buildings.

27. Private property (houses) repossession continues to be problematic and slow considering the fact that the first deadline for the repossession was the end of 2002 and the second, the end of 2003, both of which were not respected. A number of former refugees who returned to the Republic of Croatia live in misery under terrible living conditions in utterly inadequate dwelling. For already several years, they have been waiting to repossess their houses that are legitimately (in accordance with the Law on Temporary Take Over and Management of Certain Properties from 1995 NN 73/95) or illegally occupied by, in most cases, ethnic Croats exiled from Bosnia and Herzegovina. Although this opposes the Constitution and property related laws, the Government continues to give priority to the temporary users (ethnic Croats from B&H) over the owners (exiled and displaced ethnic Serbs) by preventing evictions of those persons until they are provided with an alternative accommodation

⁴⁵ International Crisis Group - A Half-Hearted Welcome: Refugee Return to Croatia, Balkans Report N°138, 13 December 2002, pages 2 and 3 (Data from Večernji List, 7 December 2002)

⁴⁶ Joint press release by four local NGOs (Center for Peace, Legal Advice and Psychosocial Assistance, Vukovar; Human Rights Committee, Karlovac; HOMO, Pula and Altruist, Split) the organisers of the round table discussion: RETURN OF REFUGEES TO THE REPUBLIC OF CROATIA – PRECONDITION FOR THE MEMBERSHIP OF EUROPEAN UNION, held in Zagreb on April 26, 2003 in the occasion of the World Day of Refugees

⁴⁷ Source HINA, May 14, 2004, www.vlada.hr

⁴⁸ OSCE Status Report no. 13

which is also affected by the slowness in the work of courts, legal bodies, delays and balking of the evictions of temporary users who, in some cases, have, at their disposal, another accommodation or are using several apartments at the same time. The courts in former UNTAES area, in cases in which displaced ethnic Serbs were occupying properties owned by ethnic Croats, were passing decisions on evictions of temporary users regardless of their being provided an alternative accommodation. This example shows that there was an obvious discrimination on the basis of ethnicity. Nevertheless, the progress in repossession of houses in certain parts of Croatia has been noticed and the Government announced that all illegally occupied buildings would be repossessed by the owners by June 1, 2004, while the process of repossession should be completed by the end of 2004.⁴⁹ In accordance to the Law on Temporary Take-over and Management over Certain Properties («NN» 73/95), the Republic of Croatia took over properties belonging to its exiled citizens of Serb ethnicity for temporary use, management and supervision. This law was based on the article 50 of the Constitution of the Republic of Croatia. Pursuant to this article, it is possible to limit or deprive properties and compensate owners with real market value of respective properties if such action would be of interest to the Republic of Croatia. The Constitutional Court of the Republic of Croatia expressed the same view in its decision passed on September 25, 1997, no. U-I948/1997. Nevertheless, the Republic of Croatia paid no compensation, established by article 50 paragraph 1 of the Constitution of the Republic of Croatia, to owners whose properties were given for use to third parties. For the same reason, only few individuals requested their rights before competent courts but have not been provided with the court decisions related to those issues yet.⁵⁰ In some cases, temporary users damaged properties of the Serb owners, which presents an additional problem in the process of repossession. The representative of the ALTRUIST, an organisation from Split, Mr. Vojko Ivica, claims that any devastation was ordered and that non-prevention of devastations was the matter of political will saying: "If the citizens of Serb ethnicity were to do something like that, they would end up in jail!"⁵¹ Associations Civil Rights Project from Sisak and "HOMO" Pula, Korenica Office possess many examples⁵² of property destruction committed by temporary users prior to the repossession of that property by its rightful owner. The owner repossesses completely destroyed and empty house without even a minimal living conditions. The state, in such cases, does not sanction former property user but also provides no material or any other assistance to the owner. The owner has no resources needed to repair the house or to create the minimum of living conditions in such a repossessed house. The Office for Displaced Persons and Refugees (ODPR), in their records on taking over the properties, does not describe the actual conditions of the property that is being repossessed by the owner. The above-mentioned associations registered no examples in which the ODPR filed an action for damages or brought criminal charges against such actions to the competent State Attorney's Office. The same sources speak of examples⁵³ in which, upon handling over of the estates to the owner, Croatian Electric-Power Company cuts the power and water supplies to the owners while temporary users who use to live in same house move to new premises and are being provided with free connection to electricity and water. There are even more drastic examples of temporary users who failed to pay the bills for electricity and water supply. Croatian Electric-Power Company and Communal Company require for those bills to be paid as they hold this to be a precondition for connecting the owners to the power (see under Article 18 paragraph 8 of the Law on Areas of Special State Concern). However, "repossession of other types of property continues to be unsolved. This includes business premises and land as well as some properties taken over from the occupants following other regulations excluding the Law passed in 1995."⁵⁴ The looting of movable property by temporary occupants while leaving houses and apartments by temporary occupants is also a problem. According to the 1995 law,

⁴⁹ "The Government of the Republic of Croatia brought measures to speed up property repossession and established the Committee for the Return of Expellees and Refugees and Property Repossession" – Data from the press release by the Ministry of Sea, Tourism, Traffic and Development in the occasion of the first 100 days of the Ministry, April 2004, www.mmtpr.hr

⁵⁰ Examples provided by associations Civil Rights Project, Sisak and Homo Pula, Korenica Office - K.LJ. Gvozd, D. M. Hrvatska Kostajnica; Association Zvonimir, Knin – case M.C. Knin

⁵¹ Identitet no.72, March 2004, page 41

⁵² Examples: M.M; R.Š; N.P., T.N. – Vojnić, V.D. – Karlovac, D. P. Živaja, G.J.; M.S., S. V. Sunja, G.M. , K.B.Hrvatska Kostajnica, K.S., M.D. Petrinja; S.S. D. Kukuruzari; D.P. Hrvatska Dubica, B. M. Š.M., M. D.. Glina; K. Lj. Gvozd.

⁵³ T.V. –Petrinja, and the area of the city of Hrvatska Kostajnica, B.M., Š.M. Glina

⁵⁴ OSCE Status Report no. 13, page 6

the properties were taken over in order to be protected and preserved. Relevant state bodies did the inventory of movable properties. It is bewildering that, although preserved, the inventory lists of movable properties are unavailable to the owners so that they can not prove the thefts in courts. Although the Government regulated the right to financial compensation for the owners of the houses occupied in accordance with the Law on Temporary Take-over and Management over Certain Properties passed in 1995, very few compensations are being paid (in the end of 2003, the compensations were paid to 450 owners out of 3900 who requested the compensation. Compensation agreements were delivered to more than 1200 addresses so far.).⁵⁵ Several hundreds of cases of owners who refused to sign the compensation agreements because of refusal by the competent ministry to pay back interest, although the ministry is required by law to pay interest, were registered.

28. Tenancy rights come under the category of property right in urban areas of the Republic of Croatia and in the whole of the former SFRY and were considered to be a broad right to use the apartments that were, at that time, socially owned. Largely discriminated, Serbs (dozens of thousands) who left their homes (for fear or pressures during 1991 – 1995 Homeland War) were deprived of their earlier tenancy rights while Croats, with a few exceptions, were enabled in re-exercise of those rights⁵⁶ and all those who did not flee or were not expelled were enabled in buying, e.g. privatise those apartments under special facilities. Tenancy rights terminations, e.g. termination of the right to home in courts were conducted following the pre-war Law on Housing Relations and the Law on Lease of Apartments in Liberated Areas passed in 1995. According to the Law on Housing Relations, non-using of the apartment for 6 months was a reason to terminate the tenancy right. According to the Law on Lease of Apartments in Liberated Areas, the tenancy rights would be terminated in areas controlled by Serb forces until 1995 (former Republic of Serb Krajina) in case the apartment was empty for over 90 days. Strict implementation of the pre-war Law on Housing Relations and ignoring of special war circumstances, fear, violent and illegal evictions and expelling as well as adoption of the Law on Lease of Apartments in Liberated Areas were aimed to directly prevent the return and exercise of the rights for expelled and exiled Serbs. Tenancy rights termination procedures before courts were proceeded *in absentia* with, in some cases, with official appointing of legal representative in order to satisfy the formality and without a real essential significance. The former Deputy Prime Minister, Mrs. Zeljka Antunovic, strongly reacted to the 2001 report by OSCE that pointed out the need to solve the issue of tenancy rights. Assistant Minister for Public Works, Reconstruction and Construction and the Head of the Office for Displaced Persons and Refugees, Mr. Lovre PejkoVIC, said that the OSCE was a "frivolous organisation"⁵⁷. In March 2002, he claimed that the Government was not responsible towards the former tenancy rights holders⁵⁸. "The most significant housing-related human rights concern and obstacle to refugee return continues to be the lack of legal and practical redress available to families who lived in socially owned apartments and whose OTR were terminated... Although the Government continues to avoid a discussion on the underlying legal and human rights aspects of the termination of OTR..."⁵⁹ The Government adopted two programs (2000-2 and 2003) related to housing of former tenancy rights holders who decide to return to and live in the Republic of Croatia. "Acquired" rights of ethnic Serbs coming from the tenancy rights were reduced to a humanitarian problem in this way. But, the programs are still not operable and allow high level of arbitrariness in deciding on the housing. Compared to former tenancy rights holders, who signed contracts on leased or privatised the apartments in the past, and, as such, in some cases even present impediments to return, nowadays housing-applicants are discriminated and their "acquired" rights continue to be denied (for example, if a former tenancy rights holder possesses or, in the meantime, became the owner of a family house or an apartment in the Republic of Croatia or any other former republic of former Yugoslavia and if he or she did not alienate these properties in any way after October 1991). Discrimination can also be noticed in the fact that two separate housing "programs" were adopted, one for so called areas of special state concern (former areas of conflict)⁶⁰, where mostly ethnic Croats exiled from Bosnia and

⁵⁵ OSCE Status Report no. 13, page 5

⁵⁶ International Crisis Group - Balkans Report N°138, 13 December 2002, page 9

⁵⁷ Source: the ICG Report, published in Jutarnji list, November 21, 2001

⁵⁸ Human Rights Watch: Broken Promises – Obstacles to Return of Refugees to the Republic of Croatia, September 2003, page 36 (press release for the Radio Slobodna Europa – Radio Liberty, March 10, 2002)

⁵⁹ OSCE Status Report no. 13 page 6

⁶⁰ Amendments (2000 and 2002) to the Law on the Areas of Special State Concern from 1996

Herzegovina need to be taken care off, and second one related to other parts of the country⁶¹ mostly concerning housing of exiled Serbs. This presents a duality within the legal system of one country. Discrimination and different approach in exercise of rights on the basis of ethnicity is also visible in the fact that the first housing "program" is regulated by the law and the second one only by the Government's Conclusion and through sub-legal acts.

The Government never took into consideration NGO suggestions on possible solutions of former tenancy rights holders. These included the following options: 1.natural restitution where ever possible, 2. allocation of a substitute apartment of building and 3. financial compensation. Some NGOs in the region criticised the Conclusion of the Government of the Republic of Croatia on Housing of Returnees to Croatia – Former Tenancy Rights Holders dated June 12, 2003.⁶²

It is striking that even Mr. Ante Klarić, the Ombudsman of the Republic of Croatia, the institution dealing with human rights protection issues, in his report to the Parliament of the RoC supports the idea to deny the right to any compensation to former tenancy rights holders since they "...left the Republic of Croatia without any valid reason to join to the enemy forces or to avoid to participate in defence of Croatia."⁶³ Such opinion opens space for adopting same criteria and opinions in denying possibility for exercise of other acquired rights such as pension rights, labour rights, social and other rights, which imposes questioning of the institution of Ombudsman as relevant in protection of the mentioned rights pertaining to exiled and displaced Serbs. In March 2002, the Republic of Croatia ratified the Succession Agreement (regulates division of rights, obligations, resources and debts of former Socialist Republic Of Yugoslavia (SFRY) between its successor states (for details see under Item IV.XVI COMMENTS on the implementation of the Article 18 of the FCNM).

29. Statutory rights, in the sense of return and regulation of a wide spectrum of the rights in the Republic of Croatia, such as regulation of the right to Croatian citizenship and permanent address present an additional problem for Serbian refugees who could not prove they were or never were the citizens of the former Socialist Republic of Croatia. The Croatian Law on Citizenship contains discriminatory provisions on acquiring Croatian citizenship. All ethnic Croats, regardless of their permanent address prior to the declaration of independence of Croatia are entitled to Croatian citizenship. However, the procedure for obtaining Croatian citizenship for persons belonging to other ethnic groups who did not have Croatian citizenship in the past is much more complicated than for ethnic Croats, regardless of how many years they legally lived in Croatia. These discriminatory provisions, besides a number of refugees (ethnic Serbs) affected more persons belonging to some other minorities, such as Roma, Bosniaks and Albanians. So, for example, Roma NGOs estimate that about 25% of Roma population in Croatia has no citizenship documents.⁶⁴ The citizenship is one of the most important criteria required for the exercise of a wide spectrum of rights related to social welfare, employment, citizens' rights and many other. The problems of recognition of the right to citizenship for some persons of Serb ethnicity who realised this rights in the past and can prove their citizenship through Croatian citizenship certificates issued during the former Socialist Federal Republic

⁶¹ Conclusion of the Government of the Republic of Croatia on Housing of Returnees to Croatia – Former Tenancy Rights Holders dated June 12, 2003

⁶² On the occasion of the Conclusion of the Government of the RoC on housing of returnees to Croatia – former tenancy rights holders, in his written analyses, Mr. Ratko Bubalo, the president of the Humanitarian Centre for Integration and Tolerance in Novi Sad (S&M) wrote as follows: "Croatian citizens in relation to the same issue (housing) have different legal position based on their ethnicity – one have the right to housing and other were given legally non-binding promise to be humanitarially assisted in housing. The law ensures the right to housing for one group and the sub-legal act declares humanitarian support in housing to others. Is there discrimination within the legal system of the Republic of Croatia on the basis of ethnicity?"

Exercise and protection of human rights of exiled Serbs can not be conditioned, limited on reduced to a humanitarian problem not even by the fact of former or current ownership over a family house or an apartment. Conclusion of the Government of the RoC on housing of returnees to Croatia is a part of special parallel pseudo-legal order in Croatia aimed towards one part of its population – Croatian citizens of Serbian ethnicity. Implementation plan for housing of returnees is a non-legal document that elaborates conditions and procedures of humanitarian aid in housing of returnees by non-legal remedies."

⁶³ Data by Pravi Odgovor no.76, April 27, 2004, page 26

⁶⁴ Country Report on Human Rights Practices -US Bureau of Democracy, Human Rights and Labour, The Report on Human Rights in Croatia in 2003, February 2004

of Yugoslavia were registered in wider Knin area. These persons are advised to start the procedures for establishing the citizenship or for additional registration in the book of citizens of the Republic of Croatia.⁶⁵

Many other exiled persons, "non-citizens", were deprived of their permanent addresses in the Republic of Croatia. Upon pressures by international community, in September 2002, Croatian authorities agreed to recognise refugees / returnees who had permanent addresses in Croatia on October 8, 1991 (the date of termination of relations with the former Yugoslavia) as foreigners with permanent right to reside. A particular problem related to permanent address, which is to be declared when issuing all relevant documents, affected displaced persons of Serbian ethnicity, former tenancy rights holders and members of their families who were already issued Croatian documents (ID cards and passports) during the UNTAES period on the basis of their pre-war permanent addresses. Upon the expiration of the documents issued within the UNTAES period, the above-mentioned persons were unable to get new documents using the old addresses of their pre-war permanent residence although they never cancelled their registrations. They were told that since their tenancy rights were terminated they needed to register on a different permanent addresses (which implies that they needed to either own a house or an apartment or make a lease agreement) in order to be able to get new documents. In accordance to the current Croatian laws, only the person who registered his or her permanent address can cancel it. The question by the citizens on how it was possible that they were able to issue personal documents on their pre-war permanent addresses during the UNTAES mandate (in 1997 and 1998) regardless of the fact that, in most cases, the tenancy rights were terminated in 1995/6, were frequently answered by relevant officers saying that this happened because of the UN presence and mandate.⁶⁶ Certain problems also occurred with the cancellations of the status of displaced persons without any written decisions by the Office for Displaced Persons and Refugees (ODPR) under the pretext that these persons were not found at their registered addresses during the re-registration. It was noticed that some displaced persons lost their status despite the fact that they lived in the addresses at which they were registered. This could have been proven by the police registration records of those people's temporary addresses, however regional ODPR's offices did not take it into their consideration. The loss (Lost) of the status caused unfeasibility to exercise certain rights, such as the right to vote at the elections in places opened for displaced persons and exercise of the right to adequate alternative accommodation if evicted from temporary occupied accommodation and similar.⁶⁷ Problems in exercise of statutory but also property and tenancy rights affected and limited the right to freedom of movement of refugees and displaced persons.

30. Reconstruction of war damaged or destroyed accommodation units – The second half of 2002, unlike the previous period, registered a significant number of decisions on allocation of state assistance to Serb beneficiaries⁶⁸, and the same trend continued in the following period. According to the OSCE data, at the end of 2003, "The Government's efforts to provide reconstruction assistance are bearing positive results."⁶⁹ Decision procedures on reconstruction applications of ethnic Serbs speeded up significantly in 2003. Since the reconstruction of properties owned by ethnic Croats was almost completed, about 75% of reconstruction beneficiaries in 2003 were Serbian returnees. That percentage is expected to reach the amount of about 80% in year 2004. The planned deadline for the completion of the reconstruction of all war damaged accommodation units (houses and apartments) is the end of 2005.⁷⁰ The Government, at the beginning of 2004, decided to extend the deadline for submitting reconstruction applications to September 30, 2004. For all those who did not submit their applications within the earlier deadlines, this extension should enable them to do so within the latest

⁶⁵ Information by Association "Hoću kući (I want to go home)" from Knin and Dalmatian Solidarity Committee Split, Knin Office, Association "Hoću kući" registers about 2.000 of such examples

⁶⁶ Centre for Peace, Legal Advice and Psychosocial Assistance in Vukovar followed some of these cases and informed the OSCE and UNHCR about their findings

⁶⁷ Centre for Peace, Legal Advice and Psychosocial Assistance in Vukovar monitors and reports on these problems, and since 1999, sent several complaints for the lack of transparency and manipulations in re-registration procedures and procedures of cancellation of the status

⁶⁸ OSCE, Status Report no.11, November 2002

⁶⁹ OSCE, Status Report no.13, December 2003, page 2

⁷⁰ The Government of the Republic of Croatia: Report on the Return of Expellees and Refugees Since 2002 to the end of September 2003, www.vlada.hr

one. The Law on Responsibility for the Damage Caused by Terrorist Acts and Public Protests and the Law on the Responsibility of the Republic of Croatia for Damages Caused by the Members of Croatian Military and Police Forces During the Homeland War were adopted in July 2003. In this way, for the first time since 1996, it was possible to get compensation for the damages and to exercise the right to reconstruction of buildings owned by Serbs that were destroyed during the war in and outside (territory controlled by Croatian Government) the conflict areas that were not included into reconstruction related legislation. Croatian Parliament, however, in January 1996, annulled the Article 180 of the Law on Obligations⁷¹ that regulated the responsibility of the state for compensation of the damage caused by terrorist acts. Thousands of owners (mostly ethnic Serbs) whose properties were damaged were deprived of legal means for requesting and exercise the right to compensation for damages. Since the Government, before 2003, showed no interest in regulation of this right, it seemed that adoption of the Law in July 2003 was, firstly, the result of the verdict by the European Court for Human Rights⁷² passed in March 2002. This verdict establishes that by annulling the Article 180 of the Law on Obligations, The Republic of Croatia violated provision of the European Convention for Human Rights Protection on the right to access to court, e.g. the right to fair trial. Adopted laws have retroactive effect and regulate the rights foreseen by the regulation annulled in 1996 in less favourable way. It means that new regulations do not regulate the right to financial compensation but refer to exercise of the right to reconstruction in accordance to the Law on Reconstruction. In reference to this Law, it is necessary to meet special criteria in order to exercise this right. Additionally, it does not allow comprehensive compensation, e.g. reconstruction of the buildings to the condition prior to the damage.

31. Some believe that despite all verbal promises obliging the Croatian investigative and judicial bodies to find and process all war crimes and punish their perpetrators, there is still no genuine political will to do so. Investigations, if they are conducted at all, are dictated by the wish to make an impression to the international public that Croatia is doing at least something. Results clearly show the lack of decisiveness and that it is only an illusion being created on investigation of the war crimes committed by Croats.⁷³ The UN Committee Against Torture, in May 2004, expressed their concern with the failures in implementation of fast, impartial and complete investigations, failures in processing the criminals and provision of fair and adequate compensations to the victims of dual standards in all phases of court procedures against ethnic Serbs.⁷⁴ The Committee was concerned with the reports on intimidation, harassment and threats facing witnesses and victims and lack of adequate protection for those persons by the state.⁷⁵ Ethnic biases, non-transparency and political influence in arrests and war crime trials, negatively affect the process of return of ethnic Serbs who were not suspects or convicted of war crimes and their wish to stay. For more statistical information on these problems, see: OSCE Mission to Croatia –Report on War Crime Trials Before Domestic Courts in 2002, February 2004.

32. Political, administrative and legal problem in exercising acquired and non-realised social and economic rights impede the return of exiled and displaced Serbs and full integration of the whole population from formerly conflict areas under the UN protection and control of local Serb forces into Croatian society. " Serious and permanent obstacles to return and re-integration of ethnic Serb refugees is the fact that the authorities did not recognise or "convalidate" their legal and administrative documents from the 1991 – 1995 conflict period"⁷⁶, despite the fact that Croatia was obliged to respect the Law on Convalidation, which was passed in 1997 as a result of the pressure by

⁷¹ Article 180 paragraph 1 of the Law on Obligations "Social and political community whose bodies were in charge of preventing such damages shall be held responsible for any damage caused by death, physical injury or damage and destruction of the property belonging to a physical person, made in the act of violence or terror and during public protests and events."

⁷² European Court for Human Rights, case Kutić verses Croatia, application no. 48779/99, verdict from March 1, 2002

⁷³ Identitet, no. 72, March 2004, page 11

⁷⁴ See: Conclusions and recommendations of Committee against torture - CAT/C/CR/32/2 , May 12, 2004 (Unedited version), www.ohchr.org/tbr/cro/Croatia

⁷⁵ IBID

⁷⁶ Identitet, no. 72, March 2004, page 11

the international community.⁷⁷ Convalidation of individual legal acts and decisions is of a great importance when regulating the rights to pension, recognition of working experience and certain labour related rights, disability insurance rights and other. The Law on Convalidation specified no final deadline for submitting the application for convalidation but the sub-legal acts limited it to April 10 1999. Exiled ethnic Serbs, since they lived outside the country and had no valid documents at the time could not respect this deadline. In procedures related to the implementation of the Law, many irregularities and obstructions were noticed in the work of administration which set criteria that most of interested persons were unable to meet. A specific issue in submitting the convalidation application was that, as of December 1999, the applicants for convalidation of working experience were obliged to provide the authorities with the statement on their participation or otherwise in paramilitary forces (former army of the "Republic of Serb Krajina"). Sub-legal act⁷⁸ stipulates that the period of professional engagement with the army of former "RSK" shall not be recognised as working experience, therefore, in case the applicants give such a statement they are provided with negative decisions for the whole working period they applied for to be recognised, regardless of how long they were in the army.⁷⁹ The Government is persistent in its denials of the requests for prolonging or abolishing the deadlines for submitting the applications for convalidation although those deadlines, in opinion of some NGOs have no firm legal ground. A specific problem is also the fact that exiled and displaced Serbs were, the same as in tenancy rights cases, excluded from the privatisation process, distribution and buying off shares they were entitled to buy with the discount in the companies they were working with. Matured but unpaid pensions for the period 1991 – 1997 present a problem of pensioners, refugees and displaced persons, who lived outside the area controlled by Croatian authorities during the war. The problem refers to pensioners, Croatian Pension Fund policy-holders, who were not receiving pension instalments since they were forced to leave places of their permanent residence for different reasons, breakdown in communications between the territories controlled by Croatian authorities and those controlled by local Serbian forces where the pensioners lived. Croatian Institute for Pension Insurance refuses to recognise the right to pension instalments for the period of seized payments from 1991 to 1997 explaining that the "para-fund", e.g. pension fund of the Republic of Serb Krajina already paid the pensions to those pensioners. Such opinion is under the question mark for multiple reasons such as the fact that Croatian pension fund, in July 1996, gave initial instructions on payments of matured but unpaid pension instalments to their policy-holders from former RSK area and that there were some cases of payments of unpaid pensions to those pensioners who returned to their pre-war permanent addresses (the areas that were controlled by Croatian forces during the war) right after the conflict finished.⁸⁰ Arguments for the payments of matured but unpaid pensions include: the fact that the RSK pension fund never passed any decision on establishment of pension instalments and the amounts to be paid and that the amounts that were paid to the pensioners were kind of financial assistance or advanced payment (the amounts that were paid were extremely low); even if those payments are to be considered advanced payments, Croatian pension funds still needs to pay the difference between those amounts and regular pensions to its policy-holders; many refugees (who lived outside the RSK territory), for a long time, received no pensions or financial assistance at all based on their pension insurance; etc. In accordance with its Letter of Intent submitted to the UN Security Council on completion of peaceful reintegration of territories under the transitional administration of the UNTAES, the Republic of Croatia took the obligation to recognise full enjoyment of all social and health rights in accordance with the law and other regulations of the

⁷⁷ "In former "Republic of Serb Krajina" that was under the United Nations protection, different judicial and administrative bodies and legal entities with public authorisation were passing different legal acts and decisions. Since this area was outside the legal system of the Republic of Croatia, mentioned legal acts and decisions had no legal validity. For that reason it was necessary to convert those acts and decisions into legally valid so their legal consequences could be recognised. The area of Convalidation includes former "Republic of Serb Krajina" area. Reasons of legal practicality, humanity and protection of fundamental rights of the citizens emphasised on the implementation of the Convalidation" – booklet Convalidation, Centre for Peace, Legal Advice and Psychosocial Assistance Vukovar, 1998, page3

⁷⁸ Instruction by the Ministry of Labour and Social Welfare, June 30, 1998

⁷⁹ Analyses Impacts of the Law on Convalidation on Social Insurance by Milorad Nenadović, Legal Advisor of "Baranja" – Association for Peace and Human Rights, Bilje, April 2003

⁸⁰ Human Rights Watch: Broken Promises – Impediments to Refugee Return to Croatia, September 2003, page 57; Social Security, Social and Health Protection of Refugees and Expellees in the Republic of Croatia "Baranja" – Association for Peace and Human Rights (Bilje), July 2001

Republic of Croatia, excluding the rights stipulated by the Law on Homeland War Defenders, to persons belonging to Serbian and all other minorities in the territory under transitional administration who are the victims of war, disabled persons in particular, widows and orphans.⁸¹ But, in practice, these rights were difficult to exercise because the administration refused to convalidate relevant decisions issued by the RSK bodies during the RSK period; set up of impossible criteria in establishment of facts relevant to exercise of certain rights; and similar administrative and political obstructions.⁸²

E) SECURITY SITUATION / ETHNICALLY MOTIVATED INCIDENTS

33. In its report from December 2003, the OSCE claims that general level of security in Croatia remains satisfying. " There are very few ethnically motivated incidents. Despite that, the persecution of such incidents is rather difficult since there are no adequate regulations to mark such behaviour as a criminal act."⁸³ "Although the security situation improved, it seems that the insecurity perception among potential Serbian returnees still de-stimulates return. Such a perception is increased by appearance of the long list of alleged war criminals of Serbian ethnicity that was published on the Internet by Croatian nationalists."⁸⁴ The OSCE reported on several ethnically related incidents where the perpetrators were charged with misdemeanour offences, such as disturbing public order, rather than criminal offences; in a majority of the cases, police and prosecutors were reluctant to identify the cases as ethnic discrimination.⁸⁵

Incidents against returnees, ethnic Serbs, in most cases happened in the areas of return, Dalmatia for example. Interethnic incidents were also noticed among the students of one secondary school in Vukovar. The report on human rights practices in Croatia for 2003 by the US Bureau of Democracy, Human Rights and Labour mentions that ethnic Serbs in war affected areas were still the subjects to harassments, intimidations and occasional violence on a regular basis. "...In May, an ethnic Serb woman was verbally abused and attacked with a whip by her neighbour in the village of Kljucar in Vojnic municipality. Police took the attacker into custody, and the woman sought medical treatment for head and back injuries. In June, a group of young men smashed the windows of a home owned by a Serbian woman in Daruvar. Police intervened and caught the perpetrators; however, the owner of the home complained that police treated her inappropriately during questioning. In Benkovac, in July, police intervened on behalf of an ethnic Serb returnee whose neighbour has verbally harassed and threatened him since his return in 1999; however, despite the fact of repeated instances of extremely provocative hate speech and an attempt to break into the returnee's home, the police said they would cite the offence only as a public disorder. In August, an ethnic Serb returnee was physically attacked by his neighbour in Pakrac and suffered injuries when he tried to re-connect his house to the local water supply. Although police investigated, the returnee expressed dissatisfaction with the security in the area and stated his intention to leave the country. Also in August, a Bosnian Croat settler who occupies a Serb house in Donji Lapac was alleged to have shouted, abuse and attacked an ethnic Serb youth with an axe. The incident was reported to police, but no criminal charges were filed."⁸⁶ Attacks against Serbian returnees and their properties continued in 2004 in villages Biljani Donji and Zemunik Gornji in the area of Zadar County. The president of Serbian National Council and the member of the Parliament, person belonging to Serbian minority, Mr. Milorad Pupovac, visited Zemunik Gornji after the incident and said: "We know of groups of people that are the source of such criminal acts in Zadar area. We are wondering why the police does not finish its work?"⁸⁷ The European Roma Rights Centre

⁸¹ Letter of Intent by Government of the Republic of Croatia to the UN Security Council on completion of peaceful re-integration of territory under transitional administration, the UNTAES territory, paragraph 11

⁸² For example, civilian war victims who got injured during the conflict in the territory that was not controlled by Croatian forces at the time, were asked to provide injury records issued by "Croatian" regular police and medical documents by doctors of "Croatian" institutions as evidences necessary to exercise this right.

⁸³ OSCE, Status report no.13, December 2003 page 16

⁸⁴ International Crisis Group - A Half-Hearted Welcome: Refugee Return to Croatia, Balkans Report N°138, 13 December 2002, page 11, data by Institute for War and Peace Reporting, March 13, 2002

⁸⁵ Country Report on Human Rights Practices -US Bureau of Democracy, Human Rights and Labour, The Report on Human Rights in Croatia in 2003, February

⁸⁶ Country Report on Human Rights Practices -US Bureau of Democracy, Human Rights and Labour, The Report on Human Rights in Croatia in 2003, February 2004

⁸⁷ Identitet, broj 72., mart 2004., str.4

mentions the incidents against Roma and their properties in Zagreb at the beginning of 2003. – Two masked attackers broke into one house near Zagreb and beat up the whole Roma family, including a nine-year old girl and her disabled father. In the same month, a group of youngsters physically attacked one Roma person and burned his car. In February in Trokut settlement in Zagreb, after frequent threats a house owned by a Roma was burned to the ground by the neighbours. Roma associations accused the skinheads and similar groups for most of the attacks and complained against insufficient engagement of the police. Večernji List quoted Mr Kasum Cana, president of the Roma Culture Centre, stating that, in Zagreb in average, two Roma per week are violently attacked.⁸⁸ European Roma Rights Centre considers the protection against discrimination and racially motivated violence inadequate, while penal, civil and administrative punishments related to combat against racism and discrimination weak and exacerbated by failures in the effective implementation.⁸⁹ Several cases of violence against foreigners were registered in 2003 – “Zagreb police pressed charges against seven minors and one adult suspected of involvement in three separate attacks in July and August against foreigners. The incidents involved an attack on an Egyptian student, an 11-year-old Egyptian boy, and an Austrian family of Pakistani origin. Government officials publicly condemned the allegedly racially motivated incidents.”⁹⁰

For details on incidents aimed against religious buildings and cemeteries and cultural institutions, see under Item IV.IV. Incidents aimed towards Ethnic Croats, e.g. official state signs of the Republic of Croatia, were also registered, such as drawing of Serb nationalistic graphite in Baranja and Karlovac areas, damage to the monuments devoted to Croatian war victims in Vukovar, removing the Croatian flag in village of Turanj, etc. Croatian nationalistic graphite regularly appear in almost all former areas of conflict but elsewhere too. NGOs and individuals occasionally reported on the police harassment and discriminatory treatment of minorities in Danube region (former UNTAES) and outside that region.⁹¹

IV Implementation of the articles of the Convention

IV.I

Article 1

The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation.

Article 2

The provisions of this framework Convention shall be applied in good faith, in a spirit of understanding and tolerance and in conformity with the principles of good neighbourliness, friendly relations and co-operation between States.

National legislation (pursuant to the articles 1 & 2 of the FCNM):

The Constitution of the Republic of Croatia

Article 140

⁸⁸ European Roma Rights Centre, Snapshots from around the Europe: Fatal Shooting and Skinhead Attack against Roma in Croatia, No.3, 2003, www.errc.org/publications/indices/croatia

⁸⁹ Written Comments of the European Roma Rights Centre Concerning the Republic of Croatia - For Consideration by the United Nations Committee on the Elimination of Racial Discrimination at its 60th Session, March 4-5, 2002, www.errc.org/publications/indices/croatia

⁹⁰ Country Report on Human Rights Practices -US Bureau of Democracy, Human Rights and Labour, The Report on Human Rights in Croatia in 2003, February 2004

⁹¹ Country Report on Human Rights Practices -US Bureau of Democracy, Human Rights and Labour, The Report on Human Rights in Croatia in 2003, February 2004

International agreements concluded and ratified in accordance with the Constitution and made public, and which are in force, shall be part of the internal legal order of the Republic of Croatia and shall be above law in terms of legal effects. Their provisions may be changed or repealed only under conditions and in the way specified in them or in accordance with the general rules of international law.

Constitutional Law on the Rights of National Minorities

Article 1.

The Republic of Croatia, in accordance with:

- the Constitution of the Republic of Croatia,*
- the principles of the Charter of the United Nations,*
- the General Declaration on the Rights of a Man, International Pact on Civil and Political Rights, International Pact on Economic, Social and Cultural Rights,*
- the Final Act of the Organisation for Security and Co-operation in Europe, the Paris Charter for New Europe and other OSCE documents related to the rights of a man, especially the Document of the OSCE Copenhagen Meeting on Human Dimension and the Document of the OSCE Moscow Meeting on Human Dimension,*
- the Convention of the Council of Europe for Protection of the Rights of a Man and Fundamental Freedoms, as well as the Protocols with this Convention,*
- the International Convention on the Repeal of all Forms of Racial Discrimination, the Convention on the Prevention and Penalising of the Crime of Genocide, the Convention on the Rights of a Child,*
- the Declaration on the Repeal of all Forms of Intolerance and Discrimination on the Grounds of Religion and Conviction,*
- the Convention on Fighting against Discrimination in the Area of Education,*
- the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities,*
- the Framework Convention of the Council of Europe for the Protection of National Minorities,*
- the European Charter on Regional and Minority Languages,*
- the European Charter on Local /Settlement/ Self-government,*
- the SEI instruments for the protection of minority rights,*
- the Lund Recommendation on the Efficient Participation of National Minorities in Public Life shall take an obligation to respect and protect the rights of national minorities and other fundamental rights and freedoms of a man and citizen, the rule of law and all other highest values of its constitutional and international legal system, with respect to all its citizens.*

Article 2.

Apart from human rights and freedoms which are recognised by constitutional provisions, the Republic of Croatia also recognises and protects all other rights foreseen in the international documents as per Article 1 of this Constitutional Law, depending on the exceptions and limitations foreseen in these documents, without discrimination on the basis of sex, race, the colour of skin, language, professing of religion, political and other conviction, national and social origin, connection with a national minority, ownership, the status inherited by birth or pursuant to some other basis, in compliance with Articles 14 and 17, Paragraph 3 of the Constitution of the Republic of Croatia.

Article 40.

Nothing contained in this Constitutional Law shall be interpreted as if it includes any right to perform any kind of activity or conduct acts contrary to the fundamental principles of the international law, and in particular the sovereignty, unity, territorial integrity and independence of the Republic of Croatia.

Article 41

This Constitutional Law shall neither change nor abolish the rights of national minorities acquired on the basis of international agreements which are, pursuant to the Constitution of the Republic of Croatia, a part of the internal legal system of the Republic of Croatia.

Comments referring to the implementation of the Articles 1 and 2 of the FCNM:

- The Republic of Croatia set both formal and legal frames within its national legislation for the adequate implementation of the Articles 1 and 2 of the FCNM. Nevertheless, considering the problems in implementation of the provisions of the Convention presented in this report and a great engagement and influence of the international community in so far positive examples in areas of protection of human and minority rights in the Republic of Croatia, it yet remains to be seen up to what level the provisions of the Convention are being implemented in a "good faith".

IV.II

Article 3

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

2. Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.

Article 4

1. 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.

2. 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.

3. The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.

National legislation (pursuant to the articles 3 & 4 of the FCNM):

The Constitution of the Republic of Croatia

I Historical foundations

...the Republic of Croatia is established as the national state of the Croatian nation and the state of the members of autochthonous national minorities: Serbs, Czechs, Slovaks, Italians, Hungarians, Jews, Germans, Austrians, Ukrainians and Ruthenians and the others who are citizens, and who are guaranteed equality with citizens of Croatian nationality and the realisation of national rights in accordance with the democratic norms of the United Nations Organisation and the countries of the free world.

Article 3

Freedom, equal rights, national equality and equality of genders, love of peace, social justice, respect for human rights, inviolability of ownership, conservation of nature and the environment, the rule of law, and a democratic multiparty system are the highest values of the constitutional order of the Republic of Croatia and the ground for interpretation of the Constitution.

Article 14

(1) Everyone in the Republic of Croatia shall enjoy rights and freedoms, regardless of race, colour, gender, language, religion, political or other belief, national or social origin, property, birth, education, social status or other characteristics.

(2) All shall be equal before the law.

Article 15

(1) Members of all national minorities shall have equal rights in the Republic of Croatia.

(2) Equality and protection of the rights of national minorities shall be regulated by the Constitutional Act which shall be adopted in the procedure provided for the organic law.

(3) Besides the general electoral right, the special right of the members of national minorities to elect their representatives into the Croatian Parliament may be provided by law.

(4) Members of all national minorities shall be guaranteed freedom to express their nationality, freedom to use their language and script, and cultural autonomy.

Article 26

All citizens of the Republic of Croatia and aliens shall be equal before the courts, government bodies and other bodies vested with public authority.

Article 39

Any call for or incitement to war, or resort to violence, national, racial or religious hatred, or any form of intolerance shall be prohibited and punishable by law.

Article 44

Every citizen of the Republic of Croatia shall have the right, under equal conditions, to take part in the conduct of public affairs, and to have access to public services.

Constitutional Law on the Rights of National Minorities

Article 4 paragraph 1, 2, & 4

(1) Every citizen [drzavljanin] 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.

(2) Members of national minorities shall exercise the rights and freedoms stipulated by the Constitution of the Republic of Croatia, as well as the rights and freedoms stipulated by this Constitutional Law and special laws, in the equal manner as other citizens [gradjani] of the Republic of Croatia.

(4) Any discrimination based on affiliation to a national minority shall be forbidden. Members of national minorities shall be guaranteed equality before the law and equal legal protection.

Article 5

A national minority in the sense of this Constitutional Law shall be a group of Croatian citizens [drzavljanji], whose members have been traditionally settled in the territory of the Republic of Croatia, and who have ethnic, linguistic, cultural and/or religious characteristics which are different than those of other citizens [gradjani], and who are guided by the wish for the preservation of those characteristics.

Article 7

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:

- 1. the use of their language and script, privately and in public use and in official use;*
- 2. education in the language and script which they use;*
- 3. the use of their signs and symbols;*
- 4. cultural autonomy by way of preservation, development and expression of one's own culture and the preservation and protection of one's cultural assets and tradition;*
- 5. the right to profess one's religion and to establish religious communities together with other members of that religion;*
- 6. access to the media and the performance of activities of public information (receiving and forwarding information) in the language and script which they use;*
- 7. self-organising and association for the purpose of exercising mutual interests;*
- 8. representation in the representative bodies at the state and local level and in administrative and judicial bodies;*

9. participation of members of national minorities in the public life and in management of local affairs through the councils and through representatives of national minorities;
10. protection from any activity which endangers or may endanger their existence, the exercise of rights and freedoms.

Article 9

(1) 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.

(2) Members of national minorities shall have the right to have the form for the personal identification card printed and filled out also in the language and script which they use.

The Law on Protection of Personal Data

Article 1.

(1) Protection of personal data and supervision over collection, processing and use of any personal data in the Republic of Croatia shall be regulated by this Law.

(2) Protection of personal data is intended to protect privacy and other human rights and fundamental freedoms while collecting, processing or using any personal data

(3) Any person regardless of his or her citizenship and permanent residence, race, colour, sex, language, religion, political or any other belief, ethnic or social background, property, birth, education, social status or any other characteristic shall be provided with protection of personal data in the Republic of Croatia.

Article 8 paragraph 1

Collecting or further processing of any personal data relating to racial or ethnic background, political view, religious or any other belief, union membership, health and sexual orientation as well as any data relating to criminal or petty offence proceedings shall be prohibited.

Law on Amendments to the Labour Act (NN. 114/03)

Article 1.

The subtitle above the article 2 of the Labour Act (the Official Gazette, "Narodne novine", no. 38/95, 54/95, 65/95, 17/01 and 82/01) shall be changed to:

"PROHIBITION OF DISCRIMINATION"

Article 2.

(1) Direct and indirect discrimination of the job seeker as well as employee on the basis of race, colour of skin, sex, marital status, family obligations, age, language, religion, political or other affiliation, national or social background, financial status, birth, social status, membership or non-membership in a political party or trade union, and physical or psychological difficulties shall be prohibited.

(2) Direct discrimination, according to this Law, concerns all action relating to any ground described in paragraph 1 of this Law by which the person mentioned in paragraph 1 of this article is, was or could have been placed in a less favourable position compared to other persons in a comparable situation.

(3) Indirect discrimination against the person mentioned in paragraph 1 of this article, according to this Law, exists in cases of neutral provision, criteria or practice that does or could place the person in less favourable position compared to other persons for his or her characteristics, status, commitments, beliefs, or the system of values that are the base for the prohibition of discrimination mentioned in the paragraph 1 of this article.

(4) Discrimination relating to paragraph 1 of this article shall be prohibited in reference to:

1. employment criteria, including selection criteria for the candidates selected for certain jobs, in any field of work and at all professional hierarchy levels,
2. promotion at work,
3. approach to all kinds and levels of professional training, additional training and retraining,
4. employment and working conditions and all labour rights relating to employment, including equality of salaries,
5. termination of the employment contract,

6. rights of the members and membership within employee or employer associations or any other professional organisation, including benefits of that same membership.

(5) Provisions of the collective contract, company labour by-laws and employment contracts discriminating on any basis described in paragraph 1 of this article shall be annulled.

(6) Pursuant to the Article 187.a of this Law, regulation of employee obligations to pay solidarity contributions shall not be considered discrimination on the basis of non-membership in the Union from paragraph 1 of this Article «.

COMMENTS on the implementation of the Article 3 of the FCNM:

- The Constitution of the Republic of Croatia, in its Historical Foundations continues to list ten "native minorities" while other minorities come under "other". Constitutional Law on the Rights of National Minorities widely defines the concept of national minority in the Article 5. This article does not specify on any particular minority and makes no difference among them. The definition of national minority includes only persons belonging to minority communities that are, at the same time, the citizens of the Republic of Croatia. The census data related to the ethnicity includes the results for 22 national minorities and additional categories, "others" for those who did not specify on their ethnicity and "regional affiliation". The census results also show that 19.677 persons declared themselves as Muslims.

- Current legislation of the Republic of Croatia guarantees the right to declare the ethnicity to all its citizens and regulates that right as a strictly personal right. The Law on Protection of Personal Data introduces personal data protection and supervision on collecting, dealing with and use of personal data in the Republic of Croatia.

- The 2001 census results showed the structure of the population related to the ethnicity but also caused reactions of the representatives of certain national minorities (see under III.a NATIONAL/ETHNIC STRUCTURE OF THE POPULATION). Besides complaints and requests for revision of the census for its failure to register about 130.000 exiled Serbs who are currently living in Serbia and Montenegro and Bosnia and Herzegovina for whom the Law on Census, Registration of Households and Apartments passed in 2000⁹² provides the exercise of this right, Milorad Pupovac, the president of Serbian National Council believed that many Serbs failed to declare themselves as such for the fear and existing animosities.⁹³ The Joint Council of Municipalities from Vukovar, emphasise that the Serbian community continues to suspect the accuracy of the 2001 census results, published in 2002 deeming them a part of the political games of the ruling structures.⁹⁴ The estimated number of Roma in the Republic of Croatia is 30.000 – 40.000⁹⁵ but the Alliance of the Roma Associations in Croatia estimates that the number of persons belonging to Roma minority is about 30.000 – 50.000⁹⁶, which is many more comparing 9.463 persons registered by the official census. While interpreting the census results, the authorities failed to consider that some persons belonging to minorities did not declare their ethnicity for the fear of discrimination. "This is particularly true for the Roma but in conflict areas people who may have a choice of identity (e.g. due to intermarriage) will often opt to be classified as a member of majority community, of some regional or "less problematic" identity".⁹⁷ The intention to respect the individual identity choice was not fully respected since 19.677 persons who declared themselves as Muslims were not included into the official statistical data but were explained under the remarks section. This situation can, partially, be explained by the fact that Bosniaks, as an ethnic category, were given possibility to declare themselves as such after the international

⁹² The Official Gazette "Narodne Novine" No. 64/2000, Law on Census, Registration of Households and Apartments, Article 2 paragraph 1 says that "persons, citizens of the Republic of Croatia, foreigners and persons of no citizenship who have permanent address in the Republic of Croatia, regardless if they were in the Republic of Croatia or abroad at the time of the census as well as the persons who temporarily resided in Croatia at that time" shall be registered by the census.

⁹³ Data by the War and Peace Reporting, June 14, 2002

⁹⁴ The Report of the Republic of Croatia on the Implementation of the Framework Convention on Protection of National Minorities, March 2004, page 57

⁹⁵ National Program for Roma

⁹⁶ The Report of the Republic of Croatia on the Implementation of the Framework Convention on Protection of National Minorities, March 2004, page 57

⁹⁷ Minority Rights Group International: Minorities in Croatia, September 2003, page 15

recognition of Bosnia and Herzegovina and that they were registered as ethnic Muslims by earlier censuses. Therefore, some people who used to declare themselves as Muslims were registered as Bosniaks by the 2001 census while some continued to declare themselves as they used to do before, as Muslims. According to Šemso Tankovic, the member of the parliament representing Bosniak national minority together with Albanian, Slovenian, Macedonian, and Montenegrin minorities, the priority of the Bosniak national minority, at this particular moment is to confirm and firm their national identity at all levels from the constitutional to the administrative one.⁹⁸

COMMENTS on the implementation of the Article 4 of the FCNM:

- The Constitution of the Republic of Croatia and the Constitutional Law on the Rights of National Minorities guarantee equality before the law and equal legal protection to all citizens belonging to national minorities and prohibit any discrimination on the basis of the ethnicity. The Government of the Republic of Croatia endeavoured to change certain discriminatory provisions within its current legislation and, in 2003, adopted new Law on Amendments to the Labour Act. Pursuant to this Law, any discrimination in employment and in exercise of the labour rights shall be prohibited. More significant steps forward were made in relation to the elimination of discrimination, in, for example, exercising the right to reconstruction, but in practice, discrimination in exercising a wide spectrum of the rights (see under Item III.d.) continued. All that was done so far in real elimination of past discriminatory practices (1991 – 1995 war and the period that followed) was insufficient and certain laws and sub-legal acts, such as implementation regulations, continue to include discriminatory regulations such as , for example, the Book of Rules on the Housing Priorities in the Areas of Special State Concern (see under Item IV.XIV). The Government of the Republic of Croatia adopted National Program on Roma in October 2003 aiming to eliminate discrimination of that minority and to fully integrate the Roma into Croatian society. The implementation of the program and the results remain to be seen. Research by Minority Rights Group International, conducted in March 2004 shows that Roma associations have different views related to the implementation of the provisions of National Program for Roma. Associations which were involved in development of the National Program are, in most cases, satisfied with the progress vis-à-vis its implementation while others share no such opinion and indeed, show certain pessimism. Some associations emphasise on the existence of the racism speech and assimilation in articles 8 and 9, related to the upbringing and education, and health protection, of the National Program.⁹⁹ On the discrimination of Roma children in schools and segregation issues see Item IV.X.

- Discrimination in employment of minorities, Serbs and Roma in particular, continues to be a serious problem. Because of extremely difficult situation in the economy of the country and relatively high unemployment rate, especially in former conflict areas, it is, sometimes, hard to prove discrimination. All the more so considering also the high unemployment rate among the majority, ethnic Croat population. In some opinions, the high unemployment rate in former conflict areas, for example in the wider Vukovar area (50-80%), significantly contributed to interethnic tensions.¹⁰⁰ According to the report by Human Rights Watch, a number of returnees told, however, that they were explicitly told that they could not get a job because of their ethnicity.¹⁰¹ The same report mentions individual examples of discrimination in employment against Serb returnees. The report also says that in most of return areas, in practice, ethnic Serbs were not employed within the health centres, schools, kindergartens, postal offices, courts, power-supply companies, custom services or the local administration.¹⁰² Around 2.000 ethnic Serbs returned to wider Korenica and Plitvice areas and only a

⁹⁸ Data by STINA News Agency, Educational and Informative Service for the Rights of Minorities and Interethnic Tolerance no. 2, May 17, 2004, www.stina.hr

⁹⁹ Progress on the National Program for the Roma in Croatia, Minority Rights Group International, March 2004

¹⁰⁰ Country Report on Human Rights Practices -US Bureau of Democracy, Human Rights and Labour, Report on Human Rights in Croatia in 2003, February 2004

¹⁰¹ Human Rights Watch: Broken Promises – Impediments to Refugee Return to the Republic of Croatia, September 2003, page 53

¹⁰² Human Rights Watch: Broken Promises – Impediments to Refugee Return to the Republic of Croatia, September 2003, page 55

few of them manage to get jobs there.¹⁰³ There are no Serbs employed in the police and the court in Vojnic, although Serb returnees outnumbered local Croats and Croat settlers by 3,500 to 2,500.¹⁰⁴ "Judicial vacancies have remained unfilled in some instances in which Serbs were the only candidates considered by the State Judicial Council (for example in Dvor, Gvozd, Vojnic and Hrvatska Kostajnica)"¹⁰⁵, and in similar cases (where the only candidates for the jobs were ethnic Serbs), the employers decided to annul the announcements rather than hire the competent Serb applicants. Several cases registered that the priority in employment was given to ethnic Croats over Serbs even in case Croat candidates failed to meet certain criteria specified by the job announcement or were less qualified than the Serb candidates.¹⁰⁶ Governmental statistics show that in 2003, one year upon the adoption of the Constitutional Law on the Rights of National Minorities which guarantees proportional minority representation in state administration and judiciary (for details on proportional representation of ethnic minorities see under IV.XII.), 66 judges were hired, 65 of them were ethnic Croats (there were no ethnic Serbs among them), and 23 State Attorneys, all ethnic Croats.¹⁰⁷

- Proportional representation of Serbs, including the representation in high positions in local health services, police and judiciary in Eastern Slavonia area (former UNTAES area) is guaranteed by the Letter of Intent of Croatian Government to the UN Security Council on completing the peaceful integration from 1997, regardless of possible future administrative regulations.¹⁰⁸ It is clear that the Letter of Intent guarantees wider spectrum of rights than the Constitutional Law on the Protection of the Rights of National Minorities since the Law does not guarantee the proportional representation in public institutions such as the hospitals, schools, police, etc. In our opinion, this is one of the main weaknesses of the Constitutional Law. The Ministry of Interior has fulfilled its obligation from the Letter of Intent on proportional representation of Serbs in the police.¹⁰⁹ However, certain local non-governmental organisations emphasised discrimination against persons belonging to minorities in employment but also in holding their current positions on the basis of the taking-over agreement¹¹⁰ in the sense of proportional representation. Since the fact of war is not recognised as legally relevant for reintegrated persons, many of former employees from the reintegrated area, compared to returnee population (mostly ethnic Croats), are facing discrimination in the exercise of the acquired rights.¹¹¹ In his letter to the Prime Minister, Mr. Ivo Sanader and the president of Croatian Parliament, Mr. Vladimir Seks, the Association of Borovo Workers who remained in former UNTAES area at the time of the conflict, mostly ethnic Serbs, say that "these workers were discriminated in exercise of their rights to work and employment, wages and in exercising the right to the shares within the privatisation process". Workers of several other, once public-owned, companies face similar problems and number of court procedures on realising the exercise of different rights are in process.

¹⁰³ Human Rights Watch: Broken Promises – Impediments to Refugee Return to the Republic of Croatia, September 2003, page 55, data by Serbian Democratic Forum Field Office in Korenica

¹⁰⁴ Human Rights Watch: Broken Promises – Impediments to Refugee Return to the Republic of Croatia, September 2003, page 55, data by Serbian Democratic Forum Field Office in Gracac

¹⁰⁵ OSCE, Status Report 12, July 2003, page 13

¹⁰⁶ Human Rights Watch: Broken Promises – Impediments to Refugee Return to the Republic of Croatia, September 2003, page 54

¹⁰⁷ Country Report on Human Rights Practices -US Bureau of Democracy, Human Rights and Labour, Report on Human Rights in Croatia in 2003, February 2004

¹⁰⁸ Letter of Intent by the Government of the Republic of Croatia, paragraph 4, www.hrt.hr/arhiv/dokumenti/dok/pismo

¹⁰⁹ OSCE, Status Report no. 11, November 2003, page 18

¹¹⁰ Written statement by Mr. Ivica Vrkić, the Head of the Governmental Office for the Transitional Administration of the Republic of Croatia, dated December 16, 1996 given in presence of the public attorney for human rights of the Republic of Croatia, Mr. Ante Klaric and the UNTAES head transitional administrator, Mr. Jacques Paul Klein, paragraph 1: "Governmental Office for the Transitional Administration, on behalf of the Republic of Croatia claims that the rights of public enterprises and institutions employees in the Eastern Slavonia, Baranja and Western Sirmium for whom the UNTAES confirms that were employed on September 30, 1996, will be protected in accordance with the legislation of the Republic of Croatia and other relevant international standards, including International Labour Union". The details on the rights of employees of the public enterprises and institutions in the UNTAES area guaranteed by the Republic of Croatia are specified in the Annex to the statement dated February 14, 1997

¹¹¹ Center for Peace, Legal Advice and Psychosocial Assistance – Vukovar, The Report on Informal Discussion on the Implementation of the Erdut Agreement held on November 13, 2002

- For the right of national minorities to representation within representative bodies on national and local levels and in administrative and judicial bodies, as well as the participation of persons belonging to minorities in public life and management of local affairs via councils and representatives of National minorities, see under Item IV.XIII.

IV.III

Article 5

1. The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.

2. Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.

National legislation (pursuant to the article 5 of the FCNM):

The Constitution of the Republic of Croatia

Article 12

(1) The Croatian language and the Latin script shall be in official use in the Republic of Croatia.

(2) 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.

Article 15 paragraph 3 (see under Item IV.II National legislation)

Article 40

Freedom of conscience and religion and freedom to manifest religion and other convictions shall be guaranteed.

Article 41

(1) All religious communities shall be equal before the law and shall be separated from the State.

(2) Religious communities shall be free, in conformity with law, publicly to perform religious services, to open schools, educational and other institutions, social and charitable institutions and to manage them, and shall them, and shall in their activity enjoy the protection and assistance of the State.

Constitutional Law on the Rights of National Minorities

Article 3 paragraph 1

(1) 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 the democratic system of the Republic of Croatia and shall enjoy necessary support and protection, including positive measures to the benefit of national minorities.

Article 7 & 9 (see under Item IV.II National legislation)

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 11.

(1) Members of national minorities shall have the right to education in the language and script which they use.

- (2) The education of members of a national minority shall be performed in pre-school institutions, primary and secondary schools and other school institutions (hereinafter: school institution), with the education in the language and script which they use, under the conditions and in the manner stipulated by a special law on the education in the language and script of national minorities.
- (3) School institutions with the education in the language and script of a national minority may be established and education may be conducted for a smaller number of pupils than the number which is stipulated for school institutions with education in the Croatian language and script.
- (4) The curriculum in the language and script of a national minority shall, except for the general part, obligatorily contain a part, the content of which is related to a specific quality of a national minority (mother tongue, literature, history, geography and cultural opus of a national minority).
- (5) The right and obligation of pupils educated in the language and script of national minorities shall be to learn the Croatian language and Latin script according to the determined curriculum, apart from their own language and script.
- (6) Educational work in a school institution with the education in the language and script of a national minority shall be conducted by teachers from among the ranks of a national minority who have excellent command of the language and script of the national minority, or by teachers who are not from among the ranks of the national minority, but who have excellent command of the language and script of the national minority.
- (7) The institutions of higher education shall organise the conduct of the programme of education of school counsellors and teachers for the performance of tasks of education in the language and script used by national minorities in a part containing specific qualities of a national minority (mother tongue, literature, history, geography and cultural creativity of a national minority).
- (8) Members of national minorities may establish pre-school institutions, primary and secondary schools and institutions of higher education for the purpose of conducting the education of members of national minorities in the manner and under the conditions stipulated by laws.
- (9) Pupils attending schools in the Croatian language and script shall be enabled to learn the language and script of a national minority in the manner stipulated by a special law, according to the curriculum determined by the competent central state administration body, along with providing financial means in the state budget and in the budgets of local self-government units.

Article 12

- (1) The equal official use of the language and script used by members of a national minority shall be exercised in the area of a local self-government unit, when members of a particular national minority comprise at least one third of the population of such a unit.
- (2) The equal official use of the language and script used by members of a national minority shall also be exercised when it is anticipated in the international agreements which, in compliance with the Constitution of the Republic of Croatia, form a part of the internal legal system of the Republic of Croatia and when it is stipulated by the statute of a local self-government unit or by the statute of a regional self-government unit in compliance with the provisions of a special law on the use of the language and script of national minorities in the Republic of Croatia.
- (3) Other conditions and manner of the official use of the language and script used by members of a national minority in the representative and executive bodies and in the procedure before administrative bodies of local self-government units and regional self-government units; in the procedure before the state administration bodies of first instance, in the procedure before judicial bodies of first instance; in the procedures conducted by the State Prosecutor's Office and notaries public, and by legal persons with public powers, shall be regulated by a special law on the use of language and script of national minorities.

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.

Article 14

- (1) The use of signs and symbols of national minorities and the celebration of national minorities' holidays shall be free.

(2) National minorities may display appropriate signs and symbols of national minorities along with the official use of signs and symbols of the Republic of Croatia. When the national anthem and/or a solemn song of a national minority is being performed, the national anthem of the Republic of Croatia shall be obligatorily performed beforehand.

(3) Local self-government units and regional self-government units shall be obliged to stipulate by the statute the official use and the manner of use of the flag and symbols of national minorities.

Article 15

(1) For the purpose of preservation, development, promotion and expression of their own national and cultural identity, members of national minorities may establish associations, endowments and foundations, as well as institutions for the performance of public information activities, cultural, publishing, museum, archival, library and scientific activities.

(2) The Republic of Croatia, local self-government units and regional self-government units, shall finance the activity of institutions as per Paragraph 1 of this Article, according to their possibilities.

(3) Associations, endowments, foundations and institutions as per Paragraph 1 of this Article may state in their title that national minorities are their founders.

Article 16

(1) Members of national minorities, their associations and councils of national minorities or representatives of national minorities shall freely maintain contacts with a nation with which they share the same ethnic, linguistic, cultural and/or religious characteristics and with legal persons with the seat in the area of the state of that nation which perform the tasks of education, science, culture, publishing and humanitarian activities.

(2) The associations of members of national minorities and councils of national minorities or representatives of national minorities may receive from the state bodies of the nation with which they share the characteristics as per Paragraph 1 of this Article and from legal persons of that state, without paying the custom duties, newspapers, magazines, books, movies, videotapes, recordings, in a limited number of copies, which they use for their needs and which they can distribute to members of a national minority without paying a compensation.

(3) The associations of members of national minorities may organise guest performances by professional and amateur cultural and art groups for the members of national minorities and organise other cultural and art performances and exhibitions which contribute to the enrichment of the culture and identity of a national minority. In such cases, foreign persons participating in the conduct of performances and exhibitions shall not need the work permit.

(4) Members of national minorities may freely express their religious affiliation and profess their religion and, in compliance with that, belong to a religious community.

Article 17

(1) On the basis of laws and implementing regulations, which regulate the activities of public information, production and broadcast of radio and television programmes, education, museum, archival and library activity and the protection and preservation of cultural assets, the conditions shall be created for the acquaintance of all citizens of the Republic of Croatia, especially of children and youth, through the content of educational work and through obligatory, as well as optional educational subjects, with the history, culture and religion of national minorities.

(2) With the objective of exercising the provisions of Paragraph 1 of this Article, the measures shall be undertaken which will alleviate the access to the media for members of national minorities.

Article 18

(1) Radio and television stations at the national, regional and local level shall have the task of promoting understanding for the members of a national minority, to produce and/or broadcast programmes intended for the information of members of national minorities in the languages of national minorities, the production and broadcast of programmes which stimulate and improve the preservation, development and expression of cultural, religious and other identity of national minorities, the preservation and protection of their cultural assets and tradition and the production and broadcast of programmes by which members of a national minority in that area get acquainted with the work and tasks of their council of national minority and of the representative of national minorities. Legal persons performing the activity of public information (the press, radio and television)

shall enable the associations of members of national minorities and institutions of national minorities to participate in the creation of the programme intended for national minorities.

(2) The state budget and the budgets of local and regional self-government units shall provide the funds for co-financing of programmes of radio and television stations which they own, which programmes are intended for national minorities, in compliance with the possibilities and according to the criteria set forth by the Government of the Republic of Croatia, upon the proposal of the Council for National Minorities, or by the competent bodies of local and regional self-government units upon the proposal of the council of national minorities.

(3) With the aim of exercising the rights of members of national minorities to the information through the press, radio and television in the script and language of a national minority, members of national minorities, their councils of national minorities and representatives of national minorities and their associations may perform the activity of public information (publish newspapers, produce and broadcast radio and television programme and perform the activity of news agencies), in compliance with the law.

The Law on the Use of the Language and Script of Ethnic Minorities in the Republic of Croatia

The Law on Upbringing and Education in the Language and Script of Ethnic Minorities

COMMENTS on the implementation of the Article 5 of the FCNM:

- The Republic of Croatia, through the implementation of the Constitutional Law on the Rights of National Minorities, special laws and international agreements (possibility to regulate certain rights) and statutes of local and regional self-governments, improved and created formal preconditions essential for persons belonging to minorities in order to preserve and develop their culture and preserve important characteristics of their identity such as religion, language, tradition and cultural heritage as well as conditions for protection of persons belonging to national minorities from violent assimilation.

- In the period 2000 – 2003, the Republic of Croatia ensured 73.534.076 HRK from its budget for different programs of the minority associations and institutions working in the Republic of Croatia (programs of informing, publishing, cultural amateurism, cultural events aiming to preserve the culture, language and customs of national minorities, programs arisen from the bilateral agreements, through building of the citizens' mutual trust and programs of creation of preconditions required for establishment of Roma cultural autonomy). As of 2003, the decision on distribution of the resources is made by the Council for National Minorities of the Republic of Croatia whose members are, exclusively, persons belonging to minorities.¹¹² In 2004, different programs of the associations and institutions were supported by 22.000.000 HRK or 10% more comparing the amount spent in 2003 (20.000.000). The Council distributed that amount to 19 different national minorities that submitted their project proposals. In accordance with the decision by the Council, Serbian national minority was approved 5.753.400 HRK, Italian 4.642.000, Hungarian 2.464.000, Czech 2.212.000, Roma 1.080.000, Ruthenian and Ukrainian 935.000, Slovak 913.000, Bosniak 790.000, Albanian 508.000, Montenegrin 479.000, Macedonian 451.000, Slovenian 451.000, Jewish 436.000, German and Austrian 436.000, Bulgarian 35.000, Polish 25.000 and Russian 20.000 HRK. In addition, 15.000 HRK were approved for the work of the council for national minorities, 154.400 HRK for co-financing of the radio programs at regional and local levels aimed to provide relevant information to persons belonging to minorities in the respective languages, 100.000 HRK for the training of the members of the councils and the representatives of national minorities and 50.000 for the training seminar for young Roma while the undistributed funds (current reserve) is about 50.000 HRK.¹¹³ The Council emphasised that there was a need for co-operation with the representatives and Councils for national minorities in monitoring implementation of the programs of the associations and institutions of national minorities financed from the State budget. For that reason, the Council invited all representatives, councils and co-

¹¹² The Report of the Republic of Croatia on the Implementation of the Framework Convention on Protection of National Minorities, March 2004, page 18

¹¹³ Official Gazette "Narodne novine" no. 57/2004

ordinations of national minorities to monitor the implementation of the programs financed via the Council in the areas where they work.¹¹⁴

- As a problem of preservation of important components of the identity, religion, language, tradition and cultural heritage of Serb community in Knin area, ALTRUIST Center from Split, Knin office, quotes the "Parish Letter" no.2 from April 2000 by Knin priest Mr Nikola S. Skorić – « Many valuable items were robbed or burned. However, the most precious ones were plundered by experts who well knew they value and were waiting for the right moment. I am saddened to say that this heritage is not only valuable to this Church but also to this State. Instead of protecting these values, they became a prey for certain experts and vulture thieves. I shall mention just one example in order to confirm this: the stone built into the temple of St. Djordje (George) was professionally removed from the wall and taken away only because it was the oldest mark and certificate of the existence Serb people in this area. It was pillaged by a person well aware of its historical value.»

IV.IV

Article 6

1. The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.

2. The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.

National legislation (Pursuant to the article 6 of the FCNM):

The Constitution of the Republic of Croatia

Article 30. (see under Item IV.II National legislation)

Constitutional Law on the Rights of National Minorities

Article 3 paragraph 2

(2) Ethnic and multicultural diversity and spirit of understanding, mutual respect and tolerance shall contribute to the promotion of development of the Republic of Croatia.

Article 8

The provisions of this Constitutional Law and provisions of special laws regulating the rights and freedoms of members of national minorities shall be interpreted and applied for the purpose of respecting the members of national minorities and of the Croatian people, the development of understanding, solidarity, tolerance and dialogue among them.

Article 18 paragraph 1 (see under Item IV.III National legislation)

Penal Code (NN.110/97)

Article 106.

(1) Anyone who on the ground of difference in race, skin colour, language, political or other belief, national or social origin, property, birth, education, social status and other, or on the ground of membership of ethnic and national community or minority in Republic of Croatia, refuses or restricts freedoms and rights of human and citizen guaranteed by Constitution, Law or other provision shall be punished by a term of imprisonment of between 6 months and 5 years.

(2) Punishment mentioned in the paragraph 1 of this Article shall be applied to anyone who refuses or restricts right of a member of nation, ethnic and national community or minority, to freely exercise his national affiliation or right to cultural autonomy.

¹¹⁴Data by STINA News Agency, Educational and Informative Service for the Rights of Minorities and Interethnic Tolerance no. 2, May 17, 2004, www.stina.hr

(3) Anyone who against the regulations on the usage of language and script refuses or restricts right of citizen to use his own language and script, shall be fined or punished by a term of imprisonment up to 1 year.

Article 110.

(1) Anyone who refuses or restricts religious, public exercise of religious affiliation and any other belief shall be fined or punished by a term of imprisonment up to 1 year.

(2) Punishment mentioned in the paragraph 1 of this Article shall be applied to anyone who refuses equality of religious community with other religious communities in Republic of Croatia, which functions in accordance with the law; or anyone who refuses or restricts right of religious community to exercise publicly religious ceremonies, foundation of schools, colleges, institutes, social or humanitarian institution and administering them in accordance to law.

*Article 174.**

(1) Anyone who on the ground of racial difference, gender, skin colour, nationality or ethnic origin violates basic human rights and freedoms recognised by the international community, shall be punished by a term of imprisonment of between 6 months and 5 years.

(2) Punishment mentioned in the paragraph 1 of this Article shall be applied to anyone who prosecutes organisations or individuals because their involvement in activities for the humans equality.

(3) Anyone who publicly speaks and express ideas of supremacy one race over another, or incites racial hatred, or incites racial discrimination, shall be punished by a term of imprisonment of between 3 months and 3 years.

*** Law on Amendments to the Penal Code (NN.129/00)**

Article 26.

In the article 174 paragraph 1, the words: "religion, language, political or other affiliation, financial status, birth, education, social position or any other characteristics" shall follow the word "race".

Paragraph 3 is amended as following:

"(3) Anyone who publicly spreads racial, religious, sexual, national, ethnic or hatred based on the colour of the skin intending to slight or express ideas of supremacy or inferiority of one race, ethnic or religious community, sex or nation over another on the basis of the colour of the skin, shall be punished by a term of imprisonment of between 3 months and 3 years".

Law on Amendments to the Penal Code (NN.111/03)

Article 55.

Following section name and Article 151.a shall follow the Article 151 running like this:

» MAGNIFYING FASCIST, NAZI AND OTHER TOTALITARIAN STATES AND IDEOLOGIES OR PROMOTING RACISM AND XENOPHOBIA

Article 151.a

(1) Anyone who produces, sells, imports or exports via internet or makes available to the public in any other way and in the same sense possesses larger quantities of promotional materials magnifying fascist, nazi or other totalitarian states, organisations or ideologies that are advocating, promoting or encouraging hatred, discrimination or violence against any individual or group on the basis of the race, colour of the skin, sex, sexual orientation, national or ethnic background, religion, political or any other affiliation, shall be punished by a fine or term of imprisonment up to one year.

(2) In case the material mentioned in paragraph 1 of this article is being publicly available for the research, art and other scientific purposes or with the aim to report on events from the presence or the past shall not be considered a felony.

(3) Subjects and means in the paragraph 1 of this article shall be deprived.«

Law on Media (NN.163/03)

Article 3 paragraph 4

(4) It is forbidden in programs of Croatian Radio and Television:

to support and magnify national, racial or religious, sexual and any other inequality as well as ideological and state formations created on those basis and encourage national, racial, religious, sexual animosity, violence and war.

COMMENTS on the implementation of the Article 6 of the FCNM:

- Authorities, especially those at the national level, in principle, compared to the past periods, through their actions and publicly expressed opinions, were advocating the spirit of interethnic tolerance and interethnic dialogue and co-operation (see the Item III.b.). During his visit to Jasenovac, the infamous Ustasa concentration camp from the Second World War (scaffold of many Serbs, Roma, Jews and Croats, antifascists), on March 16, 2004, the Prime Minister, Sanader said: "I came to pay respect to the victims before the reconstructed monument so that the truth would not be hidden or forgotten, so that the crime would never repeat. There is no such aim, political or any other, that can justify the crime. That is why I condemn any extremism, radicalism, racial and religious hatred and intolerance from all sides."¹¹⁵ Although somewhat reduced, ethnically motivated incidents continued to appear in the war affected areas and elsewhere. The work of the police and other state and local self-government bodies was criticised since particular incidents were not qualified as crimes but merely as misdemeanours. (see under Items III.d. and III.e.). Amendments to the Penal Code from 2000 and 2003 present a significant contribution and legal measures forbidding and sanctioning the encouragement to racial discrimination and violence. In accordance to the Penal Code, persons who on the basis of race, religion, language, political or any other affiliation, financial status, birth, education, social position or other characteristics violate fundamental human rights or encourage animosities, conflicts and hatred shall be punished. The Law on Media prohibits transmission of media programs encouraging or magnifying ethnic, racial, religious, sexual or any other inequality as well as ideological and state products created on such basis that may cause ethnic, racial, religious, sexual or other animosities and encourage violence and war. According to the OSCE, the Croatian Television (HTV) still does not devote enough attention to important, past war issues such as refugee return and respect of human and minority rights. Although the hate speech is no longer an active sign of the HRT reporting, it continues to be tolerated by some TV news reporters and moderators. Bias reporting on property repossession and other issues related to refugee return still affects the process of reconciliation and normalisation of relations in certain fields.¹¹⁶ Referring the same source, compared to past period, in the second half of 2003, reporting by local media on refugee return and minority issues improved all over the country¹¹⁷... But, in two areas, Osijek and Zadar, reporting on political and ethnic issues was, occasionally, provocative.¹¹⁸

- The UN Committee for Elimination of all Forms of Racial Discrimination emphasised that there were no convictions in cases of encouragement to racial discrimination and violence in 2002 "despite significant number of such allegations". The Committee expressed its concern with the lack of legislative measures that would prohibit encouragement to racial discrimination and violence for inappropriate efforts to investigate and indict those responsible for causing ethnic hatred, especially in war affected areas.¹¹⁹ European Roma Rights Center claimed that it was frequently reported on the speech of hate by some officials against Roma but no legal actions were taken against those who practiced such speech of hate¹²⁰ and that the high level of discrimination and violence against Roma continues to be a serious problem in Croatia.¹²¹ One primary school teacher, Mrs. Gordana Dumbovic, a candidate of nationalistic Croatian Rights Party, in one of her public presentations on the radio station in Petrinja during the pre-election campaign for local elections in 2001 said: "Our man is a martyr. Our man is a believer. Our man is in his own land. And that minority one, poor Serb who returned from the motherland Serbia, is neither a man nor an animal. The animal does not deserve to be compared with them. So, my dear Croats, I believe that no one should float somewhere in between any more. Either you are for or you are against. If you are for, than, my dear Croats, prepare your guns..... We can live with anyone but devils since the devil and religion can not be together. We are going to clean Croatia from its rubbish. Save us God from the Chetnic (Serb) butchering."¹²² Gordana Dumbović was elected for a deputy Mayor of Petrinja and the court in Kutina, after two and a half years decided to set her free of the allegations for public encouragement on racial

¹¹⁵ Identitet, no. 72, March 2004, page 17

¹¹⁶ OSCE, Status Report no.12, July 2003

¹¹⁷ OSCE, Status Report no.13, December 2003, page19

¹¹⁸ IBID, page 25, footnote br.37.

¹¹⁹ Minority Rights Group International: Minorities in Croatia, September 2003, page 29; CERD Conclusions on Croatia, May 21, 2002

¹²⁰ IBID, referring the Report by International Helsinki Federation for 2002, www.ihf-hr.org/reports

¹²¹ IBID, referring the OSCE, Status Report no.11, November 2003

¹²² Identitet, no.71, February 2004, page 25

discrimination.¹²³ The editor of the magazine "Narod" (People), don Anto Baković said: " If they want to live in Croatia they shall learn Croatian language. They should not impose Arabic language to us. Every day I notice obituaries in the newspapers and every time a Muslim dies he goes to the Ahiret. I'm not sure if Muslims can translate this to Croatian language?"¹²⁴ Croatian Helsinki Committee reported on their meeting with the prefect of Medjimurska County. The prefect did not hide his hatred against Roma and showed no intention to deal with their problems such as the one when Roma newborn baby died during delivery and the ambulance failed to come despite numerous phone calls.¹²⁵ An association of Croatian war veterans from Vukovar forbid a boy, an ethnic Serb, to play for his football club in a football tournament. Almost all media reported on this case and Mr. Ivica Racan, at that time the Prime Minister and Mr. Stjepan Mesic, the president of the Republic of Croatia publicly judged this incident and appealed for reconciliation and tolerance. In the occasion of celebration of birthday of Ustasa butcher Jure Francetic held in Slunj, in July 2004 " the police peacefully observed from a side waving with fascist signs, Ustasa heats and the SS T-shirts."¹²⁶

- News agency SRNA (www.srna.co.yu) published following information showing the anti-Semitism in the Republic of Croatia on June 23, 2004: "Dubrovnik – The HDZ council member in the City Council of Dubrovnik, Mr. Ivan Zec, says that from a long-term perspective "Jews are even more dangerous than Serbs" . While the City Council was discussing the offer for the majority package of shares of the hotel "Srebreno" in the municipality Parish of Dubrovnik given by, among the rest, British "Levis' Trust Group" owned by an Israeli Mr. David Levis who owns 25 different hotels all around the world, Mr. Zec said that " Croatian properties should not be sold to Serb and Jews". Mr. Levis held a press conference on Tuesday evening and said how embittered he was by such statements and announced to give up on his investment if this is the view of business people and politicians in this part of Croatia. "During my 50-year work in tourism all around the world, I have never heard a comment similar to this one I heard in Dubrovnik" he said. The Major of the Parish of Dubrovnik, Mr. Ivo Miletic, believes that "to much unnecessary noise" was raised for this statement. Asked why no one reacted, including himself, on this anti-Semitic statement, Mr. Miletic said, "we were all caught" by such action. In the meantime, Mr. Zec, tried to correct his own statement claiming that "he meant nothing bad about Jews and that he had a great respect for them" but he " was against such high concentration of Jews in such small area as the Parish of Dubrovnik" since he was afraid of the international terrorism."¹²⁷

- In the US Bureau of Democracy, Human Rights and Labour Country Report on Human Rights Practices in Croatia in 2003, several incidents related to minority religious institutions and personnel are mentioned. "In January, the driver for the Metropolitan of the Serbian Orthodox Church was verbally abused in front of the main church in Zagreb. In September, an incident occurred involving verbal abuse against the Metropolitan and another member of the Serbian Orthodox clergy. In March and again in May, fascist graffiti appeared on the church door, and obituaries were regularly torn off the billboard by the church entrance. Sometime between March and April, the Serbian Orthodox Church of St. Archangel Michael and Gabriel in Kostajnica was broken into. Windows were smashed and religious items, including four icons, were burned or badly damaged. In April, windows were broken at the Serbian Orthodox Church in Plaski, and similar incidents were reported in Ogulin in August and September. No arrests were made in any of the cases. According to the OSCE and other reporting, Serbian Orthodox churches and property in war-affected areas were attacked during the year. In April, tombstones in a cemetery in Vukovar were damaged--marking the eighth such incident at the cemetery. Serbian Orthodox Church leaders reported that in Knin the Church of St. Pokrov was frequently desecrated with fascist Ustasha symbols. Serbian Orthodox clergy reported good co-operation with the police, who promptly reacted to reported incidents, but complained about a lack of information on the results of investigations. In June, insulting graffiti appeared on the walls and minaret of the Zagreb mosque. Police investigated, but no arrests were made." The incidents against religious objects and cemeteries continued in 2004. In the beginning of 2004 Serb Orthodox church of

¹²³ IBID

¹²⁴ IBID

¹²⁵ Minority Rights Group International: Minorities in Croatia, September 2003, page 29, referring the Report by International Helsinki Federation for 2002, www.ihf-hr.org/reports

¹²⁶ Karlovački list July 3, 2004

¹²⁷ www.b92.net/news/..., June 23, 2004.god.

Sveta Petka in Vukovar was attacked in two occasions. Church windows were broken and damaged, some money and relics were stolen and doors were desecrated with fascist Ustasa symbols; in March 2004 Serb Orthodox wooden cross was sawed and demolished in Borovo Naselje near Vukovar; in the week before the Easter (April 2004) several monuments at Serb Orthodox cemetery in Vinkovci were damaged and desecrated with fascist Ustasa symbols. In the beginning of 2004 window glasses at the Serb house in Vukovar (the building that is temporarily used for religious services purposes) have been broken. The perpetrator was identified and church was compensated.

- On June 2, 2004, on the façade of the building of the Italian Union in Split, the Italian flag was taken down. This same flag was hanging together with Croatian national flag that remained untouched at that time. The flags were usually run up for 5 meters. The president of the Italian Union from Split, Mr. Čulić-Dalbello expressed his bitterness and informed the Headquarters of the Italian Union in Rijeka, Italian Consulate and Trieste University on the incident. Further on, the president concludes that there is a stifled, disguised atmosphere of intolerance ruling in Split that frightens citizens belonging to Italian minority that are declared Italians. Mr. Čulić-Dalbello says that this situation makes difficult expression of Italian identity and culture for the past harassment. Young people claim that if they would become members of Italian community this could result in reduction of their employment possibilities but also other rights and, therefore, even the smallest project that would have Italian prefix remains unrealised.¹²⁸ The poster on cultural events organised by Italian Union in Zadar is very often displayed on the door of this association. This poster was on many occasions tear and removed from the door. The Union recently reconstructed their premises and was asked if they would have grand public opening in this occasion. They answered that they would be glad to do this but were afraid of possible incidents.¹²⁹

- At the entrance of the Orthodox Church of Saint Mother of the God, in main Knin street, there is a small glass-door box with the schedule of religious services printed in Cyrillic script. The glass is broken several times a year and the schedule tear off. In the forepart of the same church, on the wall of the priest's house and the façade of the city administration, for already several years, there are graffiti of Fascist Ustasa signs and messages but local authorities showed no interest in removing those symbols. During 1997 and 1998, the Orthodox cemetery near the Church of Saint Djordje (George) from the 15th century in Knin was desecrated on several occasions. Perpetrators tear off and took away copper Cyrillic letters and crosses from the monuments and if the text on the tombstones was engraved, marble boards would be overthrown and destroyed. Traces of those barbaric acts are still visible.¹³⁰

- Results of a public poll, conducted in October 2002, show high level of intolerance against minorities. According to a public poll in October 2002, one in four Croatian adults would expel ethnic Serbs from Croatia. One in seven said they would also expel Bosniaks and Montenegrins and one in 10 would expel Slovenes.¹³¹ In another poll, 75 per cent of respondents said that the government should not accelerate the return of Serbs.¹³² According to a public poll by Vecernji List in the beginning of 2004, 32,4% of respondents supports and 25,3% does not support the return of Serbs to Croatia; 56,9% is not confident to full loyalty of Serbs to Croatia while 16,7% believes the opposite; 63,3% of respondents believe that exiled Serbs should pass special tests prior to their return to Croatia.¹³³

IV.V

Article 7

¹²⁸ Information by association Zvonimir, Knin

¹²⁹ IBID

¹³⁰ Information by association ALTRUIST, Split, Knin Office

¹³¹ Večernji list, October 30, 2002

¹³² Jutarnji list, November 22, 2002

¹³³ Identitet, no. 72, March 2004, page 4

The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.

National legislation (pursuant to the Article 7 of the FCNM):

The Constitution of the Republic of Croatia

Article 42

Everyone shall be guaranteed the right of public assembly and peaceful protest, in conformity with law.

Article 43

(1) Everyone shall be guaranteed the right to freedom of association for the purposes of protection of their interests or promotion of their social, economic, political, national, cultural and other convictions and objectives. For this purpose, everyone may freely form trade unions and other associations, join them or leave them, in conformity with law.

(2) The exercise of this right shall be restricted by the prohibition of any violent threat to the democratic constitutional order and independence, unity and territorial integrity of the Republic of Croatia.

Constitutional Law on the Rights of National Minorities

Article 7 tc 5 & 7 (see under Item IV.II National legislation); Article 15 (see under Item IV.III National legislation)

Law on Associations

COMMENTS on the implementation of the Article 7 of the FCNM:

- The authorities of the Republic of Croatia respected, without discrimination, the rights of all citizens and in the same sense the rights of persons belonging to national minorities, to freedom of peaceful gathering and assembling, freedom of speech, conscience and religion.¹³⁴

IV.VI

Article 8

The Parties undertake to recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations.

National legislation (pursuant to the Article 8 of the FCNM):

The Constitution of the Republic of Croatia

Articles 40 & 41 (see under Item IV.III National legislation); Article 43 (see under Item IV.V National legislation)

Constitutional Law on the Rights of National Minorities

Article 7 tc. 5 (see under Item IV.II National legislation); Article 16 paragraph 4 (see under Item IV.III National legislation)

The Law on Legal Position of Religious Communities (NN.83/02)

COMMENTS on the implementation of the Article 8 of the FCNM:

¹³⁴ For details see: Country Report on Human Rights Practices -US Bureau of Democracy, Human Rights and Labour, Report on Human Rights in Croatia for 2003, February 2004

- "The Constitution of the Republic of Croatia provides for freedom of conscience and religion and free public profession of religious conviction, and the Government generally respects these rights in practice".¹³⁵ The Constitution guarantees for freedom of conscience and religion and free public profession of religious conviction, freedom of founding schools, educational and other institutions, social and charity institutions and management over those institutions. Religion and ethnicity are closely linked in society. Census results related to religion show that– 87,8 Catholics (mostly Croats), 4,4 Christian Orthodox (mostly Serbs), 1,3 Islam (mostly Bosniaks and Muslims), etc. According to data by Central State Register Office for Administration, 31 religious communities were registered in Croatia although the process is not finished yet.¹³⁶ There is no official state religion; however, the Roman Catholics are the majority, almost 90% of population. The Law on Legal Position of Religious Communities that was adopted in 2002 regulates their legal position, exercise of the right to financial support from the state budget, education at schools and similar rights. It is required to sign separate agreements with the Government in order to enable exercise of any other right. "...The Government has taken actions to eliminate religious discrimination, its approach is to negotiate with individual religious communities based on common framework rather than setting uniform, no-discriminatory standards and practices."¹³⁷ The Government, besides earlier agreement between the state and the Roman Catholic Church, signed agreements with Serbian Orthodox Church and the Islamic community in 2002, and several other agreements with different, mostly Protestant, churches. Jewish community is willing to do the same as soon as the problem over repossession of one building in Zagreb is solved. Adoption of the Law and signing the agreements were significant steps in equalising the position and rights of religious communities in accordance with their needs. Minority religion representatives expressed their satisfaction with communication and co-operation with the Government.¹³⁸ The Law on Legal Position of Religious Communities stipulates registration of the communities with the competent ministry. The new Law stipulates that, to register, religious communities must have at least 500 believers and must be registered for 5 years. Religious communities that are based abroad will need to submit written permission for registration from their country of origin. Registered religious communities will be granted the status of a "legal entity" .

- Roman Catholic Church and the state-run Croatian State Radio and Television signed an agreement on media coverage of relevant events, as many as 10 hours per month. Other religious communities receive approximately 10 minutes broadcast time per month or less. Topics of interest to major non-Catholic religious groups are covered regularly on weekly religious programming on HRT.¹³⁹

- The Croatian Government signed contracts with the Serbian Orthodox Church and the Islamic community. The agreement allowed 5 Orthodox clergy as chaplains in jails and detention units. It is planned to engage three Islamic clergy in the same way. Catholic, Islamic and Serbian Orthodox marriages are officially recognised by the State.

- Attendance in religious training in public schools is optional. Schools that meet the necessary quota of seven students of a minority faith per class offered separate religion classes (different from the dominant Roman Catholic) for the students. In case there are not sufficient numbers of students of a minority faith to warrant separate classes, students may exercise the option to receive religious instructions through their religious community. An estimated 4,500 Serbian children attend Serbian Orthodox religious classes, out of which there are about 4.000 in Eastern Slavonia.

- Restitution of property nationalised or confiscated by the Yugoslav Communist regime remains slow and is a common problem of all religious communities whose properties were nationalised or

¹³⁵ Croatia, International Religious Freedom Report 2003 - US Bureau of Democracy, Human Rights and Labour, 18.decembar 2003.god., www.state.gov

¹³⁶ The Report of the Republic of Croatia on the Implementation of the Framework Convention on Protection of National Minorities, March 2004, page 29

¹³⁷ Croatia, International Religious Freedom Report 2003 - US Bureau of Democracy, Human Rights and Labour, December 18, 2003, www.state.gov

¹³⁸ Croatia, International Religious Freedom Report 2003 - US Bureau of Democracy, Human Rights and Labour, December 18, 2003, www.state.gov

¹³⁹ Croatia, International Religious Freedom Report 2003 - US Bureau of Democracy, Human Rights and Labour, December 18, 2003, www.state.gov

confiscated. Roman Catholic Church signed the agreement with the Government regulating restitution of all seized properties while other religious communities have no such agreement and the law regulates their rights, exclusively. Some believe that the slowness in restitution of properties seized from the Serbian Orthodox Church may be result of a slow judicial system rather than a systematic effort to deny restitution of Orthodox properties.¹⁴⁰

- For intolerance and attacks against religious buildings and officials, see under Item IV.IV.

IV.VII

Article 9

1. The Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media.

2. Paragraph 1 shall not prevent Parties from requiring the licensing, without discrimination and based on objective criteria, of sound radio and television broadcasting, or cinema enterprises.

3. The Parties shall not hinder the creation and the use of printed media by persons belonging to national minorities. In the legal framework of sound radio and television broadcasting, they shall ensure, as far as possible, and taking into account the provisions of paragraph 1, that persons belonging to national minorities are granted the possibility of creating and using their own media.

4. In the framework of their legal systems, the Parties shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit cultural pluralism.

National legislation (pursuant to the Article 9 of the FCNM):

The Constitution of the Republic of Croatia

Article 38

(1) Freedom of thought and expression shall be guaranteed.

(2) Freedom of expression shall specifically include freedom of the press and other media of communication, freedom of speech and public expression, and free establishment of all institutions of public communication.

(3) Censorship shall be forbidden. Journalists shall have the right to freedom of reporting and access to information.

(4) The right to correction shall be guaranteed to anyone whose constitutional and legal rights have been violated by public information.

Constitutional Law on the Rights of National Minorities

Articles 17 & 18 (see under Item IV.III National legislation)

The Law on Croatian Radio and Television (February 2003)

The Law on Electronic Media (July 2003)

The Law on Telecommunications (July 2003)

The Law on the Media (NN.163/03)

Article 5.

¹⁴⁰ Croatia, International Religious Freedom Report 2003 - US Bureau of Democracy, Human Rights and Labour, December 18, 2003, www.state.gov

(1) *The Republic of Croatia encourages and spreads pluralism and diversity of media in conformity with the law.*

(2) *Production and publishing of the programs related to:*

– *exercise of the right to public informing and quality of information of all citizens of the Republic of Croatia,*

– *exercise of the right to public informing and quality of information of persons belonging to national minorities and communities abroad*

– *exercise of the right to public informing and quality of information of persons belonging to national minorities in the Republic of Croatia,*

– *informing of the public on national minorities and issues related to exercises of minority rights in the Republic of Croatia and encouraging tolerance and the culture of dialogue... shall be encouraged.*

COMMENTS on the implementation of the Article 9 of the FCNM:

- Constitution of the Republic of Croatia guarantees the freedom of thought and expression, while the Constitutional Law on the Rights of National Minorities guarantees access to the media and the performance of activities of public information (receiving and forwarding information) in the language and script which they use. The Law on media encourages production and publishing of the programs related to exercise of the right to public informing and quality of information of persons belonging to national minorities in the Republic of Croatia and informing of the public on national minorities and issues related to exercises of minority rights in the Republic of Croatia and encouraging tolerance and the culture of dialogue...

- Results of the research on perception of national minorities in media and pre-election campaign for parliamentary elections show that writing about minorities is still largely politically influenced. Texts that would follow on the problems and life of national minorities in more comprehensive and analytical way are missing. This implies that minorities are still just a secondary topic in Croatian media.¹⁴¹ The professor of Journalism of the Faculty of political Sciences, Mr. Stjepan Malovic, referring recent researches, warns, again, on how the Croatian media are still insufficiently sensible in reporting on national and other minorities and the issue of diversity in general. Reporting on national minorities is still affected by politics and protocol, even ghettoised, in most cases, into special columns and shows. Raising sensibility on those issues within media presents a great challenge but also a mission and education of editors and journalists of majority media is one of the main preconditions for it to be accomplished.¹⁴² Opinions by representatives of national minorities from eastern Croatia point to the need for wider opening of media to persons belonging to national minorities and better quality and continuity in monitoring the topics they are interested in. These views show satisfaction with the implementation of local radio project on minority issues "ETNOS" and the need and wish for this project to continue in the future.¹⁴³ Intensity, quality and scope of monitoring and media reporting is different at national and local levels, in printed and electronic media, state and private media and there are, even, certain differences among broadcasts on national minorities and broadcasts in minority languages.

- The Government supports receiving and dissemination of information and idea in minority languages and on minorities via printed media financed exclusively from the state budget of the Republic of Croatia through the Council for Ethnic and National Minorities (see under the Item IV.III.)¹⁴⁴ Minorities are represented in national radio and television broadcasts in limited and at minimum of the content and time considering number of persons belonging to national minorities in

¹⁴¹ STINA News Agency, Educational and Informative Service for the Rights of Minorities and Interethnic Tolerance, no.3, May 31, 2004, data from the article by the Chief Researcher, Mr. Sinisa Tatlovic, www.stina.hr

¹⁴² IBID

¹⁴³ Audio record from the radio project ETNOS, Radio show no.8, October 24, 2003; The project was implemented by the Center for Peace, Legal Advice and Psychosocial Assistance in Vukovar in co-operation with 4 local radio stations from Vukovar-Sirmium, Osijek-Baranja and Brodsko-Posavska counties in period September – November 2003. The OSCE financed the implementation of the project.

¹⁴⁴ For details on printed media financing see: the Decision of the Council for National Minorities on Distribution of Resources ensured from the State Budget of the Republic of Croatia for 2004, Official Gazette "Narodne novine" no.57 / 2004

the Republic of Croatia and the census results related to mother tongue – with about 4%. Broadcasts on national minorities and languages of several national minorities are represented in regional branch studios of national radio and television, initially, on radio stations. Representatives of some national minorities criticise the quality of the program and insufficient involvement of persons belonging to minorities in editing and production of the programs in minority languages on relevant topics.¹⁴⁵ Lack of resources for production and broadcasting and lack of education of relevant people in minority related issues present the main problems affecting private and other local electronic media. In Eastern Slavonia two private radio stations broadcast their programs in Serbian and one in Serbian and Roma languages.¹⁴⁶ There are certain joint initiatives by several national minorities aimed towards assurance of common minority media space. So, for example, the Co-ordination of National Minorities of Vukovar-Sirmium County submitted a request to county authorities asking the authorities to advocate for assurance of media space for presentation of the work of Co-ordination on local Vinkovci television, an hour a month.¹⁴⁷ In order to initiate informing in languages of national minorities, Republic of Croatia ensured 900.000 HRK from the State budget for 2003 for special broadcasts and programs of national minorities in the television and radio.¹⁴⁸ On the basis of agreement on financing between the Council for Ethnic and National Minorities and Croatian Radio and Television, the Croatian Radio and Television started with the project of education for minority journalists, potential associates of the Editorial office for National Minorities of Croatian Radio and Television.¹⁴⁹

- Example of unequal possibilities for different minority communities in access to electronic media is the example of Radio Daruvar from Daruvar that broadcasts program in Czech language for persons belonging to local Czech minority. At the same time, request by Serbian minority for broadcasting the program in Serbian language was refused explaining that there were no resources ensured for that purpose.¹⁵⁰

IV.VIII

Article 10

1. 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.

2. 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.

3. 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.

National legislation (Pursuant to the Article 10 of the FCNM):

¹⁴⁵ For example, the president of Hungarian Minority Council of Osijek-Baranja county, Audio record from the radio project ETNOS, Radio show no.8, October 24, 2003

¹⁴⁶ Radio Dunav - Vukovar, Radio Borovo - Borovo, Radio Banska kosa - Beli Manastir

¹⁴⁷ STINA News Agency, Educational and Informative Service for the Rights of Minorities and Interethnic Tolerance, no.2, May 17, 2004

¹⁴⁸ See State Report of the Republic of Croatia on Implementation of Framework Convention for Protection of National Minorities, March 2004, page 28

¹⁴⁹ Data from the Memorandum by Joint Council of Municipalities from Vukovar no.49/2004 – information sent on April 19

¹⁵⁰ Information by association Zvonimir from Knin (broadcast on Radio Free Europe on July 10,2004). In accordance to the information Center for Peace Studies from Zagreb and Delfin association from Pakrac have collected, the reason for refusing requests for broadcasting program in Serbian language was insufficient sensibility of the public in hearing such music, information and topics

The Constitution of the Republic of Croatia

Article 12 (see under Item IV.III National legislation); Article 15 (see under Item IV.II National legislation)

Article 29

(1) Everyone shall have the right to the independent and fair trial provided by law which shall, within a reasonable term, decide upon his rights and obligations, or upon the suspicion or the charge of a penal offence.

(2) 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,...

Constitutional Law on the Rights of National Minorities

Articles 10, 12, 13 (see under Item IV.III National legislation)

The Law on the Use of the Language and Script of Ethnic Minorities in the Republic of Croatia

The Law on Criminal Procedure – Final Draft (NN.62/03)

Article 7.

(1) Croatian language and Latin script shall be used in criminal proceedings unless second language or scripts are officially introduced in particular court areas.

(2) Parties, witnesses and other participants in the process are entitled to use their own language. In case the proceedings are not run in the language of this particular person, oral translation of what that person or the others say as well as the translation of related documents and any other written evidence shall be ensured. The interpreter shall translate.

(3) Prior to his or her first move, the person mentioned in paragraph 2 of this Article who may also decline to use this right in case he or she knows the language in which the proceedings are run, shall be informed on his or her right to translation. Information and the statement by the person in question shall be noted in the minutes of the proceeding.

(4) Court summons and decisions shall be written in Croatian language and Latin script. Lawsuits, appeals and all other court depositions shall be submitted in Croatian language and Latin script. In case second language or script were officially introduced in certain court area of responsibility, court depositions may be submitted to the court also in that language or script. After the court hearing has already started, person submitting the court deposition can no longer, without the court permission, recall his or her decision on the language he or she would use in the court process.

(5) Arrestee, defendant, under detention as well as the person serving time shall be delivered the translation of court summons, decisions and court depositions in the language he or she uses in the court process.

(6) Foreigner under detention may submit the court depositions in the court hearing in his or her own language, and prior and upon that only in case of reciprocity.

Law on Civil Procedure

Article 105.

(1) The use of the language and script of national minorities in civil procedures shall be regulated by a special law.

(2) Expenses of translation into the languages of respective national minority resulting from the implementation of the provisions of the Constitution and other laws regulating linguistic rights of persons belonging to national minorities shall be covered by the court budget.

Law on General Administrative procedure

(1) Administrative procedures shall be conducted in the official language and script of the respective administrative body.

(2) Persons belonging to any nation or minority shall be guaranteed the freedom to use their own language and script in administrative procedures under conditions regulated by special laws.

COMMENTS on the implementation of the Article 10 of the FCNM:

- The Constitution of the Republic of Croatia provides for the free use of own language and script and cultural autonomy and also stipulates that in some units of local self-government, besides the Croatian language and Latin script, second language and Cyrillic or any other script can be officially introduced under the conditions stipulated by the law.

The Constitutional Law on the Rights of National Minorities provides for the exercise of the right to equal official use of the language and script used by persons belonging to a national minority in the area of a local self-government unit, when members of a particular national minority comprise at least one third of the population of such a unit (2001 census data are to be considered relevant). Compared to provisions of the Law on Use of Language and Script of National Minorities, the Law on the Rights of National Minorities makes a positive step forward. Provisions of the Law on Use of Language and Script of National Minorities predetermined introduction of second official language equal to Croatian language by requesting for the respective minority to constitute majority in the area of respective city or municipality. Earlier provisions were unclear since it was impossible to conclude whether this majority was the relative or the absolute one. Nowadays threshold is precisely established. Constitutional Law provides for the possibility to regulate the right to equal official use of minority language and script, in case the minority constitutes less than one third of the population in the respective city or municipality, by international agreements and statutes of the unite of local self-government.

- In some opinions, the threshold of one third of the population belonging to a national minority of such a unit required to exercise the right to equal official use of minority language and script, is high with a lower figure of between 10 and 20 per cent being considered reasonable by bodies such as the CoE Advisory Committee.¹⁵¹ For example, in the city of Vukovar, the only bigger urban area in the Republic of Croatia inhabited by traditionally settled Serbian national minority that constitutes 32,88% of the population in that area, according to the provisions of the Constitutional Law, it is impossible to introduce Serbian language and script as second official language and script. Hungarian national minority submitted an official request for introduction of Hungarian language into official use in the city of Beli Manastir although this minority constitutes only 8,5 per cent of the population in that city. The president of the city council of Hungarian national minority, Mr. Robert Jankovic, said that their request drew the attention of media and caused certain negative public reaction without any justified reason. He reminded that Hungarian minority exercised this same right even before 1991.¹⁵² Therefore, this request by the Hungarian minority could be considered as a reference to "acquired" rights.¹⁵³ The exercise of the right to official use of the language and script in some units of local self-government depends, at first, on the political will of the representatives of local self-government (for example, the statutes in the Istria county introduced Italian language as equal to Croatian in official use) and adjustment of the census results with possible changes in the ethnic composition of the population caused by the return of refugees and displaced persons.

- Some Units of Local Self-Governments, such as municipalities Vojnic, Krnjak, Gvozd, Donji Kukuruzari, Dvor, Korenica, in which the threshold is satisfied (1/3 of the population) for legal exercise of the right on equal official use of Serbian minority language and script, did not build this provision into their statutes although they were obliged to do so. State administration offices that are, according to the law, obliged to monitor the implementation of the provisions of the Law on the Use of the Language and Script of National Minorities and the Constitutional Law on the Rights of National Minorities did not react and order respective municipalities to amend their statutes.¹⁵⁴

IV.IX

Article 11

1. The Parties undertake to recognise that every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority

¹⁵¹ See Minority Rights Group International: Minorities in Croatia, September 2003, page 24

¹⁵² Audio record from the Radio project ETNOS, radio show no. 7, October 17, 2003

¹⁵³ Several provisions of the Constitutional Law mention the term of "acquired" rights but it is not being interpreted in details.

¹⁵⁴ Information by Civil Rights Project from Sisak and HOMO Pula, Korenica

language and the right to official recognition of them, according to modalities provided for in their legal system.

2. 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.

3. 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.

National legislation (pursuant to the Article 11 of the FCNM):

Constitutional Law on the Rights of National Minorities

Article 9, 10, 12, 13 (see under Item IV.III National legislation)

The Law on Personal Name

Article 1.

(1) This Law regulates the procedure on establishing personal names of the citizens of the Republic of Croatia.

(2) Every citizen has the right and is obliged to use his or her personal name.

Article 6.

(1) Every person has the right to change his or her personal name.

(2) Application for changing personal name shall specify the reasons for the requested change, and suggested new name shall justify the request.

(3) Municipal administrative body responsible of general administration in the place of permanent residence of the applicant shall decide on the request for changing personal name.

Law on Registry Offices

The Law on Identity Card

Article 8.

Identity Card sheet is printed in Croatian and English languages and Latin script, it is filled out in Croatian language and Latin script only.

When regulated with a special law or international agreements, sheet of Identity card for a member of national minority group, shall be printed in the language of national minority.

Sheet mentioned in row 2 of this Article shall be filled out in Croatian language and Latin script and language and scripts of members of national minorities.

The Law on the Use of the Language and Script of Ethnic Minorities in the Republic of Croatia

COMMENTS on the implementation of the Article 11 of the FCNM:

- The Constitutional Law on the Rights of National Minorities provides for the right to free use of their language and script, privately and in public use and in official use of own language and script, privately and publicly, including the right to use of their signs and symbols and other information in accordance to the law; and 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. In some cases and in some areas, the interpretation of this, exclusively personal right together with the right to official use of minority language and script is limiting the right of a national (Serbian) minority to use their names and surnames in the language they use.

- In the Report of the Republic of Croatia on the Implementation of the Framework Convention on Protection of National Minorities from March 2004, it is mentioned that pursuant to the provision of the Constitutional Law on Protection of National Minorities (Article 9 paragraph 1), persons belonging to national minorities have the right to use their own names in the language they use and that, according to the Law on Personal Name, every person is obliged to use his or her names. It is also specified that this right is a strictly personal right and that no one but that person can change it.¹⁵⁵ Some ethnic Serbs who used to exercise this right were deprived of the right to sign the passport application forms in Cyrillic (Serbian) script, and in the same sense to use their own names in written form. Upon the enquiry of the Center for Peace, Legal Advice and Psychosocial Assistance in Vukovar, the Ministry of Interior responded as follows: "...passport application forms are printed in Croatian language and Latin script and, additionally, in English and French and need to be filled, exclusively, in Croatian Language and Latin script. Therefore, the signature of the applicant on the Form 5 and the Form 7 (data to be entered into the passport) should be written in Latin script when filling in the afore-mentioned forms. We would like to emphasise that the Law on Personal Name or any other acts do not regulate the issue of the signature in the script on national minority. We are kindly asking you to contact a body competent for a legal interpretation in reference to the issue."¹⁵⁶

- The Article 9 paragraph 2 of the Constitutional Law mentions that the persons belonging to national minorities are entitled to the ID Card form printed and filled in the language and script they use. The opinion of the Ministry of Interior is that this particular right can be exercised, if request, only by those persons belonging to minorities who live in the areas of local or field units of Self-government in which the language used by the respective minority was, beside the Croatian language, officially introduced as the second official language. But, since the Article 9 paragraph 2 does not refer to the implementation of the provisions of the Law on the Use of Minority Language and Script or to another provision of the Constitutional Law on the Rights of National Minorities, and that, in some opinions, this personal right of choice should not be related to the number of persons belonging to particular minority in the areas of certain units of local/field Self-government, it is to be concluded that some interpretations are quite opposite to the opinion of the Ministry of Interior.¹⁵⁷ Several applications for bilingual ID cards by ethnic Serbs from Vukovar area, where Serbian language was not introduced as second official language were rejected on the basis of the opinion of the Ministry of Interior.¹⁵⁸

- Exercise of the right to giving traditional local names, names of the streets and other topographical signs providing for the general public in minority language when there is adequate interest relates to the exercise of the right to official use of minority language and script (see under the Item IV.VIII). This right is respected in general in units of local self-government where a minority language in the official use. The example of partial exercise of this right is noticed in 4 municipalities of the Vukovar-Sirmium County (municipalities: Trpinja, Borovo, Markusica and Negoslavci) where Serbian language is in official use but there are no bilingual (Croatian and Serbian) traffic signs. Traffic signs with the name of the village are written only in Croatian language and Latin script, there are no traffic signs in Serbian language and Cyrillic script although municipal officials asked for them. Bodies competent to deal with these issues did not meet the requests made for many years by these municipalities, additionally, they removed bilingual signs municipal officials put.

- In former UNTAES area, the Eastern Slavonia, on August 20, 1997 the Directive on Presentation of Signs of Public Institutions, Enterprises and Other Administrative Bodies whose official signs was issued, upon the completion of reintegration of particular enterprise or institution on the basis of

¹⁵⁵ The Report of the Republic of Croatia on the Implementation of the Framework Convention on Protection of National Minorities, March 2004, page 11

¹⁵⁶ Memorandum from the Ministry of Interior no.511-01-72-6012/4-02, March 18, 2002

¹⁵⁷ Audio record from the radio project ETNOS, Radio show no.7, October 17, 2003, interview with Mrs. Gordana Vucic, Administrative Department of the Ministry of Interior of Vukovar-Sirmium County and Ljubomir Radić, Assistant Minister of Interior belonging to the Serbian national minority

¹⁵⁸ Audio record from the radio project ETNOS, Radio show no.7, October 17, 2003, interview with Mrs. Gordana Vucic, Administrative Department of the Ministry of Interior of Vukovar-Sirmium County and Ljubomir Radić, Assistant Minister of Interior belonging to the Serbian national minority

written document were presented in both languages and scripts, Serbian and Croatian.¹⁵⁹ The Directive was planned to be in force till Transitional Administrator decides otherwise. Some signs were removed after the UNTAES mandate finished during the period of so called Peaceful Reintegration and only those signs that were in Croatian language were left.

- Zdenka Čuhnil, the representative of Czech and Slovak minorities in Croatian Parliament commented on the law on Use of Minority Language and script as follows: " Regarding this other law on use of language and scripts, it is also a good law, but, how many units of local self-government incorporated it into their statutes? I've already mentioned one bizarre example where a minority has acquired right to use its minority language in one city. But, local authorities put that right to a level of decision to put the welcoming sign to the entrance of that city in both Croatian and a minority language and, in that sense, the use of a minority language in that city finishes right there for them. While current Government is trying to assist in overcoming these entire minority related problems and policies, a lot is collapsing at local and regional levels and I am wondering when will they call for action since the implementation of certain laws, in many ways, depend on them in final instances."¹⁶⁰

- In the opinion of some non-governmental associations from Knin, such as ALTRUIST Split, Knin Office, expression of intolerance against minority language and script (Cyrillic) of Serbian community makes Serbs to use Latin script even in cases when this is traditionally beyond comprehension, for example in notices on religious services, death announcements, tombstones. An example of intolerance: Twenty-year old M.Z. was killed on August 5, 1995, in joint police and military action "Storm". His body was exhumed from the mass grave in Knin. He was buried in the village where he was born in the beginning of 2004. His parents live in Serbia and Montenegro and, therefore, they printed his death announcement in Cyrillic script in Belgrade. The announcements that were placed in the streets of Knin were destroyed the very same day. Similar announcements if written in Latin script are not being removed but, often, some improper remarks are being added on them.

IV.X

Article 12

1. The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.

2. In this context the Parties shall inter alia provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities.

3. The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.

National legislation (pursuant to the Article 12 of the FCNM):

Constitutional Law on the Rights of National Minorities

Article 11 & 15 (see under Item IV.III National legislation)

The Law on Upbringing and Education in the Language and Script of Ethnic

COMMENTS on the implementation of the Article 12 of the FCNM:

- In accordance with the Constitutional Law, for the purpose of preservation, development, promotion and expression of their own national and cultural identity, persons belonging to national minorities may establish associations, endowments and foundations, as well as institutions for the performance of public information activities, cultural, publishing, museum, archival, library and scientific activities.

¹⁵⁹ UNTAES The Office of Transitional Administrator, Presentation of signs of public institutions, enterprises and other administrative bodies – Directive dated August 20, 1997

¹⁶⁰ STINA News Agency, Educational and Informative Service for the Rights of Minorities and Interethnic Tolerance, no.3, May 31, 2004

the Law also stipulates that institutions of higher education may organise the conduct of the programme of education of school counsellors and teachers for the performance of tasks of education in the language and script used by national minorities in a part containing specific qualities of a national minority (mother tongue, literature, history, geography and cultural creativity of a national minority).

- In practice, some minority communities face the problem of adjustment or provision of (adequate) textbooks in minority languages when creating, adjusting to specific needs and adopting plans and programs for education of national minorities and ensuring human resources trained to teach in minority language.¹⁶¹ In the beginning of academic year 2003/2004, the moratorium on teaching history of former Yugoslavia for the period 1989 – 1995 that was introduced in 1997 for the students, ethnic Serbs in former UNTAES area expired. The Ministry of Education and representatives of Joint Council of Municipalities (Serbian organisation established in accordance with the Letter of Intent by the Republic of Croatia on completion of the process of peaceful reintegration under the UNTAES administration in 1997) agreed to produce special separate history textbooks, in order to have a more impartial and better balanced viewing of the recent history, the time prior to the 1991 – 1995 war period. Those materials are to be designed for the students of Serbian ethnicity. Joint Council of Municipalities insisted on "impartial establishment of historical facts". The working group on separate textbooks included both Serbian and Croatian experts.¹⁶² Separate textbooks have not yet been produced. Independent analyses of particular primary and secondary school textbooks still reflect signs of intolerance and negative prejudices against minorities.¹⁶³ For example, the analyses of one science textbook for the first grade of primary school "From Home to School" by Jadranka Žderić published in 2000 says that "...insisting, exclusively, on Roman Catholic holidays without contextualising showing that there also others is followed by questions on how Christmas is celebrated within the family. This must be traumatic for children that are not Roman Catholics. The question: "How do you celebrate Christmas?" violates the right to privacy". The analyses of one history textbook for the 8th grade of primary school by the author Mrs. Vesna Đurić published in 2000 says that: "the students are being served (historical) forgeries... any criticism is impossible" and recommends for the textbook in question to be eliminated for "many lies and manipulations which mislead the students in terms of history and coexistence"¹⁶⁴ Roma children and students face problems of discrimination and segregation in schools. "An estimated 10 percent of Croatian Roma children begin primary school, and of these only approximately 10 percent go on to secondary school. International and local NGOs remained concerned about the practice of holding separate classes (allegedly of lower quality) for Roma students in northern Croatia. In May, the European Centre for Roma Rights (ECRR) lodged a pre-application letter against Croatia with the European Court of Human Rights in Strasbourg related to the case of segregated classes in Medjimurje. In 2002, the Cakovec County Court confirmed a municipal court's verdict, which rejected a complaint by 15 parents of Roma students who charged the Ministry of Education, Medjimurje County, and four primary schools for operating segregated classes. ECRR filed the pre-application to bring the matter before the European Court should the Croatian Constitutional Court rule against their appeal. In March, more than 100 residents of the village of Drzimurec–Strelec protested against the building of a new wing of a primary school for Roma children, who constitute a majority in the first four grades. County authorities said they would not give up the project and that construction, delayed for technical reasons, was scheduled to begin in 2004. A school in Medjimurje held both mixed and integrated classes; however, it fell short of the constitutionally guaranteed right of all citizens to equal education regardless of ethnicity."¹⁶⁵

¹⁶¹ Audio record of Radio project ETNOS, radio show no.10, November 7, 2003

¹⁶² Audio record of Radio project ETNOS, radio show no.10, November 7, 2003, statement by Mr. Đuro Podunavac, the president of Education Board of the Joint Council of Municipalities and Mr. Jovan Ajduković, the president of Joint Council of Municipalities

¹⁶³ Analyses of the Primary School Textbooks in the Republic of Croatia – What Kind of Intolerance New Textbooks Contain or What are the Values on Which We Up Bring and Educate New Generations, Friedrich-Naumann Stiftung, Zagreb, 2002

¹⁶⁴ IBID pages 7 and 8

¹⁶⁵ Country Report on Human Rights Practices -US Bureau of Democracy, Human Rights and Labour, Report on Human Rights in Croatia for 2003, February 2004

- On teaching of religion (religious classes) see under Item IV.VI.

IV.XI

Article 13

1. Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments.

2. The exercise of this right shall not entail any financial obligation for the Parties.

National legislation (pursuant to the Article 13 of the FCNM):

Constitutional Law on the Rights of National Minorities

Article 11 paragraph 8 (see under Item IV.III National legislation)

Comments referring to the implementation of the Article 13 of the FCNM:

- The Republic of Croatia set both formal and legal frames within its national legislation for the adequate implementation of the Article 13 of the FCNM.

IV.XII

Article 14

1. The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.

2. In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.

3. Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language.

National legislation (pursuant to the Article 14 of the FCNM):

Constitutional Law on the Rights of National Minorities

Article 11 (see under Item IV.III National legislation)

COMMENTS on the implementation of the Article 14 of the FCNM:

- The Constitutional Law on the Rights of national minorities guarantees the right to persons belonging to national minorities to the upbringing and education in the language and script they use. The Law also guarantees the right to persons belonging to minorities to education in the language of the majority. Persons belonging to Serbian and other minorities living in the former UNTAES area are guaranteed the right to educational and cultural autonomy pursuant to the Article 8 of the Letter of Intent by Croatian government submitted to the UN Security Council on the completion of the peaceful integration from 1997. Pursuant to the Law on Upbringing and Education of persons belonging to national minorities, teaching in the language and script they use is performed in pre-school institutions, primary and secondary schools and other educational institutions. Schools in which the teaching is performed in a minority language and script can be founded even if the number of the pupils is lower compared to the number of pupils required for establishment of the school in which the teaching is performed in Croatian language and script. Pupils who are attending classes in the language and script of a minority have the right but also an obligation to study Croatian language and Latin script. School curriculum and program, apart from the general part, contains the part related to the specifics of a national minority (mother tongue, literature, history, geography and cultural opus of a national minority). Upbringing and education of persons belonging to national minorities is

performed through three different basic models. Basic models are: A – teaching in the language and script of national minorities, B – bilingual teaching and C- promotion of the language and culture of minorities.

- Model A considers founding of separate schools in which the teaching is performed in minority language and script. In case of Serbian minority, the Government's view is rather different. Compared to similar requests by Italian and Hungarian minorities, the Government discriminates the requests by Serbian minority. Italian minority in Istria and Hungarian minority in Eastern Slavonia have established separate minority schools with classes in their own languages and scripts. The requests by Serbian minority for founding and formal registration of schools in Serbian language and Cyrillic script (teaching in Serbian language and script is already being performed in some schools, but those schools are not formally registered as minority schools) from July 2002 met with negative reactions of the authorities. Mr. Goran Granic, who was the Prime Minister of the Croatian Government at that time claimed that such a request by the Serbian minority might result in a segregation of Serbian school children.¹⁶⁶ The most important issues related to the minority education include employment of qualified Serbian teachers, school curriculum and program on national level that includes national minorities' contribution (including history, literature, geography, etc) and additional programmes in Serbian language and script.¹⁶⁷ This problem, obviously, is a serious political issue at local but also national level. Mr. Djuro Podunavac, the president of the Educational Board of the Joint Council of Municipalities, said that the lack of implementation of the law in this case was a result of extreme views by certain individuals.¹⁶⁸ The Government asked for the OSCE Mission to the Republic of Croatia engagement in the issue in order to ensure that the right to minority education does not result in exclusion or isolation of minorities. The incidents between the students of Serbian and Croat ethnicity happen occasionally in the area of Eastern Slavonia. School facilities in the city of Vukovar are being physically divided to Croat and Serbian classes and the whole political situation at local level does not contribute to reductions in interethnic tensions. Vukovar Grammar School is just one of the examples of physical division on "Croatian" and "Serbian" parts. Mr. Vladimir Stengl, the Mayor of Vukovar, commented on the fact that Croatian students attend classes in reconstructed school premises while the Serbian children still use the old and unreconstructed building, saying that the citizens had the right to insist on the Serbian classes not to be held in the building the Serb forces destroyed ten years ago.¹⁶⁹ The issue of formal founding and registration of minority schools in Serbian language continues to be unsolved for the silence of the administration.

- In Knin, despite constant efforts of Serb Orthodox Church and Serb Cultural Association "Prosvjeta" students of Serb ethnicity were not provided the additional school program in their mother tongue.¹⁷⁰ Although the children and their parents were interested to form classes in Serbian language in Pakrac and Daruvar they were explained that there was insufficient number of students and their requests to form such classes were rejected.¹⁷¹

- For details related to the education issues, see, also, the Item IV.X.

IV.XIII

Article 15

The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

National legislation (pursuant to the Article 15 of the FCNM):

The Constitution of the Republic of Croatia

Article 44.

¹⁶⁶ OSCE, Status report no.11, November 2002, page 11

¹⁶⁷ OSCE, Status report no.11, November 2002, page 11

¹⁶⁸ Audio record of Radio project ETNOS, radio show no.10, November 7, 2003

¹⁶⁹ Data by Novi List, February 7, 2002

¹⁷⁰ Information by association ALTRUIST, Split, Knin office

¹⁷¹ Information by Center for Peace Studies from Zagreb and association Delfin from Pakrac

Every citizen of the Republic of Croatia shall have the right, under equal conditions, to take part in the conduct of public affairs, and to have access to public services.

Article 45.

All Croatian citizens of the Republic of Croatia who have reached the age of eighteen years shall have universal and equal suffrage. This right shall be exercised through direct elections by secret ballot.

In elections for the Croatian Parliament and for the President of the Republic, the Republic of Croatia shall ensure suffrage to its citizens who are abroad at the time of the elections, so that they may vote in the countries in which they are or in any other way specified by law.

Constitutional Law on the Rights of National Minorities

Articles 19 – 36

Article 19.

(1) The Republic of Croatia shall guarantee members of national minorities the right to representation in the Croatian Parliament.

(2) Members of national minorities shall elect a minimum of five and a maximum of eight of their representatives in special electoral units, in compliance with the law regulating the election of representatives into the Croatian Parliament, whereby the acquired rights of national minorities may not be decreased.

(3) Members of national minorities who participate in the total population of the Republic of Croatia with more than 1.5% shall be guaranteed a minimum of one and a maximum of three representative seats for the members of that national minority, in compliance with the law regulating the election of representatives into the Croatian Parliament.

(4) Members of national minorities who participate in the total population of the Republic of Croatia with less than 1.5% shall have the right to elect a minimum of four representatives, members of national minorities, in compliance with the law regulating the election of representatives into the Croatian Parliament.

Article 20

(1) 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.

(2) If at least one member of a national minority, which participates in the population of the local self-government unit with more than 5 % and less than 15 %, is not elected in the representative body of the self-government unit on the basis of universal suffrage, the number of members of the representative body of the self-government unit shall be increased by one member, and the member of a national minority, who was not elected first according to the proportional success of each slate in the elections, shall be considered elected, unless otherwise stipulated by the law regulating the election of members of the representative body of a local self-government unit.

(3) If, based on universal suffrage, a national minority which accounts for at least 15% in the population of a local self-government unit, is not represented in the representative body of the local self-government unit by the number of members of the national minority which is proportional to its share in the population of that local self-government unit, the number of members of the representative body of the unit shall be increased up to the number which is necessary to exercise the representation, and those members of a certain minority, who were not elected, according to the order of proportional success of each slate in the elections, shall be considered elected, unless otherwise stipulated by the law regulating the election of members of the representative body of a local self-government unit.

(4) If, based on universal suffrage, a national minority which accounts for more than 5 % in the population of a regional self-government unit, is not represented in the representative body of the unit by the number of members proportional to its share in the population of that regional self-government unit, the number of members of the representative body of the unit shall be increased up to the number which is necessary to exercise the representation, and those members of a certain minority, who were not elected, according to the order of proportional success of each slate in the elections, shall be considered elected, unless otherwise stipulated by the law regulating the election of members of the representative body of a regional self-government unit.

(5) If the representation of members of national minorities in the representative body of a local self-government unit is not reached even with the application of the provisions as per Paragraphs 2 and 3 of this Article, or if the representation of members of national minorities in the representative body of

a regional self-government unit is not reached even with the application of the provisions as per Paragraph 4 of this Article, by-elections shall be called in the self-government unit in compliance with these provisions.

(6) The nomination and election of members of the representative body of a local self-government unit and regional self-government unit pursuant to the provisions of Paragraphs 2, 3, 4 and 5 of this Article, shall be regulated by the law regulating the election of members of representative bodies of local and regional self-government units.

(7) 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 election, the official census results on the number of members of national minorities in a local or regional self-government unit shall be conformed to possible changes registered in the last confirmed voter's list of that unit.

Article 21

Local self-government units and regional self-government units, in which members of national minorities do not constitute the majority of population, may determine by their statutes that members of national minorities, or a larger number of members of national minorities, are elected to the representative body of a local self-government unit or regional self-government unit than it ensues from their share in the total population of the unit.

Article 22

(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.

III. COUNCILS AND REPRESENTATIVES OF NATIONAL MINORITIES IN SELF-GOVERNMENT UNITS

Article 23

Members of national minorities shall elect, in the manner and under the conditions stipulated by this Constitutional Law, their representatives for the reason of participation in the public life and management of local affairs through the councils and representatives of national minorities in self-government units, in order to improve, preserve and protect the position of national minorities in the society.

Article 24

(1) In self-government units in the area of which members of an individual national minority participate with at least 1.5 % in the total population of the self-government unit, in local self-government units in the area of which more than 200 members of an individual national minority are living, and regional self-government units in the area of which more than 500 members of a national minority are living, members of each of those national minorities may elect the Council of National Minority.

(2) Ten members of a national minority shall be elected into the Council of National Minority of a municipality, 15 members into the Council of National Minority of a town and 25 members into the Council of National Minority of a county.

(3) In cases when at least one of the conditions as per Paragraph 1 of this Article for the election of the Council of National Minority has not been fulfilled, and there are at least 100 members of a national minority living in the area of a self-government unit, a minority representative shall be elected for the area of such self-government unit.

(4) The candidates for the members of the Council of National Minority, that is, the candidates for minority representatives, may be proposed by the associations of national minorities or by at least 20 members of a national minority from the area of a municipality, that is, 30 members from the area of a town and 50 members from the area of a county.

(5) The members of the Council of National Minority and minority representatives shall be elected directly, by secret ballot, for a four-year term, and the provisions of the Law, which regulate the election of the members of representative bodies of local self-government units, shall be appropriately applied to the election procedure and other issues related to their election.

(6) The census, corrected (increased or decreased) by that number of voters who are registered in or deleted from the voter's list, compiled for the election of members of representative bodies of local self-government units, shall be relevant to the determination of the number of members of a national minority for the conduct of the provisions of this Article.

Article 25

(1) The Council of National Minority shall be a non-profit legal person. It shall acquire the capacity of a legal person by the entry into the Register of Councils of National Minorities, which is kept by the Ministry competent for general administration affairs.

(2) The Council of National Minority shall be responsible for its commitments with its entire assets.

(3) The title of the Council of National Minority shall be in the Croatian language and Latin script, as well as in the language and script used by the national minority which founded the Council.

(4) The title of the Council of National Minority shall contain the sign of the national minority and the sign of the area for which it was elected.

(5) The Minister competent for general administrative affairs shall stipulate the content of the Register of Councils of National Minorities and the manner of its keeping by a Rule Book, as well as the form of requests for entry into the Register of Councils of National Minorities.

Article 26

The members of the Council of National Minority shall elect the President of the Council by secret ballot. The Council of National Minority shall also elect a person who shall replace the President of the Council in case of his absence or him being prevented to perform his duty.

Article 27

(1) The Council of National Minority shall pass the working programme, financial plan and annual financial statement, as well as the statute which regulates the issues of significance for the work of the Council.

(2) The President of the Council of National Minority shall represent and act on behalf of the Council of National Minority, convene the sessions of the Council and have the rights and obligations set forth by the Statute of the Council.

(3) The Council of National Minority shall pass the Statute, working programme, financial plan and the annual financial statement by the majority of votes of all members.

(4) The statute, financial plan and the annual financial statement of the Council of National Minority shall be published in the official gazette of the local or regional self-government unit for the area of which the Council was established.

Article 28

(1) Self-government units shall provide the funds for the work of The Council of National Minority, including the funds for the performance of administration tasks for their needs, and they may also provide the funds for the conduct of specific activities set forth in the working programme of the Council of National Minority.

(2) The funds for the exercise of specific programmes of the Council of National Minority may also be provided from the state budget of the Republic of Croatia.

Article 29

(1) The funds, which the Council of National Minority gains from its property, from donations, gifts, inheritance or some other basis, may be used exclusively for the activities and tasks of importance for the national minority which were determined in the working programme of The Council of National Minority.

(2) The funds, which the Council of National Minority gains from the state budget of the Republic of Croatia or the budget of a self-government unit, may be used exclusively for the purposes determined in the budget and law, that is, by a decision which regulates the execution of the budget, or for the purposes determined by the Council for National Minorities, in the case of funds from the state budget of the Republic of Croatia.

(3) When the Council of National Minority purchases goods or services or performs works using the funds as per Paragraph 2 of this Article, it may only use them under the conditions and in the manner stipulated by the Law on Public Purchase.

Article 30

(1) The members of the Council of National Minority shall perform their duties, as a rule, voluntarily and with the care of a good host.

(2) The members of the Council of National Minority may only receive a compensation for the costs they had while performing the tasks for the Council from the Council's funds, as well as a reward, on a monthly basis or some other period of time, if approved, and to the amount approved, by the minister competent for general administration.

Article 31

(1) The Council of National Minority in a self-government unit shall have the right to:

- propose to the bodies of a self-government unit the measures for the improvement of the position of a national minority in the state or in an area thereof, including the submission of proposals of general acts which regulate the issues of significance for a national minority to the bodies which adopt them;*
- propose candidates for duties in state administrative bodies and bodies of self-government units;*
- be informed about each issue which the working bodies of the representative body of a self-government unit will discuss, and which pertains to the position of a national minority;*
- provide opinions and proposals with regard to the programmes of radio and television stations at the local and regional level intended for national minorities or programmes which deal with minority issues.*

(2) The bodies of self-governments units shall regulate the manner, deadlines and the procedure for the exercise of rights stipulated in Paragraph 1 of this Article by its general acts.

Article 32

(1) The authorities of a self-government unit shall be obliged, in the preparation of proposals of general acts, to request from the Council of National Minority established for its area an opinion and proposals with regard to the provisions which regulate the rights and freedoms of national minorities.

(2) Should the Council of National Minority deem that a general act of a self-government unit or some of its provisions, is contrary to the Constitution, this Constitutional Law or special laws regulating the rights and freedoms of national minorities, it shall be obliged to immediately inform about it the ministry competent for general administration. It shall also inform on that the authorities of the self-government unit and the Council for National Minorities.

(3) If the Ministry competent for general administration evaluates that the general act as per Paragraph 2 of this Article or some of its provisions is contrary to the Constitution, this Constitutional Law or special laws which regulate the rights and freedoms of national minorities, it shall terminate its implementation within eight days.

(4) The decision on the termination of implementation shall be forwarded, without a delay to the municipal mayor, city mayor, that is, to the county mayor and to the president of the representative body which passed the general act and the information on the passing of the decision shall be forwarded to the Council for National Minorities and to the Council of National Minority based on which information the decision was passed.

(5) The Ministry competent for general administration shall forward to the Government of the Republic of Croatia the decision on the termination of implementation of the general act with a proposal for the initiation of the procedure for the assessment of conformity with the Constitution and law before the Constitutional Court of the Republic of Croatia and it shall inform a self-government unit on that.

(6) The termination of the implementation of the general act shall cease if the Government of the Republic of Croatia does not initiate the procedure as per Paragraph 5 of this Article within 30 days from the day of receipt of the decision as per Paragraph 5 of this Article.

Article 33

(1) Two or more Councils of National Minorities founded in the same local self-government unit, two or more Councils of National Minorities founded in different local self-government units, two or more Councils of National Minorities founded in the same regional self-government unit and two or more Councils of National Minorities founded in different regional self-government units may establish the co-ordination of Councils of National Minorities for the purpose of conformation and promotion of mutual interests.

(2) The Councils of National Minorities shall conform the positions on the issues from their scope of activities through the co-ordination of Councils of National Minorities.

(3) The Councils of National Minorities may authorise the co-ordination of Councils of National Minorities to undertake particular measures as per Article 31 of this Constitutional Law, on their behalf.

(4) It shall be considered that the Councils of National Minorities of regional self-government units have established a co-ordination of Councils of National Minorities for the area of the Republic of

Croatia when more than half of Councils of National Minorities of regional self-government units joined the agreement on the establishment of this co-ordination.

(5) The co-ordination of Councils of National Minorities, which was established by the Councils of National Minorities of regional self-government units for the area of the Republic of Croatia, may pass decisions on signs and symbols of national minorities and on the manner of celebration of holidays of national minorities with the consent of the Council for National Minorities.

Article 34

(1) A minority representative shall perform his tasks under the title which has to be in the Croatian language and Latin script and in the language and script used by the national minority which elected him and which contains the mark of the area for which he was elected.

(2) A minority representative shall open an account for funds which are used for the exercise of minority rights in the area of a local self-government unit for which he was elected, the financial plan for the use of those funds and the annual financial statement for those funds. The financial plan and the annual financial statement for the funds used for the exercise of minority rights, shall be published in the official gazette of the self – government unit for the area of which the minority representative has been elected.

(3) The provisions of Articles 28, 29, 30, 31, 32 and 33 of this Constitutional Law shall be adequately applied to a minority representative and his competencies and duties.

IV. THE COUNCIL FOR NATIONAL MINORITIES

Article 35

(1) The Council for National Minorities shall be established in order for national minorities to participate in the public life of the Republic of Croatia and especially to discuss, propose, regulate and resolve issues related to the exercise and protection of rights and freedoms of national minorities.

With that goal, the Council shall co-operate with the competent state bodies and bodies of self-government units, councils of national minorities or minority representatives, associations of national minorities and legal persons performing the activities, through which minority rights and freedoms are exercised.

(2) The Council for National Minorities shall have the right to:

- propose to the bodies of state authorities to discuss certain issues of significance for a national minority, particularly the implementation of this Constitutional Law and special laws regulating minority rights and freedoms;
 - propose to the bodies of state authorities measures to improve the position of a national minority in the state or in an area thereof;
 - provide opinions and proposals about the programmes of public radio stations and public television intended for national minorities and about the manner in which minority issues are being treated in the programmes of public radio stations and public television and other media;
 - propose the undertaking of economic, social and other measures in the areas that are traditionally or in a significant number inhabited by members of national minorities in order to preserve their existence in those areas.
 - request and acquire from the bodies of state authorities and bodies of local and regional self-government the data and reports required for discussing the issues from its scope of activities;
 - invite and request the presence of representatives of bodies of state authorities and bodies of local and regional self-governments, which competence includes the issues from the scope of activities of the Council established by this Constitutional Law and the Statute of the Council.
- (3) The Council for National Minorities shall co-operate in the issues of interest for national minorities in the Republic of Croatia with the competent bodies of international organizations and institutions which deal with the issues of national minorities as well as with the competent bodies of parent countries of members of national minorities in the Republic of Croatia.
- (4) The Council for National Minorities shall allocate the funds provided from the state budget for the needs of national minorities. The beneficiaries of the funds shall submit annual reports to the Council on the expenditure of the funds which were allocated to them from the state budget, of which the Council shall inform the Government of the Republic of Croatia and the Croatian Parliament.
- (5) If the Council for National Minorities fails to pass a decision on the allocation of funds as per Paragraph 4 of this Article within 90 days from the adoption of the state budget, the Government of the Republic of Croatia shall pass a decision on it.

Article 36

(1) The Government of the Republic of Croatia shall appoint members of the Council for National Minorities for a four-year term, as follows:

- seven members of national minorities, from among the ranks of persons proposed by councils of national minorities,
 - five members of national minorities from among the ranks of distinguished cultural, scientific, expert, religious employees from among the ranks of persons proposed by minority associations and other minority organisations, religious communities, legal persons and citizens, members of national minorities.
- (2) The members of the Council for National Minorities shall also be representatives of national minorities in the Croatian Parliament.
- (3) The Council for National Minorities shall have a President and two Deputy Presidents appointed by the Government of the Republic of Croatia from among the ranks of the members of the Council. One of them shall be obligatorily a member of the Council from among the ranks of a national minority which participates in the total population of the Republic of Croatia with more than 1.5%.
- (4) On the occasion of the appointment of members of the Council for National Minorities, the Government of the Republic of Croatia shall take into account the share of members of particular national minorities in the total population of the Republic of Croatia, as well as the fact that the composition of the Council shall reflect their identity and specific quality, historical values, ethnic, cultural and every other diversity.
- (5) The President and Deputy Presidents of the Council for National Minorities shall perform their duty professionally and the President of the Council shall also be the Head of the Expert Office of the Council.
- (6) The Government of the Republic of Croatia shall establish the Expert Office of the Council for the performance of expert and administrative tasks for the Council for National Minorities and it shall determine the approximate number of its officials and employees.
- (7) The Council for National Minorities shall have a Statute adopted with the consent of the Government of the Republic of Croatia. The Statute shall more precisely regulate the scope of activities and the organization of the Council.
- (8) The Council for National Minorities shall adopt the working programme, the financial plan, the annual financial statement and decisions on the allocations of funds which are provided in the state budget for the needs of national minorities.
- (9) The Council for National Minorities shall adopt a Rule Book on the Internal Order of the Expert Office of the Council upon the proposal of the President of the Council.
- (10) The Council for National Minorities shall pass decisions with the majority of all members.
- (11) The working programme of the Council for National Minorities, the financial plan and the annual financial statement of the funds of the Council for National Minorities, and the acts, whereby the Council for National Minorities allocates the funds provided in the state budget for the needs of national minorities, shall be published in the "Official Gazette".

COMMENTS on the implementation of the Article 15 of the FCNM:

- The Constitutional Law on the Rights of National Minorities guarantees representation to national minorities in representative bodies at national and local levels, as well as in administrative and judicial bodies and participation of persons belonging to minorities in the public life and local affairs management via councils and representatives of national minorities.

-The Republic of Croatia through its Constitutional Law on the Rights of National Minorities guarantees representation of a minimum of 5 and a maximum of 8 representatives in Croatian Parliament to persons belonging to minorities. Persons belonging to national minorities who make up more than 1.5% of the total population of the Republic of Croatia with more than 1.5% shall be guaranteed a minimum of one and a maximum of three representative seats for the members of that national minority, in compliance with the law regulating the election of representatives into the Croatian Parliament. The Law on Amendments on the Law on Election of Members of the Croatian Parliament that was adopted in April 2003, extended earlier right of national minorities to elect five representatives into the Parliament to eight representatives. Persons belonging to the Serb national minority elect 3, Hungarian and Italian minorities each 1 and other 19 minorities together 3

representatives.¹⁷² Eight minority representatives were elected into Croatian Parliament in elections held on November 23, 2003. Certain minorities were concerned if common representatives of several minority communities would ensure that their voices are "heard" in the Parliament.¹⁷³ The request by certain minorities to a "dual" right to vote was not accepted by the Government and the Parliament, or by the Constitutional Court of the Republic of Croatia.¹⁷⁴

- Constitutional Law on the Rights of National Minorities guarantees to national minorities the representation in representative bodies of the units of local and regional self-government. In February 2002, By-elections for the election of the representatives of national minorities and Croatian people into municipal and city councils and county assemblies were held. This, in principle, ensured proportional representation of minority population, Serbs and Roma in particular, in 19 local and regional self-governments which was not realised by earlier local elections held in 2001.

- The Constitutional Law guarantees the right to proportional representation in state administrative and judicial bodies as well as in the bodies of the units of local and regional self-governments to the persons belonging to national minorities. According to the Constitutional Law, the persons belonging to national minorities shall, under the same conditions, be given a priority over the others in employment within those bodies. However, "No efforts have been undertaken by the Government to implement the CLNM guarantees of minority representation in the state administration and judiciary, despite significant under-representation in these spheres"¹⁷⁵. "Some Government officials have expressed reluctance towards this part of the CLNM, suggesting that it is "too soon" for implementation that might result in a backlash"¹⁷⁶. Since there was a reorganisation of the ministries and other government bodies after the formation of the new Government, a central register of all civil servants and officials has not yet been compiled, and therefore it is not possible to provide data on the share of national minorities in state administrative bodies.¹⁷⁷ Government information as of 31 October 2003 indicates that 95 per cent of all judicial personnel are Croats, while 2.5 per cent are Serbs (compared with 4.5 per cent of the total population) and 2.6 per cent (compared to 2.9 per cent of the total population) are other national minorities.¹⁷⁸ In county Courts and County state attorney's offices, Serbs are represented with 3,8% and other minorities with 4,4% and 2,3%. "Serbs are significantly under-represented at the municipal court and particularly municipal state attorneys offices. There continue to be no Serb or other minority judges on the Administrative Court, no Serb and only two other minority judges on the Supreme Commercial Court and regional commercial courts (160 judges total), whereas there is one Serb and two other minority members on the Supreme Court."¹⁷⁹

For the ethnic structure of those employed in judiciary or with the state attorney's offices in 2003 and obstructions in employment of minorities within those structures, see under Item IV.II. Comments on the implementation of the Article 4 of the FCNM. The insufficient representation of the persons belonging to minorities within the administration and executive power exists also at the levels of the units of local and regional self-government. Mrs. Nives Kopajtić – Škrlec, Head of the Office for Establishment of Local and Regional Central State Administrative Office, said: " ... we are aware that certain administrative units are under staffed, but, in most parts of Croatia, that is not the case. They have more than enough employees so the Constitutional Law and the right to the minority representation will be possible only in the future in the way regulated by the Constitutional Law. This

¹⁷² See Official Gazette "Narodne novine" no. 53/2004, Law on Election of the Representatives into the Croatian Parliament, Article 16

¹⁷³ Macedonian and Albanian communities for example, see: Report of the Republic of Croatia on the Implementation of the Framework Convention on Protection of National Minorities, March 2004, pages 52, 53

¹⁷⁴ Article 4 Paragraph 2 of the Constitutional Law on the Rights of National Minorities says: "Members of national minorities shall exercise the rights and freedoms stipulated by the Constitution of the Republic of Croatia, as well as the rights and freedoms stipulated by this Constitutional Law and special laws, in the equal manner as other citizens of the Republic of Croatia."

¹⁷⁵ OSCE, Status Report no.13, December 2003, page 10

¹⁷⁶ OSCE, Status Report no.13, December 2003, page 10

¹⁷⁷ The Report of the Republic of Croatia on the Implementation of the Framework Convention on Protection of National Minorities, March 2004, page 32

¹⁷⁸ OSCE, Status Report no.13, December 2003, page 10, footnote 24

¹⁷⁹ OSCE, Status Report no.13, December 2003, page 10, footnote 24

means that the ethnicity of the employees will be taken into consideration only in future vacancies.¹⁸⁰ There is no detailed and complete data on the representation of persons belonging to national minorities within the administration or the executive.¹⁸¹ Letter of Intent of Croatian government to the UN Security Council on competition of the peaceful reintegration from 1997, in its paragraph 4, guarantees to the Serb ethnic community under the transitional administration that their representatives shall be appointed deputy prefects in the areas of two counties, Vukovar-Sirmium and Osijek-Baranja counties and the Government respects that. Number of appointed assistant ministers, representatives of the Serbian community, was raised from four to eight in the beginning of 2004 as guaranteed by the Letter of Intent in its paragraph 7.

- The Constitutional Law, related to the participation of persons belonging to national minorities in public life and local affairs management, enables establishment of councils and/or national minorities' representatives in the units of local and regional self-government inhabited by persons belonging to minorities in the number specified by the Law. In order to ensure minority participation in public life at national level the Law also enables establishment of the Council for National Minorities at national level. Such national Council for National Minorities was established in 2003. Councils, representatives and the Council for National Minorities are in most cases only playing the advisory roles in order to contribute to progress, preservation and protection of the position of persons belonging to national minorities. The Council for National Minorities decides on distribution of the state budget resources ensured for the needs of national minorities. According to the 2001 census, national minorities were entitled to elect 417 different minority councils in 263 municipalities and 18 counties, and 141 representative in additional 40 municipalities in 21 counties. In May 2003, the elections for councils and representatives of national minorities were held. 220 councils and 42 representatives were elected on those elections. Minorities were given minimum of time in compliance with the law to prepare for the elections. The voter turnout was only 13%. Since the Constitutional Law on the Rights of National Minorities has introduced many new regulations that are of the interest for national minorities such as the elections and establishment of the councils for national minorities, there is an impression that the governmental institutions did not do much in promoting the law or interpreting its provisions. During preparations and the elections, many problems related to the lack of informing and education of minority communities were noticed. Less than one half of the potential number of candidates was nominated. This imposes the conclusion that the lack of informing and education was not only the characteristic of the voters but also some of the candidates and that low response by the voters can, partially, be explained as the lack of interest in these elections. Certain minorities complained because lists of voters were not updated and records of the ethnicity of the citizens were inaccurate. As of late November 2003, 209 councils had been constituted; of those, 115 had completed the registration process with the Ministry of Justice necessary to operate as a legal entity.¹⁸² Since the May elections did not result in election of all councils and representatives of national minorities, Repeated and by-elections were held on February 15, 2004. Only 36,22% of the possibility to nominate the candidates was used and the voters responded badly.¹⁸³ Parliamentary Committee for Human Rights and the Rights of National Minorities, during one of its sessions, criticising the way the elections for the councils and representatives of national minorities were held, concluded that it was necessary to submit the request for a new election law on the councils for national minorities since there was no such law yet.¹⁸⁴ There are opinions that the Constitutional Law is over-standardised and that it creates the system parallel to already existing organisations of national minorities but also that the councils and the representatives can play their own role in local levels with no minority organisations or where

¹⁸⁰ STINA News Agency, Educational and Informative Service for the Rights of Minorities and Interethnic Tolerance, no.2, May 17, 2004

¹⁸¹ STINA News Agency, Educational and Informative Service for the Rights of Minorities and Interethnic Tolerance, no.3, May 31, 2004, press release by Mrs. Nives Kopajtić – Škrlec, Head of the Office for Establishment of Local and Field (Regional) Self-government of Central State Office for Administration

¹⁸² OSCE Status Report no.13, December 2003, page 9

¹⁸³ See www.izbori.hr/manjine/rezultati/predgovor

¹⁸⁴ Statement by Mr. Furija Radina, the representative of Italian national minority and the president of the Parliamentary Human Rights and the Rights of National Minorities Committee, STINA News Agency, Educational and Informative Service for the Rights of Minorities and Interethnic Tolerance, no.4, June 14, 2004

such organisations have no tradition.¹⁸⁵ Some believe that there was a failure in complete creation of the minority self-government since the minority councils were not established at national (state) level.¹⁸⁶ In certain local areas, in accordance with the law, local co-ordinations of the councils of national minorities were established.

- Since the Councils and representatives of national minorities present new institutes of minority communities in the Republic of Croatia and that these institutes were established and registered less than one year ago, we believe that it is still early to make conclusions on their work and results they have achieved. In some regions, certain minorities complained against the short deadlines, e.g. fast procedures of forming and establishing the councils for national minorities as well as against non-preparedness and lack of education of members of certain councils.¹⁸⁷ Work of the Councils and representatives of national minorities will be impossible to evaluate since it will depend also on their personal capacities, work and relations between local and regional Self-governments, etc. Governmental Office for National Minorities and Council for Ethnic and National Minorities. Made significant step forward in the field of educating council members and national minorities' representatives by organising seminars all over Croatia.

- For more details on efficient participation of persons belonging to national minorities in economic life and public affairs see under Items III.d. and IV.II

IV.XIV

Article 16

The Parties shall refrain from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the principles enshrined in the present framework Convention.

National legislation (pursuant to the Article 16 of the FCNM):

Constitutional Law on the Rights of National Minorities:

Article 4 paragraph 5

The undertaking of measures which change the proportion among the population in the areas inhabited by persons who belong to national minorities and which are directed at hindering the exercise or restricting the rights and freedoms stipulated by this Constitutional Law and special laws, shall be forbidden.

COMMENTS on the implementation of the Article 16 of the FCNM:

- The 2001 census showed significant changes in the ethnic structure of the population in the area traditionally inhabited by persons belonging to national minorities, especially by Serbs living in former Republic of Serb Krajina (areas of special state concern. Compared to the former period, the situation has changed up to certain level concerning increase in minority returns (see under Item III.a. paragraph 7). However, many refugees and displaced persons continue to face different problems and obstructions related to possible return to pre-war places of residence (see under Item III.d) which directly affects the proportion of minority population in certain areas. Planned settling but also housing of ethnic Croats exiled from Bosnia and Herzegovina and Serbia and Montenegro (Vojvodina and Kosovo) in areas formerly inhabited by expelled or exiled ethnic Serbs caused permanent changes in the ethnic structure in particular areas of the Republic of

¹⁸⁵ Mrs. Zdenka Čunhil, the representative of Czech and Slovak minorities in the Parliament of the Republic of Croatia, STINA News Agency, Educational and Informative Service for the Rights of Minorities and Interethnic Tolerance, no.3, May 31, 2004

¹⁸⁶ Mrs. Zdenka Čunhil, the representative of Czech and Slovak minorities in the Parliament of the Republic of Croatia, STINA News Agency, Educational and Informative Service for the Rights of Minorities and Interethnic Tolerance, no.3, May 31, 2004

¹⁸⁷ Information by Center for Peace Studies from Zagreb and association Delfin from Pakrac provided by the representatives of Czech (Mr. Vozab), Serbian (Mr. Ivanov) and Italian (Mr. Bruneta) councils of national minorities from Pakrac area and Italian representative (Mr. Menegin) council from national minorities from Lipik area

Croatia.¹⁸⁸ The Book of Rules on Priorities in Housing in the Areas of Special State Concern places to the first place persons accommodated in expellee and other means of organised housing (mostly ethnic Croats exiled from Bosnia and Herzegovina and Serbia and Montenegro). On second place are the persons that are returning to their earlier places of residence or are settling in the areas of special state concern. This Law gives priority to former tenancy rights holders, apartment users whose tenancy rights were terminated and are using the apartments in accordance with the provisions of the Law on Lease of the Apartments in Liberated Areas (Mostly ethnic Serbs).¹⁸⁹ Such priority order could, additionally, firm or change the ethnic structure of the population in the areas of special state concern at the expense of minority communities related to the exercise of the rights specified by the Constitutional Law since the scope of certain rights guaranteed by this law depends on the number and proportional representation of persons belonging to national minorities in the population of particular areas. Since the problem of the change in proportion in the ethnic structure of the population spreads beyond the areas of special state concern, same problems are referred to those areas. Constitutional Law gives the possibility to regulate certain rights by international agreements or through the statutes of local and regional self-governments regardless of proportional representation of the persons belonging to minorities within the population in total in particular area. However, possible regulation of the rights by the statute of local and regional self-government depends on political will of local authorities (for example, the right to equal official use of minority language and script of persons belonging to minorities – Articles 12 and 13 of the Constitutional Law on the Rights of National Minorities).

- The statement by Mr. D. V. from Knin signed on July 7, 2004 in premises of the association "Hocu Kuci (I want to go home)" shows what kind of pressures are facing persons belonging to Serb ethnicity in order to make them sell their properties and leave the areas in the Republic of Croatia of their permanent residence.– ""Statement... by which I claim that I was forced in the below described ways to sell my private house that I could not repossess until I returned to the Republic of Croatia in 1997. One year after I submitted a request to return, I was convinced that the RoC was not willing to let me repossess my property. Therefore, I offered my house to the APN – State Real Estate Agency. The price I was offered was (25.000 DM) for the 260m2 house. I gave up on selling my house and continued to fight for its restitution. After the HDZ came in power on January 01, 2004, and new Government of the RoC promised to give back all illegally possessed properties by June 30, 2004 and all other properties by December 30, 2004, the situation related to buying of private properties started to change. Since I have been waiting for my properties for 7 years, I was ready to sell it as I realised that the Government had o intention whatsoever to let me repossess my properties. They only raised prices in order to pay me off and make me leave the country in that way. The only reason for this is my ethnic background as I am an ethnic Serb. This feeling of mine was confirmed by the information I got in State Real Estate Agency. I was told: " Mister, you can get 65,000 Euro and be paid right away in Samobor. There is an organised transport to Samobor and further, to Serbia and Montenegro. This is the highest price you will ever be offered and you will be unable to sell your house ever again unless you accept this price right now. The city of Knin will be dead for the next 10 years and your son will never come back to live here. " The APN agent Ljilja told me all this and I only answered that I was not satisfied with the price. She called me 5 times and repeated all this to me the very next day. Her last call on that day ended with: "What? You still did not go to collect the money?" I asked her how many houses they sold in the last month and she said "a lot...".

IV.XV

Article 17

1. The Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with

¹⁸⁸ "The Tudjman government had brought ethnic Croat population to the territories formerly inhabited by Serbs, and many of those ethnic Croats now live in the former homes of Serb refugees and displaced persons" - Human Rights Watch: Broken Promises – Impediments to Refugee Return to Croatia, September 2003, page 12

¹⁸⁹ Official Gazette "Narodne novine" no.116/2002. Book of Rules passed in accordance with the Law on Amendments on the Law on Areas of Special State Concern (Official Gazette "Narodne novine" 88/2002)

persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage.

2. The Parties undertake not to interfere with the right of persons belonging to national minorities to participate in the activities of non-governmental organisations, both at the national and international levels.

National legislation (pursuant to the Article 17 of the FCNM):

Constitutional Law on the Rights of National Minorities:

Article 16 (see under IV.III National legislation)

Law on Associations

COMMENTS on the implementation of the Article 17 of the FCNM:

- The Agreement between the Government of the Republic of Croatia and the Council of Ministers of Bosnia and Herzegovina on mutual, permanent, cancellation of the visa regime signed on December 5, 2003 (Instruction on Publication of the Agreement was brought on March 03, 2004) enabled the citizens of both countries in entering, exiting and moving over the other country's territory with national ID cards for 90 days within 6 months. The citizens of Serbia and Montenegro, temporarily, till the end of 2004, do not require visas to enter the Republic of Croatia for the tourist visits up to 90 days. The Republic of Croatia did not interfere or limit the rights of persons belonging to national minorities to establish or maintain cross-border contacts.

- The Republic of Croatia did not interfere or limit the rights of the persons belonging to national minorities to participate in non-governmental organisations' activities at national or international levels.

IV.XVI

Article 18

1. The Parties shall endeavour to conclude, where necessary, bilateral and multilateral agreements with other States, in particular neighbouring States, in order to ensure the protection of persons belonging to the national minorities concerned.

2. Where relevant, the Parties shall take measures to encourage transfrontier co-operation.

National legislation (pursuant to the Article 18 of the FCNM):

Constitutional Law on the Rights of National Minorities:

Article 6.

(1) The Republic of Croatia may conclude international agreements with other countries whereby it shall regulate the issues of the rights and freedoms of members of national minorities in the Republic of Croatia.

(2) On the occasion of concluding international agreements as per Paragraph 1 of this Article, the Republic of Croatia shall advocate the standpoint that they should create and promote conditions necessary for the preservation and development of culture of members of national minorities, and preservation of significant components of their identity, that is, their religion, language, tradition and cultural heritage.

COMMENTS on the implementation of the Article 18 of the FCNM:

- The Republic of Croatia signed and ratified bilateral agreement with Hungary on protection of the Hungarian national minority in the Republic of Croatia and Croatian national minority in Hungary. The agreement on the rights of minorities between Italy and the Republic of Croatia was signed in 1996. The Agreement on Normalization of the Relations Between The Republic of Croatia and Federal Republic of Yugoslavia (now the State Union of Serbia and Montenegro) was signed in 1996. The Article 8 of the Agreement says:

" The Serbs and Montenegrins in the Republic of Croatia and Croats in the Federal Republic of Yugoslavia shall be guaranteed all the rights they are entitled to in accordance with the international law".

The negotiations on the draft on bilateral agreement on protection of Croatian minority in Serbia and Montenegro and Serbian and Montenegrin minority in the Republic of Croatia are in process.

- The Republic of Croatia is a member of several regional initiatives such as the Stability Pact, Adriatic and Ion Initiative, "Kvadrilaterala" (between Italy, Slovenia, Hungary and Croatia), Middle European Initiative (SEI), Southeast Europe Co-operation Initiative (SECI), Alps and Adriatic Initiative, Danube Commission, and is an observer in Southeast Europe Co-operation Process (SEEC). The above-mentioned regional, but also bilateral initiatives are of a great significance in the fields of political, economic, cultural and other regional interstate co-operation. Therefore, those initiatives directly and indirectly influence the situation of minority communities. The Republic of Croatia intensified its co-operation with Serbia and Montenegro and Bosnia and Herzegovina referred to relevant refugee information exchange.

- The Agreement on Secession is an important regional document, which generally regulates distribution of the rights, obligations, resources and debts of former, Socialist Federal Republic of Yugoslavia (SFRY) among its successor states. The Republic of Croatia ratified the agreement in March 2004, later than all other successor states (Slovenia, B&H, Serbia and Montenegro and Former Yugoslav Republic of Macedonia). Although the Agreement primarily regulates relations between successor states, in its Annex G, it also regulates private property and acquired rights issues which is of a great significance to refugees and displaced persons, especially persons belonging to Serbian Minority considering the fact that the Republic of Croatia, more than any other state in the region, obstructs the recognition and exercise of above-mentioned rights (see under Item d) RESPECT FOR GENERAL (HUMAN) RIGHTS OF PERSONS BELONGING TO MINORITIES AND THE RULE OF LAW). Article 2, paragraph 1 of the Agreement says: "The rights to movable and immovable property located in a successor State and to which citizens or other legal persons of the SFRY were entitled on 31 December 1990 shall be recognised, and protected and restored by that State in accordance with established standards and norms of international law and irrespective of the nationality, citizenship, residence or domicile of those persons. This shall include persons who, after 31 December 1990, acquired the citizenship of or established domicile or residence in a State other than a successor State. Persons unable to realise such rights shall be entitled to compensation in accordance with civil and international legal norms."¹⁹⁰ Article 6 of the Annex G refers to an important tenancy rights issues and says: " Domestic legislation of each successor State concerning dwelling (tenancy) rights shall be applied equally to persons who were citizens of the SFRY and who had such rights, without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."¹⁹¹ The Succession Agreement came into force on June 03, 2004.

5. Conclusions and recommendations

Situation, perspectives and degree of respect of human and minority rights of persons belonging to national minorities are, even today, more or less determined by the 1991-1995 war consequences and the situation that was the result of international recognition of the Republic of Croatia in 1992. The Republic of Croatia, undoubtedly, made certain steps forward in strengthening formal and legal protection of persons belonging to national minorities, respect of minority rights and elimination of discrimination. However, there were many failures in their implementation. Respect of (human) rights of persons belonging to certain national minorities, especially exiled and displaced Serbs and Roma continues to be problematic and conditioned by war inheritance and long-term discriminatory policy. By adoption of the Constitutional Law on the Rights of National Minorities at the end of 2002, as well as adoption of several other relevant laws, Croatia adopted provisions but also spirit of the Framework Convention into its national legislation. The latest moves by the Government and statements by certain officials raise expectations in elimination of nationalistic policies and extremism and the end of discriminatory practices aimed towards certain minorities, Serbs and Roma, in particular. Past experiences indicate the need for certain caution and permanent monitoring of the implementation of relevant international and national human and minority rights protection standards.

¹⁹⁰ Official Gazette "Narodne Novine", International agreements 2/2004, www.nn.hr/sluzbeni-list/mugovori

¹⁹¹ Official Gazette "Narodne Novine", International agreements 2/2004, www.nn.hr/sluzbeni-list/mugovori

However, the experiences show that the Republic of Croatia, aiming to firm its international reputation and position, approached and accepted obligations to respect all important international agreements in a declaratory manner and, at the same time, took forever with the implementation of those documents since they were not implemented at all or only quasi-solutions were created at the national level which directly affected the situation of minority communities.

Serious consequences of mass and brutal violations of human rights of persons belonging to certain minorities, especially exiled and displaced Serbs and Roma continue to be an important problem. Scope of the implementation of the provisions of the Framework Convention and other international documents regulating the rights of persons belonging to minorities depends, at first, on respect and implementation of the standards of general human rights. Adoption of quality legal solutions is not necessarily bringing positive changes in practice. Human and minority rights situation, therefore, demands systematic and not cosmetic changes. All national as well as international subject engaged in those issues should be aware of the above. Wide spectrum solutions of refugee and displaced persons' problems, elimination of past discriminatory practices, establishment of the rule of law and functional administration and judiciary, establishment of individual responsibility system, objective and impartial approach in processing of the war crimes and establishment of facts related to 1991 –1995 war and implementation and respect of human and minority rights standards and recognition of acquired rights of persons belonging to minorities should be the Government's priorities but also the priorities of the international subjects. The progress in normalisation of interethnic relations and long-term stability of the Republic of Croatia and wider region depend on solving of those problems.

The Republic of Croatia, in the beginning of this year was provided with positive opinion of the European Commission on its economic and political resources related to its application for the EU membership and in mid July got an official candidate status. Further democratisation of Croatian society and dynamics of approaching the European Union depend on real intention of the Government to comply with all relevant political and economic criteria and presumptions, respecting international human and minority rights standards. The Government of the Republic of Croatia deserves full support of all social structures in its way of reforming and approaching the European Union. But, for the objectively weak political and economic influence of minority communities in the Republic of Croatia, the international community, the European Commission and the EU in particular, continue to be the main corrective of the Government's work. The international community should not only be lead by the rhetoric speech changes, adjustment of the legislation and the Government's promises when establishing the level of respect of human and minority rights in the Republic of Croatia. They should be principled in requesting full implementation of international obligations of the Republic of Croatia and standards it promotes since the future of national minorities in the Republic of Croatia will depend on it a lot.

In order to be better introduced to the implementation of the provisions of the Framework Convention and the respect of the rights of national minorities, we would like to suggest that the Advisory Committee of the FCNM, while visiting Croatia, arranges visits to different regions in Croatia, former conflict areas in particular, since the situation of different national minorities and relevant problems, very much, depend on the geographical area and local community they live in.

In order to ensure full and effective implementation of the provisions of the Framework Convention for the Protection of National Minorities, the Republic of Croatia, as its priorities, should:

1. Related to the implementation of the Article 4 of the FCNM – ensure the respect of all internationally accepted obligations and take concrete and measurable steps in elimination of existing negative consequences of discriminatory policies against persons belonging to national minorities, and recognise and/or compensate acquired rights terminated on the basis of discrimination and human rights violations which primarily refers to the Serb and Roma. In the same sense, among the rest, it is necessary to ensure full implementation of the provisions of the Annex G of the Secession Agreement of the Former SFRY and to interpret them in a "good faith" (recognition and protection of private real estates and movable assets, and acquired and tenancy rights) and effective implementation of National Program for Roma..
2. Related to the implementation of the Articles 16 and 18 of the FCNM – create required political, security, legal and economic preconditions for the sustainable return of refugees and

displaced persons to their homes, the urban areas in particular. To solve the refugee and displaced persons' problems, it is necessary to intensify the cross-border co-operation with Bosnia and Herzegovina and Serbia and Montenegro at all levels.

3. Related to the implementation of the Article 15 of the FCNM – ensure proportional representation on persons belonging to minorities in the state administration and judicial bodies and eliminate discrimination in employment of those persons. It is necessary to constantly keep in mind possible changes in proportional representation of persons belonging to minorities within national population structure in certain areas considering the number of refugees and displaced persons returned and complaints against the 2001 census results. It is necessary to ensure and encourage creation of preconditions for effective functioning of the councils for national minorities at local and regional levels by fully implementing and respecting the provisions of the Constitutional Law on the Rights of National Minorities. .
4. Related to the implementation of the Article 6 of the FCNM – make additional efforts and start with the concrete activities aimed towards encouraging of interethnic co-operation and understanding at all levels. It is necessary to impartially, with the inclusion of all relevant society structures, research all aspects of drastic reductions in number of persons belonging to national minorities in 1991–2001 period. It is necessary to continue the co-operation with the International Criminal Tribunal for Former Yugoslavia (ICTY) and to ensure preconditions for processing all persons who committed war crimes regardless of their ethnicity and in impartial and transparent processes. It is necessary to call to account and efficiently punish persons responsible of ethnically or religiously motivated incidents, violence, animosities and discrimination and to eliminate those issues.
5. It is necessary to ensure effective and non-selective implementation of the Constitutional Law on the Rights of National Minorities and other relevant laws at all levels. It is necessary to provide an official interpretation of particular provisions and terms in the Constitutional Law such as the term "acquired rights" and to interpret those provisions and terms in good faith and spirit of international standards (FCNM) and customs considering particularities of minority communities and geographical areas.