



CARDS 2003

**REPRESENTATION OF INTERESTS
OF NATIONAL MINORITIES IN
THE REPUBLIC OF CROATIA**

**A Reflection Paper to support national
policy development**

**Produced in the context of EU CARDS project
"Support to the Councils of National Minorities
in Areas of Special State Concern"**

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Foreword

This Reflection Paper was developed within the context of the project «*Support to the Councils of National Minorities in Areas of Special State Concern*», which was executed as a part of the EU CARDS 2003 programme «*Sustainable Development in Areas of Special State Concern*».

The Project was contracted by the Croatian Ministry of Finance through its Central Financing and Contracting Unit and the Project Partner is the National Council for National Minorities. The project is financially supported by the European Commission CARDS programme and implemented by an international consortium led by WYG International Ltd. (UK) and in conjunction with Corporate & Public Management Consulting Group (Latvia).

The content of this document is based on data and information collected by the project team from different sources and at different phases of the project. The process of developing the Reflection Paper was led by team member Mladen Ivanovic.

During the inception phase of the project (June-September 2006) the project team discussed issues with representatives of 36 councils of eight national minorities established on the level of local and regional self-government, representatives of 4 coordinations of Councils of National Minorities, 6 representatives of local and regional governments and representatives of 3 NGOs.

- In the second phase of data collection (October-November 2006) the project team surveyed authorities in 14 counties, 13 cities and 20 municipalities. Besides, the survey has covered 5 minority councils and two representatives on the county level, 24 councils and two representatives on the city level, 50 councils on the municipality level, as well as 13 mononational and polinational coordinations established on the level of local and regional self-government, and 9 coordinations established on the national level.¹
- A Technical workshop was held on January 17, 2007, to draft recommendations for improvement of work and effectiveness of minority councils. The recommendations were published in the document «*Gap Analysis on the effectiveness of Councils of National Minorities in Areas of Special State Concern of the Republic of Croatia*».
- During development of the Handbook for National Minority Councils (February – June 2007) the project team discussed issues with 33 representatives of minority councils and local and regional authorities. The content of the Handbook was tested in three locations: Pribislavec, Vojnić and Zagreb.

Other content of this document is based on statistical and other data from different institutions (Central Bureau of Statistics, State Electoral Commission, SDF, etc.), and on the content of the discussions on specific issues of minority representation, conducted in project conferences in Vukovar (July 5, 2007) and Zagreb (July 16, 2007).

The views expressed in this document are those of the contractor alone and do not represent the opinions of the Croatian Government, the National Council for National Minorities or the European Commission.

⁸ See details in: «*Gap Analysis on the effectiveness of Councils of National Minorities in Areas of Special State Concern of the Republic of Croatia*», January 2007, Page 13 – 18.

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ABBREVIATIONS

CARDS	Community Assistance for Reconstruction, Development and Stabilization
CBS	Central Bureau of Statistics
CLNM	Constitutional Law on the Rights of National Minorities
CSOA	Central State Office for Administration
EU	European Union
HINA	Croatian News Agency
RC	Republic of Croatia
SDF	Serbian Democratic Forum
SEC	State Electoral Commission
SFRY	Socialist Federative Republic of Yugoslavia
SNC	Serb's National Council
WYGI	White Young Green International

EXECUTIVE SUMMARY

Since its first Constitution Croatia has committed to high standards of protection of rights and freedoms of resident national minorities, and has accepted and implemented in its legal system obligations arising from several key international treaties designed to protect different aspects of human rights. In addition, over the last fifteen years Croatia has built a national legal and institutional system which enables protection of the rights of national minorities, as well as their full participation in public life.

The current system of protection of minority rights has been examined and it is apparent that the legal and institutional framework is robust. However, this Reflection Paper identifies apparent inconsistencies in the content or implementation of the legal framework, and in the procedures governing the development of minority institutions, which could prevent realisation of the full potential of the system and its further development.

- The Constitutional Law on the Rights of National Minorities (CLNM) has a central position within the system of legal protection of national minorities, so that its correct and consistent implementation is of utmost importance and represents an essential precondition for correct implementation of all other relevant legislation. Inconsistencies in its application have been identified and some concepts require clarification
- The institutional framework established to ensure minority representation is developed and functional. However, some areas for improvement have been identified which are not of a substantial nature, but rather represent “ fine tuning “ which could enable better functioning of the established institutions, that is
 - National Council for National Minorities,
 - Government Office for National Minorities and
 - Minority Councils.
- In terms of implementation of the legal provisions, it seems that a significant number of local governments are ignoring the Constitutional Law and appear to be deliberately hampering the work of minority councils and representatives. This is done either by denying them resources and other technical preconditions for their work, or by omitting to set up procedures to allow minority representatives to fulfil their responsibilities.
- The role of the Government in the minority council elections is also considered. To date two rounds of elections for minority representatives were held, and in neither round was there any systematic promotion of participation in the elections from the Government, its institutions or particular politicians. Both elections had low turnout. The issue of timing of elections is considered, as well as issues of Governmental decisions which may affect election results, and Governmental involvement in the post-electoral composition of minority councils.

This Reflection Paper proposes ways of rectifying inconsistencies within the current system which should allow its strengthening and further development. The following measures are suggested:

IN RELATION TO THE CONSTITUTIONAL LAW ON THE RIGHTS OF NATIONAL MINORITIES

It is suggested that work at national level is needed to :

- clarify the term «*acquired rights*»
- regulate the procedure of registration of minority councils

- regulate the reasons for which a minority council can cease to exist, as well as the procedure through which those reasons will be determined
- re-consider adequate application of other legislation to the status and work of minority councils, in order to resolve various status issues (for example reduction in number of council members)
- ensure the legal personality of coordinations of minority councils and regulate their financing mechanisms
- ensure consistent implementation of the CLNM provision which guarantees to national minorities proportional representation in local parliaments as well as in administrative and judicial bodies
- Monitor intensively the implementation of the CLNM

IN RELATION TO INSTITUTIONAL ORGANIZATION,

It is suggested that further work at national level should

- strengthen the professional support service to the Council
- make work of the Government's Office for National Minorities more visible to the public
- reassess preconditions for establishment of the Councils of National Minorities in communities where national minority participates in political decision-making and prevent conflict of interest of the members and officials of minority councils

IN RELATION TO ELECTIONS OF MINORITY COUNCILS

It is suggested that the Government should

- consider the possibility of simultaneous elections for minority councils and representatives and elections for local representative bodies
- encourage the systematic promotion of elections by the Government
- consider refraining from taking decisions which have the potential to directly or indirectly affect election results
- ensure respect for the principle that constituting of the councils of national minorities should be left to the councils themselves

1. INTRODUCTION

1.1. OVERVIEW OF THE FACTS ABOUT NATIONAL MINORITIES IN CROATIA

Even though in its preamble the first Croatian Constitution (from 1990) indicates only 10 national minorities, the 2001 Census showed that there are 22 minority communities in Croatia, comprising 7,47 % of the total population.² The most numerous minority are Serbs comprising 4,54 % of the total population, followed by Bosniaks (0,47%), Italians (0,44%), Hungarians (0,37%), Albanians (0,34%) and others.³ Members of national minorities reside across the whole Croatian territory, although some minorities are traditionally more present in particular areas (e.g. Italians in Istria or Czechs in Bjelovar-Bilogora County).⁴

Since its first Constitution Croatia has committed to high standards of protection of rights and freedoms of resident national minorities. In addition to including the protection of national minorities in its first Constitution,⁵ from the beginning of its independence Croatia has accepted several key international treaties closed under the Organization of the United Nations, which protects different aspects of human rights.⁶ Croatia introduced brought its first law on protection of human and minority rights in December 1991.⁷ Unfortunately, the subsequent war prevented full implementation of this Law, and some of its provisions were never applied.⁸

After ending of the Homeland War (in mid 90-ties) Croatia demonstrated its commitment to harmonize the standards of treating national minorities with the standards of the European Union. The process of harmonization with European standards was started by ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1997),⁹ and was continued during 1998, when Framework Convention for Protection of National Minorities and European Charter on Regional and Minority Languages were entered into force on Croatian territory.

Development of the legal framework which regulates rights and freedoms of national minorities was continued by adoption of the Law on the Use of the Language and Script of National Minorities in the Republic of Croatia, the Law on Education in the Language and Script of National Minorities and the Constitutional Law on the Rights of National Minorities. By adopting the National Programme for Roma (2003), for the first time Croatia has adopted a special policy with the aim of conducting specific measures which will enable Roma national minority to fully integrate in Croatian society.

² Croatia has significantly more minority communities than some other European countries: Italy-12, Austria-7, Germany-4, etc.

³ See: http://www.dzs.hr/Hrv/censuses/Census2001/Popis/Graphs/narbars_body.html#IDX3

⁴ The Government of the RoC, Third Report of the RoC about implementation of the European Charter for Regional or Minority Languages, August 2006, Page 7.

⁵ Article 15 of the 1990 Constitution:

«In the Republic of Croatia members of all nations and minorities are equal.

To members of all nations and minorities freedom of expression of their national origin, free use of their language and script and cultural autonomy is guaranteed.»

⁶ International Pact on Civil and Political Rights and International Pact on Economic, Social and Cultural Issues were entered into force in Croatia from 1991; International Convention on the Elimination of All Forms of Racial Discrimination from 1992, etc.

⁷ Constitutional Law on Human Rights and Freedoms and Rights on Ethnic or National Communities or Minorities

⁸ Among other things, the Constitutional Law has envisaged establishment of the municipality (territory) with special self-governing (autonomous) position in the areas where members of particular national minority, following the results of 1981 census, participate with more than 50% in total population. Few months after it was passed, the Constitutional Law was amended and «municipalities with special statute» became «districts with special statute». Due to the war this territorial units were never really established.

⁹ Even though this Convention is not dealing exclusively with national minority rights, its adoption and implementation of its basic principles in Croatian legal system confirmed once again Croatian ambition to build the society in which basic values are rule of law, justice and equality of all citizens.

Simultaneously with the development of this legal framework, Croatia was building an institutional framework for the protection of national minorities. The Government Office for National Minorities was established in 1990, while its present organisation and competencies were determined by Governmental Decree in 2001. The Constitutional Law on the Rights of National Minorities (CLNM) passed in 2002, envisaged the establishment of the National Council for National Minorities as a central body which deals with the issues related to national minorities. It also established foundations of the system of minority councils and representatives, as well as a system of control over the execution of the legislation which guarantees rights of national minorities. In this way, the legal and institutional preconditions for the protection of national minorities and their participation in social and political life in Croatia have been created.

1.2. THE PROJECT IN SUPPORT TO THE COUNCILS OF NATIONAL MINORITIES IN AREAS OF SPECIAL STATE CONCERN

With the aim of further empowerment of established minority representation, the EU CARDS 2003 programme «Sustainable Development in Areas of Special State Concern», includes the project «*Support to the Councils of National Minorities in Areas of Special State Concern*» which has the ultimate goal of provision of support to minority institutions on local and regional level – that is national minority councils and representatives.

After numerous project activities, project team has concluded that the project findings and results should be consolidated systematically, in order to present all knowledge gathered on issues of functioning of minority representation. Thus, it was decided that the knowledge gained by the project team should be systematized in separate document. Consequently, the purpose of this document is not to judge, but to serve as a foundation for consideration about possible improvements of the system.

2. CONSTITUTIONAL LAW ON THE RIGHTS OF NATIONAL MINORITIES

In the Croatian legal system, the legal protection of national minorities starts with Croatian Constitution which, as well as the level of general protection of human rights, protects rights of national minorities with particular provisions.¹⁰ In the hierarchy of regulations the Constitutional Law on the Rights of National Minorities (CLNM) stands beside the Constitution, followed by two laws covering specific minority issues: the Law on the use of the Language and Script of National Minorities in the Republic of Croatia and the Law on Education in the Language and Script of National Minorities. Finally, there are other laws regulating realization of specific minority rights (e.g. right to have identity card in both Croatian and minority language, right to use minority language during court or administrative procedure, etc.).

It is evident that Croatia has built a consistent legal framework for the protection of national minorities. However, there is still potential for improvement. The research that was conducted during the implementation of the Project showed that CLNM has some weaknesses in relation to the quality of some of its provisions and also in relation to the manner and supervision of its implementation. The fact that CLNM has a central position within the system of legal protection of national minorities means that its correct and consistent implementation is of utmost importance and, essentially, a precondition for the quality implementation of other relevant legislation.

¹⁰ See, for instance, Article 3, 14, 15 and 17 of the Constitution of the Republic of Croatia.

2.1. LIMITATIONS IDENTIFIED OF THE CLNM CONCEPTS AND PROVISIONS

a) *Lack of clarity of the term «acquired rights»*

In some cases the CLNM indicates «acquired rights» as a base for identification or realisation of the rights of national minorities. For example, in article 4/6 acquired rights are one of the possible bases for realisation of the rights of national minorities; in article 19/2 they are mentioned in the context of minority representation in Croatian Parliament; and in article 22/3 in the context of minority representation in administrative bodies of local governments. However, neither CLNM nor any other legislation answers the question what exactly are «acquired rights», how can it be proved, how can a minority right be realized on the basis of «acquired rights» and what are the mechanisms of its implementation? The fact that there are no clear answers to those questions creates legal uncertainty and significantly limits or even obstructs the realisation of minority rights on the basis of acquired rights. Moreover, the new territorial-political division of the Republic of Croatia has made it unclear where previously defined rights were applied.¹¹ In some cases even State bodies claims that they can't confirm volume of acquired minority rights.¹²

b) *Lack of comprehensive provisions to regulate registration and termination of Councils of National Minorities*

The CLNM provisions which regulate registration of the Councils of National Minorities are insufficient and, as such, a potential source of discretionary ruling of the Registration Office. Even though the article 25/1 states, among other things, that any Council of National Minority acquires legal personality after being recorded in the Register of the Councils of National Minorities, CLNM contains no provisions nor instructions on the procedure to be applied during the registration process. Furthermore, CLNM indicates no circumstances under which an already registered Council of National Minority can be terminated, nor does it indicate the procedure to be applied in that case. It seems that once registered, a Council of National Minority stays permanently recorded in the Register, a situation which is legally incomplete and unsustainable in some circumstances.

c) *Gaps in adequate application of other legislation*

In provision 24/5 CLNM prescribes, among other things, that the law which regulates local elections will be adequately applied on the elections of the members of the Councils of National Minorities. It is the only case where CLNM calls for adequate application of other legislation. This solution is not unusual for the Croatian legal system but, in this case, is insufficient for purpose. For instance, neither CLNM nor adequate application of the Law on Local Elections can indicate what needs to be done when the number of members of a Council of National Minority is reduced to a level which disables its operations (perhaps due to death of an elected member, move to another place or some other reason). The way this

¹¹ Municipalities in Croatia before 1990 were, in general, bigger and territorially different from the present local units. Therefore, it is not unusual that the right of national minority which was previously spread on the territory of one municipality today covers territory of two or more local units. The example of the Czech minority's unsuccessful claim for introduction of the Czech language as an official language on the territory of the City of Daruvar shows how difficult is to prove acquired right. According to the representative of the Czech minority, even in the time of former Yugoslavia and all the way to 1993 Czech language was officially used on the territory of the former municipality Daruvar. However, when the Czech minority asked for restoration of the rule in 2006, the City Government rejected the claim as unjustified citing 18,9% of the City population, as too few for introduction of Czech language as an official language in the City. The minority's reference to acquired rights and proving that equal use of Croatian and Czech existed in Daruvar until 1993 brought no results. The National Council for National Minorities has initiated a procedure before Constitutional Court, asking for evaluation of some provisions of the statute of the City of Daruvar. The Constitutional Court has not yet brought any decision about the issue (Sept 2007) .

¹² From HINA's news «Serbs in Croatia have officialy their flag»: «...In the Office for Administration they say they can't determine which are Checz's acquired rights because they don't have insight in the documents from 1983», <http://www.skdprosvjeta.com/news.php?id=443>.

situation should be handled for municipal, city or county council is not prescribed in the Law on Local Elections but rather in the Law on Local and Regional Self-Government. Considering that the latter is not applied on the Councils of National Minorities at all, in the case of reduced number of members in a Council there is a legal gap which opens the space for improvisations.

d) Legal personality of coordinations of the Councils of National Minorities

In the case of Coordinations of Councils of National Minorities, the work of established coordinations is made more difficult by the failure of the CLNM to regulate registration of such coordinations. A Coordination is authorised to take some important decisions, for example, decisions on emblems and other insignia of national minority can be taken by a national coordination. However, it operates in a framework which is, at best, regulated by a contract or agreement between its members - Councils of National Minorities. This informal status raises issues of financing operations of a coordination and of its competencies in general. It precludes the coordination from raising the money for its operations from other available sources. Although a coordination can acquire legal personality through registration as a common association, such a registration has not been pursued by most established coordinations as they feel this does not reflect the important status of a coordination.¹³

2.2. WEAKNESSES IDENTIFIED IN IMPLEMENTATION OF CLNM AND IN SUPERVISION OF ITS IMPLEMENTATION

Implementation of CLNM

The degree of full implementation of several CLNM provisions appears to be inadequate without additional clarifications, bylaws or additional effort of the central Government.

- Firstly, in terms of financing, CLNM article 28/1 regulates financing of the Councils of National Minorities by local government units. This is a general provision which, among other things, prescribes the obligation of local governments to secure funds for Councils of National Minorities, including funds for its overhead costs. Differences in the application of this provision across local governments, creates huge differences between Councils of National Minorities. Consequently, councils which are operating in richer communities are better resourced with better working conditions; there are also differences where some local governments appear to purposely secure only minimum working conditions for councils.
- Secondly CLNM Article 31/2 prescribes obligation of local units to regulate (in its statutes and other local legislation) the manner terms and procedure in which Councils of National Minorities can exercise their legally established rights. The CLNM stipulates that Councils of National Minorities have the right to propose measures, to be informed and to give opinions on issues which are relevant for national minorities. However, such rights have no effect if local units in which councils are operating do not prescribe the procedures to be followed. During Project implementation, and for the purpose of development of the Handbook for Councils of National Minorities, the project team examined dozens of statutes of different municipalities and cities in which Councils of National Minorities were established, concluding that the most of these are not harmonized with CLNM in a satisfactory way. This is confirmed by the only research done so far on this issue by Serbian Democratic Forum, on the sample of 10 cities and 18 municipalities.¹⁴

¹³ According to the author's information, Serb National Council (SNC) is the only national coordination which is registered as an association.

¹⁴ SDF: Implementation of the Constitutional Law on the Rights of National Minorities in Local and Regional Self-Government Units, May 2007, Page 6: «... statutes are not harmonized with CLNM's Article 31/2, which

- Among other rights, in Article 7/1/8, the CLNM guarantees to national minorities in Croatia representation in parliaments on central and local level, as well as in administrative and judiciary bodies. While this right has been completely exercised at the level of the State Parliament (Sabor) through the election of eight minority representatives, this is not the case on the local and regional level, nor as far as representation in administrative and judiciary bodies is concerned.¹⁵ According to the amendments to the Law on Local and Regional Self-Government, passed in 2005, local and regional executive bodies have the obligation to develop a plan of employment in local administration, which needs to envisage employment of minority members. However, very few local units have developed such plans, and as a consequence, the proportion of minority members in most public services does not reflect the proportion in the total population.¹⁶ Moreover, in some local units this part of CLNM was not applied at all.¹⁷

Rate of employment of Serbs in public services in some local government units

Local Unit	Proportion of Serbs in total population	Employment in public services
Glina	28,7%	1,1%
Topusko	29,6%	4,6%
Vojnić	50%	13,8%
Pakrac	17,1%	0%
Plitvička Jezera	30,5%	3%
Knin	20,8%	3,8%

Source: Serbian Democratic Forum, (NE)JEDNAKE ŠANSE PRI ZAPOŠLJAVANJU MANJINA, September 2006; See: http://www.sdf.hr/index.php?option=com_content&task=blogcategory&id=31&Itemid=48

Likewise, plans of employment in the Civil Service do not contain minority quota.¹⁸ It appears that researches on participation of minority members in Central Government bodies are rare and, even if they are conducted, some State bodies are reluctant to participate.¹⁹

Monitoring and Supervision of Implementation of CLNM

Pursuant to CLNM article 38 any Council of National Minority can request a monitoring of implementation of CLNM, as well other laws which regulate minority rights. However, for practical reasons most Councils do not apply this right while they depend on financing from local government.²⁰ They do not want to initiate a formal procedure, in case the relationship with local government (frequently already fragile) becomes completely shattered. Under such circumstances monitoring the implementation of CLNM depends on *ex officio* supervision.

prescribes that the way, terms and procedure in which minority councils/representatives realize its rights needs to be regulated by local units... The results of the analysis showed different level of harmonization of the city and municipal statutes – from small number of examples which have accepted most of CLNM's provisions to those which were more or less ignoring it ...».

¹⁵ EU Delegation, Croatia - Progress Report 2006, Page 11: «...Implementation of the Constitutional Law on National Minorities (CLNM) continues to be slow and problems persist particularly in terms of under-representation of minorities in state administration, the judiciary and the police.»

Croatian Ombudsman, Working Report for 2006, Page 179: «...provisions on political representation and on representation in the State and local administration are still not completely applied, though it is a pre-condition for full normalization of relationships, especially in local communities.»

¹⁶ SDF: Implementation of the Constitutional Law on the Rights of National Minorities in Local and Regional Self-Government Units, May 2007, Page 5

¹⁷ Croatian Ombudsman, Working Report for 2006, Page 129 (part of the Report which describes visit to Sisak-Moslavina County): «Constitutional Law on the Rights of National Minorities is not applied at all, because no member of national minority was employed in public, State and city services.»

¹⁸ See plans of employment for different parts of Public Service: http://www.uprava.hr/?A=PLAN_PRIJEMA.

¹⁹ See: SDF, (NE) JEDNAKE ŠANSE PRI ZAPOŠLJAVANJU MANJINA, September 2006.

²⁰ «We are trying to get to the agreement by using only political methods», says one of the collocutors answering the question whether the council has ever considered initiation of formal procedure of supervision of implementation of CLNM.

Nevertheless, even though in some relevant Government documents it is indicated that the supervision was regularly conducted,²¹ its impact is not visible in reality.

3 THE INSTITUTIONAL FRAMEWORK: SOME ISSUES FOR DISCUSSION

3.1. NATIONAL COUNCIL FOR NATIONAL MINORITIES

National Council for National Minorities (hereinafter: National Council) is a central institution of the system of minority representation in Croatia. The National Council operates on the level of central government and, as a major body, it has important competencies including:

- suggesting that State bodies discuss particular issues or conduct particular measures in relation to realization of minority rights and freedoms;
- giving the opinions and collecting data;
- proposing the amount and allocating the money which was reserved for national minorities in the State Budget.

The National Council also has authority to initiate monitoring and supervision of implementation of CLNM and other legislation which deals with rights and freedoms of national minorities. It is clear that it has a wide area of competencies which require a strong and well organised institutional framework for their successful execution.

CLNM's article 36/6 allows a professional support service for conducting professional and administrative work of the National Council to be established. In practice, the President of the National Council has a professional support service consists of only two employees: an advisor and a secretary. The limitations of this professional support service means that it is difficult for the National Council to adequately fulfil its competencies as prescribed by CLNM, in particular the systematic monitoring and supervision of implementation of CLNM and other legislation which deals with rights and freedoms of national minorities. However, real problem with employment of professional staff is the fact that the respond to vacancy announcement published so far was relatively low.

3.2. GOVERNMENT OFFICE FOR NATIONAL MINORITIES

The establishment of the Government Office for National Minorities as a separate Governmental service demonstrates the intention of the Croatian Government to deal with issues related to national minorities in a continued and systematic manner. However, it appears that there is insufficient public understanding of the functions and operation of the Office. Based on the project findings, it can be argued that the Office's valuable achievements could be better recognized if its presentation toward public would be more intensive.

3.3. COUNCILS OF NATIONAL MINORITIES

The purpose of special minority institutions on local and regional level (minority councils and representatives) is to enable members of national minorities to "*participate in public life and management of local affairs...*".²² Even though Councils of National Minorities have

²¹ Government of the Republic of Croatia, The Report on Implementation of the Constitutional Law on the Rights of National Minorities in Croatia and on Disbursement of Funds reserved for National Minorities in the State Budget for 2005, June 2006, Page 104: «*Through competent bodies Government of the Republic of Croatia will undertake further measures of supervision of harmonization of local and regional legislation with Constitutional Law*».

²² See Article 23 of the CLNM.

established themselves as relevant institutions of minority representation, four years of experience has opened some questions for discussion in relation to their establishment and work. It is more and more obvious that Councils of National Minorities, in the communities where a particular national minority participates in political decision-making, sometimes are not fulfilling their designated purpose.

In communities where a national minority participates in political decision-making, the minority participates in public life and manages local affairs through traditional democratic institutions. In that case, through establishment of the council of the same national minority, it is argued by some that in such cases public resources are needlessly dispersed while unnecessary quasi-administrative apparatus is built up. Minority councils themselves are confused under those circumstances and are unsure of their role in the community where the interests of their national minority are more efficiently protected by minority representatives who are members of the local government.

A further issue in relation to the work of Councils of National Minorities is the possible conflict of interest of particular council officials. Some officials and members of minority councils are at the same time members of local governments. Thus the same person can be participating in decisions regarding fund allocation to a minority council and, as a member of the national minority council, accepting and spending those funds. Such a situation represents a significant aberration from democratic standards and it undermines confidence in the system.

3.4. THE ROLE OF LOCAL GOVERNMENTS

There appear to be a certain number of local governments which seem to purposely ignore CLNM provisions and which complicate and hinder work of Councils of National Minorities, whether by withholding financial resources and other pre-conditions for its work or by failing to harmonise its legislation with CLNM and to set up a procedure in which minority councils can realize their purpose.²³ As previously indicated, minority councils do not challenge local governments – their sole source of financial support - on these issues, and the issue of more effective monitoring of CLNM implementation in such cases requires further attention.

4. ELECTIONS OF MINORITY COUNCILS AND REPRESENTATIVES

The elections of minority councils and minority representatives conducted in a legitimate way, and with respect of democratic standards, are the basic precondition of legitimacy of these elected minority institutions. The first elections, held in 2003, as well as the supplementary elections held in 2004, were characterized by a very low turnout of constituency-members of minority communities (see data displayed further in this chapter).²⁴ That was the main reason why minority councils and representatives were not elected in all communities where legal pre-conditions existed.²⁵ In the next round of elections for minority councils and minority representatives held in June 2007, voters' turnout was significantly

²³ See: Government of the Republic of Croatia, The Report on Implementation of the Constitutional Law on the Rights of National Minorities in Croatia and on Disbursement of Funds reserved for National Minorities in the State Budget for 2005, June 2006. The Report shows which local governments have not harmonized its legislation with CLNM, and how much money was devoted to Councils of National Minorities by particular local governments.

²⁴ Ankica Gorkić, Position of National Minorities in Croatian Legislation in Last 15 Years, SDF, June 2006, ANALYSIS OF THE PROTECTION OF MINORITY RIGHTS IN LOCAL UNITS, Page 12: «... Voters' turnout (to first elections for minority councils – author's comment) was low due to the lack of preparation of competent State bodies and lack of information among those who were suppose to participate in it.»

²⁵ The elections were called for total of 471 council, but only 274 councils were elected.

higher for particular national minorities,²⁶ but the overall average was still low (see data displayed further in this chapter).

4.1. TIMING OF ELECTIONS FOR MINORITY COUNCILS

Article 24/5 of the CLNM governs electoral procedure and other issues related to elections of local representative bodies. Members of minority councils and minority representatives are elected for a mandate of four years.

According to the Law on Elections of Members of Representative Bodies of Local and Regional Self-Government,²⁷ the Croatian Government calls the elections for members of minority councils and minority representatives by separate decision. The first elections were held on May 18, 2003. Due to the low response of minority members, additional elections were held on February 15, 2004. In both cases voter turnout was low, and for some national minorities extremely low.²⁸

Turnout for all national minorities in 2003 elections

	Elections for Minority Councils			Elections for Minority Representatives		
	Number of registered voters	Turnout	%	Number of registered voters	Turnout	%
Counties	320,793	37,752	10,21	4,992	790	15,83
Towns	132,991	14,422	10,84	1,444	353	24,45
Municipalities	88,615	19,607	22,13	115	27	17,42

Source: SEC, Information on the Results of the Elections of Minority Representatives-Statistical Data, May 28, 2003.

See: <http://www.izbori.hr/arhiva/arhiva2003/dip/predgovor.pdf>

Turnout for all national minorities in 2004 elections

	Elections for Minority Councils			Elections for Minority Representatives		
	Number of registered voters	Turnout	%	Number of registered voters	Turnout	%
Counties	137,545	8,733	6,35	2,452	261	10,64
Towns	48,859	4,392	8,99	2,101	145	6,90
Municipalities	12,695	2,056	16,20	28	6	21,43

Source: SEC, Information on the Results of the Elections of Minority Representatives-Statistical Data, February 26, 2004.

See: <http://www.izbori.hr/arhiva/manjine/rezultati/predgovor.pdf>

Maybe the most discussed issue related to the timing of the elections of minority councils is possibility of conducting the elections for minority councils at the same time with elections for representatives in parliaments of local units. The continuing low turnout at national minority

²⁶ For instance, turnout of Roma was 20-33 %, German minority 14-52 % and Hungarian minority 16-38 %. See: SEC, Information on the Results of the Elections of Minority Representatives-Statistical Data, July 9, 2007.

²⁷ Off.Gaz., No 33/2001, 10/2002, 155/2002, 45/2003, 43/2004 and 40/2005.

²⁸ As an example, during the elections held in 2003 turnout of Austrian national minority on the county level was 1,59 %, Macedonian 3,36 % and Slovenian 3,50 %. On additional elections held in 2004 the turnout of Hungarians on the elections for minority councils on the level of towns was 0,98 %. More on election results see on the SEC's web page: <http://www.izbori.hr/>

elections make this idea even more interesting. Advocates of this idea claim that simultaneous elections for representatives in local parliaments and members of minority councils would significantly increase voters' turnout for latter. Some of the arguments in support of that thinking say that there are more polling stations open for local elections, that more people knows and cares about local elections, and that local elections are more visible than elections for minority representatives (due to the fact that local elections are always introduced by competitive pre-election campaign). That would, at the same time, strengthen the legitimacy of elected minority representatives²⁹ and reduce the costs of the elections.

However, no matter what is the quality of presented arguments, the decision on simultaneous elections for local parliaments and minority councils is of political nature, and would require a change in the CLNM provisions regulating elections of minority councils and representatives.

4.2. PROMOTION OF VOTER PARTICIPATION IN ELECTIONS³⁰

There was no systematic Governmental promotion of voter participation in the elections in 2003/4 nor in 2007, and this is argued by some as a major reason for low turnout. In the 2007 elections, an EU funded awareness rising campaign on significance of the minority elections was undertaken within the project on the support to the Councils of National Minorities. According to a survey, conducted by PULS agency, 58% of the surveyed minority population noticed the campaign. Voter turnout was still relatively low, although there are indications that this varied greatly across different minorities.

Turnout in 2007

	Elections for Minority Councils (%)	Elections for Minority Representatives (%)
Counties	9,88	12,55
Towns	8,04	11,03
Municipalities	17,02	18,08

Source: SEC, Information on the Results of the Elections of Minority Representatives-Statistical Data, July 9, 2007.
See: <http://www.izbori.hr/rezultati/statistika.pdf>

It has been argued that a Government campaign for public awareness would more significantly enhance turnout, as this would give overt Government support to the process. However, there has been an absence of systematic, planned activity of the Government or leading political personalities, aimed to clarify significance of minority institutions or to invite minority members to vote.

Before elections in 2007 the Government took the decision to compensate successful minority candidates for costs of their pre-election campaign.³¹ However, this decision was made less than 3 weeks before the elections and it has been argued by some that the lateness of the decision and the low amounts of such compensation do not represent a serious support for such campaigns.³²

²⁹ According to present electoral system, it is enough for a candidate to get at least one vote to win four years mandate. Insight in the results of the elections held so far shows that some members of minority councils and some minority representatives won the mandate with only two (!) votes.

³⁰ In the context of elections for minority representatives we use term «promotion of elections» instead of common term «pre-election campaign». The reason is because elections for minority representatives are missing usual competition of candidates, so there is no room for pre-election campaign which is, in its essence, of competitive character.

³¹ Off. Gaz., No 58/07

³² The decision states that compensation of pre-election campaign for each elected member of minority council on the level of county and the City of Zagreb amounts 1,500.00 kn; for each elected member of the council on the level of town or municipality compensation amounts 1,000.00 kn, while each elected representative gets amount of 1,000.00 kn.

4.3. EXECUTION OF ELECTIONS (GOVERNMENT DECISIONS WHICH CAN INFLUENCE EXECUTION OF ELECTIONS AND FINAL RESULTS)

Before the 2007 elections for minority councils and minority representatives, the Croatian Government (directly or through its bodies) has taken some decisions which might have influenced, or have influenced, election results.

On May 9, 2007, the Government took two decisions on calling the elections for minority representatives in local and regional units.³³ Both decisions, among other things, state that

“Croatian citizens who are indicated as Muslims in the Voters’ Register exceptionally, on this election can vote, for minority councils (or representatives) of Bosniak national minority, .”.

This decision is clearly aimed at solving the issue of nearly twenty thousand declared Muslims, who were excluded from first elections for minority representatives. However, the Government’s decision has raised dissatisfaction of some other national minorities, who were claiming that twenty thousand declared Muslims may be not only Bosniaks but also Roma and members of some other minorities.³⁴

The Government decision to call elections also indicated in which local units will be elected minority councils and where will be elected only minority representatives. The legitimacy of this decision has been questioned. In 2003/2004 elections were called for total of 471 minority councils and 141 minority representatives. Candidacy was submitted for 220 councils (46,91 %) and 40 representatives (28,57 %).³⁵ In its decisions from May 2007, the Government has called elections for total of 308 minority councils and 228 minority representatives, a significant increase in number of representatives and decrease in number of minority councils. To some extent this change can be explained by changes in population structure, meaning by harmonisation of the data from 2001 Census with data from Voters’ Register (which was envisaged in CLNM article 24/6).

However, it seems that the change in the number of minority councils and representatives was also influenced by the interpretation of the CLNM by Central State Office for Administration (CSOA). In CLNM article 24 a minority council can be established by members of a particular minority

- who participates in total population of local unit with not less than 1,5%,;
- or
- if on the territory of local unit live at least 200 (in towns and municipalities) or 500 (in counties and in City of Zagreb) minority members.

It is generally obvious that these criteria were set up by CLNM in an alternative way, enabling establishment of a council in a local or regional unit if at least one of the indicated prerequisites is fulfilled. However, the CSOA has interpreted the CLNM provision as concluding that both conditions prescribed for establishment of minority council need to be fulfilled simultaneously (ie that the condition for establishment of the council is both 1,5%

³³ Both decisions were published in Off. Gaz., No 49/07.

³⁴ «Razif Memedi, member of the Council (what Council?) , said that it is not right that the Muslims could have vote for Bosniaks but not for Roma as well»

http://www.vlada.hr/hr/naslovnica/novosti_i_najave/2007/lipanj/savjet_za_nacionalne_manjine_trazi_poseban_za_kon_o_manjinskim_izborima.

«Alija Mešić, president of the Association of Roma in Zagreb and president of the Executive Board of the Council of Roma Associations in Croatia was dissatisfied with elections... «To us it wasn’t allowed to declare and to bring a certificate on belonging to Roma nation, as it was until the very last day allowed to Bosniaks».»: <http://www.vjesnik.hr/html/2003/05/20/Clanak.asp?r=tem&c=2>

³⁵ GONG, The Report on Elections for Members of Councils and Representatives of National Minorities in Local and Regional Units, May 18, 2003, Page 1.

participation in total population **and**, at the same time, with at least 200 or 500 minority members on the territory of the local unit).

The State Secretary of the CSOA has justified described interpretation of CLNM, explaining that there are some local communities in which it is impossible to apply the CLNM criteria consistently.³⁶ However, this argument is inconsistent with the fact that the CLNM criteria constitute a clear legal provision which asks for no interpretation, nor leaves any space for it. Furthermore, even if CLNM provisions were unclear, making practical application difficult, neither CSOA nor any other institution of executive branch is authorized to conduct interpretation, which can be done only by Parliament.

4.4. ESTABLISHMENT OF MINORITY COUNCILS

Besides the claim for registration of the council of national minority one must attach, among other things, the minutes from establishing session of the council which contains decision on election of the President of the council. In a legal sense, establishment means holding of a first session after elections and confirming that the council was established in accordance with prescribed procedure. Establishment also includes election of officials and managing bodies. For the Councils of National Minorities, to establish means to hold a first session of the newly elected council and elect the president of the council.

After the first elections for minority councils, the Government authorised local officials (majors, municipal majors and county prefects) in local units where minority councils were elected, to summon the first, establishing session of the minority councils.³⁷ It has been argued that such an intervention from the Government's side could have been justified in 2003, even though neither CLNM nor any other regulation authorizes the Government, or any of its bodies, to participate or to stimulate organization of the sessions of minority councils, after first elections for minority councils and minority representatives. It was the time of implementation of completely new system of minority representation, and there was no previous experience on which the Government could have leaned on. In such circumstances, leaving newly elected councils to summon first sessions by themselves could have meant that the procedure of establishment of the councils could have been protracted or uncertain.

However, in the intervening 4 years sufficient knowledge and experience was gained, within council members to take these status-related decisions for the council in a proper manner. The reasons for the same Government decision after elections of 2007³⁸ is thus unclear, as councils now do not need intervention for summoning the first, establishing sessions.

The repeated Government decision giving authority to local officials to summon establishing sessions of the councils is unnecessary. It creates the impression that the Government of Croatia and local governments, by their own decision, can intervene in affairs of minority councils. It implies that minority councils, besides being dependent on local government for basic pre-conditions for its work, are dependent on local governments in other ways as well, leading to a possible erroneous conclusion that local government is authorized to control the work of the councils.

⁴⁰ Presentation of the State Secretary A. Palarić on the public event in the occasion of finalized minority elections held on July 16, 2007, in Westin hotel in Zagreb.

³⁷ Decision of the Government of the Republic of Croatia on Authority for Summoning of the Constituting Sessions of the Councils of National Minorities (Off. Gaz., No 97/03)

³⁸ Off. Gaz., No 82/07

5. RECOMMENDATIONS

We can conclude that Croatia has legal and institutional framework which secures a system of minority representation of reasonable quality, in accordance with standards of developed democracies. The system was developed to the level which requires no major interventions. However, there are a number of inconsistencies and anomalies, in the content or implementation of the legal framework, and in process of development of minority institutions which can prevent realisation of the full potential of the system and its further development. Suggested recommendations are for measures to correct errors and inconsistencies of the system and which, consequently, will strengthen the system and enable its further development.

5.1. IN RELATION TO CLNM

CLNM is the central law which establishes the system of minority representation and adequate institutional organization. The consistent implementation of the CLNM is of major importance for the protection and representation of minority interests, while every inconsistency in its content or its application has far-reaching influence to the system of minority representation as a whole.

The CLNM is an organic law which, consequently, can be amended only by qualified (two-thirds) majority in the Parliament. It is recommended that the Government should consider the following areas of possible amendments to the CLNM provisions which have been shown to be insufficient or inexact to the extent which jeopardize realization of its purpose.

5.1.1. Clarification of the term «acquired rights»

Considering that “acquired rights” is one of established criteria for realization of the rights of national minorities, clarification of the content of that term should not be left to *ad hoc* interpretations. The content needs to be clearly defined, either through amendments to the CLNM or through its authentic interpretation.

5.1.2. Regulation of the procedure of registration of minority councils

Regulation of the procedure of registration of minority councils will strengthen legal certainty. As with any other legal person in the Croatian legal system, pre-conditions for establishment/registration for minority councils must be defined, but also for rejection of the claim for registration, legal remedies, etc.

5.1.3. Regulation of the reasons for which minority council can cease to exist, as well as the procedure through which those reasons will be determined

For the sake of legal certainty and consistency of the system, CLNM needs to define circumstances under which a registered minority council can cease to exist, the procedure through which those circumstances will be determined and, finally, the body authorized to make such definitions.

5.1.4. Reconsideration of adequate application of other legislation to the status and work of minority councils, in order to solve various status issues (eg decrease of number of council members)

Reference to adequate application of other legislation, aimed at solving some minority council status issues, has in some cases shown to be insufficient, because adequate application of other law cannot address the problem. Those parts of the CLNM which

refer to adequate application of other legislation need to be reconsidered. It needs to be clear whether application of other legislation is possible in a concrete case, if it can solve existing problems and, if necessary - amendments to the CLNM initiated.

5.1.5. Ensuring legal personality of coordinations of minority councils and regulation of mechanism of their financing

Due to the importance which coordinations bear within the system of minority representation, it is recommended to allow them to acquire a legal personality. Such pre-conditions, procedure and financing scheme must be regulated by CLNM.

5.1.6. Consistent implementation of CLNM provision which guarantees to national minorities proportional representation in local parliaments as well as in administrative and judicial bodies

Through system of monitoring, control and sanctions, central Government can demonstrate its commitment to apply the CLNM provision which guarantees to national minorities proportional representation in local parliaments. Furthermore, through concrete measures and examples (by setting up minority quota, through employment of minority members in public services, etc.) central Government can show its will for application of CLNM provision which guarantees to national minorities proportional representation in administrative and judicial bodies.

5.1.7. Conducting intensive monitoring of CLNM implementation

This can be ensured where competent State authorities, within its competencies, without hesitation and of their own initiative, without expecting minority councils or other minority institutions to do so, monitor if local governments apply CLNM consistently (do they secure minimum of working conditions to minority institutions, have they harmonized their statutes according to CLNM, etc.). Against those local governments which refuse to apply CLNM, legal sanctions could be initiated.

5.2. IN RELATION TO INSTITUTIONAL ORGANIZATION

It is concluded that the institutional framework of minority representation is developed and functional, so the suggested interventions below are not of a substantial nature, but rather represent "fine tuning" which will enable more effective functioning of the institutions.

5.2.1. Strengthen the professional support service to the Council

There should be conditions for small but competent and efficient professional support service to the Council, which is likely to mean further employment of needed staff.

5.2.2. Make activities of the Government's Office for National Minorities more visible

Government's Office for National Minorities should display information on its activities to the interested and general public, for example design of its own web page to present activities of the Office and to serve as a communication channel between the Office and interested public.

5.2.3. Reassess preconditions for establishment of the Councils of National Minorities in communities where national minority participates in political decision-making and prevent conflict of interest of the members and officials of minority councils

In local units where particular national minority participates in political decision-making it is not always required to establish a council of that particular national minority to achieve the objectives of such a council. Hence, CLNM criteria for establishment of minority councils could re-considered to regulate in what situations minority council may not need to be established, even though a particular minority participates in total population significantly.

Minority members must be enabled to avoid situations of conflict of interest where members are simultaneously members of minority councils and officials in local government,

5.3. IN RELATION TO ELECTIONS

It is recommended that the Government should:

5.3.1. Consider the possibility of conducting the elections for minority representatives simultaneously with elections for representatives in local parliaments

The possibility of simultaneous elections for local parliaments and minority representatives can be seriously considered. That can reduce total costs of elections, while increase of minority members who participate in elections can strengthen the legitimacy of elected minority representatives.

5.3.2. Encourage voter participation by promotion of elections

Even though elections for minority representatives have no (and shouldn't have) character of political competition, a timely Governmental campaign before elections could have significant impact to voters turnout. This will require a sustainable model of financing of promotion and funds secured. It is also recommended to secure unbiased participation of leading politicians in its promotion.

5.3.3. Consider consequences carefully when taking procedural decisions which directly or indirectly affect election results

The Government and its institutions are obliged to secure pre-conditions for legitimate elections. In that context, they must do whatever needed before the day of elections to solve any doubts which might influence election results (e.g. ask clarification of unclear legal provisions from competent bodies). However, before elections the Government should carefully consider the consequences of any decision which might, directly or indirectly, influence electoral procedure or results.

5.3.4. Respecting the principle that establishment of the Councils of National Minorities should be left to the councils themselves

The Government should demonstrate respect for the principle that the establishment of the Councils of National Minorities is left to elected members of the councils, and to existing minority infrastructure, without interference of bodies and officials of central or local government.



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