



Organization for Security and Co-operation in Europe

Mission to Croatia

H e a d q u a r t e r s

20 August 2002

Background Report

Constitutional Law on National Minorities

Introduction

Following the approval of the new Government during the Parliament's Extraordinary Session in the last week of July, Parliament was asked to give urgent consideration to the Government's proposal for a new Constitutional Law on National Minorities. The obligation to adopt such legislation dates from Croatia's 1996 accession to the Council of Europe. Recent calls for the fulfilment of this long-standing commitment include February 2002 Resolution of the Council of Europe Committee of Ministers on the implementation of the Framework Convention for the Protection of National Minorities,¹ the April 2002 European Commission Stabilisation and Association Report, and the Mission's June 2002 Status Report.²

The Government's proposal for adoption of the legislation in urgent procedure was rejected by the Parliament, but the draft law was given a first reading before the special session ended. Debate will continue after the summer break. Under standard procedure, the final draft proposal must be returned to Parliament no later than 6 months after the first reading in order to keep the issue on the Parliament's agenda.

Given the extensive history and legal complexity of this issue, this report is intended to provide background for the Mission's future reporting on this issue.

¹ Croatia ratified the Framework Convention for the Protection of National Minorities in October 1997 and submitted its first report in 1999. In April 2001, the Advisory Committee issued an opinion that formed the basis for the 2002 resolution by the Committee of Ministers.

² Adoption of a revised Constitutional Law on National Minorities is also a condition for Croatia's accession to NATO as re-iterated by the NATO Secretary General in August 2002.

Legislative Enactments – 1991 to 2000

In December 1991, the Parliament adopted the Constitutional Law on Human Rights and Freedoms³ and the Rights of National and Ethnic Communities or Minorities in the Republic of Croatia.⁴ The adoption of such a law was a precondition for Croatia's international recognition as an independent state in January 1992.

In late September 1995, in the aftermath of the military operations through which the Government regained control of all of the former Serb-controlled territory except Eastern Slavonia that was put under a temporary United Nations administration, Parliament "temporarily" suspended application of most of the law, particularly those provisions related to the Serb minority. General provisions, and those representational provisions related to the smaller minority communities (e.g., Italians, Hungarians), remained in force.⁵

In May 2000, the Parliament amended the Constitutional Law, re-introducing some suspended provisions related to proportional representation of the Serb minority, but repealing the vast majority related to Serb minority self-government. Two related laws, one on the official use of minority languages and scripts and the other on education in national minority languages, were also adopted. Given that the amended law failed to include numerous features recommended by the Council of Europe's Venice Commission, the Parliament also adopted on the same date a "Conclusion" instructing the Government to prepare a new draft Constitutional Law that could be introduced in Parliament within six months, *i.e.*, by November 2000. However, this did not happen. A renewed effort by the Government to introduce a draft law into Parliament was aborted in February 2002 when a proposal reviewed by the Venice Commission was withdrawn. On 22 July 2002, the Government introduced a much modified draft proposal into parliamentary procedure.

Evolving Features of the Constitutional Law and Related Electoral Legislation - 1991 to 2002

The 1991 Constitutional Law, as amended in 1992, provided minorities in Croatia a range of cultural autonomy rights, proportional representation rights and special self-governing districts. The 1992 law regulating parliamentary elections paralleled the language of the Constitutional Law, and provided for proportional representation for minorities in excess of 8% and a total of five representatives for those with less than 8%, specifically 1 each for Italians and Hungarians, 1 for Czechs and Slovaks, 1 for Ruthenians and Ukrainians, and 1 for Germans and Austrians.

³ As denoted in the title, not only did the 1991 Constitutional Law address minority rights, it also addressed a wide range of human rights guarantees. As explained by the Croatian Constitutional Court, one of the important auxiliary functions of the Constitutional Law was to incorporate the European Convention on Human Rights into Croatia's legal system in 1991, six years prior to Croatia's ratification of the European Convention. See Constitutional Court of the Republic of Croatia, 8 November 2000, U-I-745/1999.

⁴ The 1991 law was amended in May 1992.

⁵ Croatia has entered into two bilateral agreements regarding the protection of national minorities: the 1995 Agreement between the Republic of Croatia and the Republic of Hungary on the Protection of the Hungarian Minority in the Republic of Croatia and the Croatian Minority in the Republic of Hungary and the 1997 Agreement between the Republic of Croatia and the Republic of Italy on Minority Rights. Discussions of a similar bilateral agreement between Croatia and Yugoslavia commenced in 2002.

Among the provisions suspended in September 1995 in the aftermath of the military operations was Article 18, paragraph 1 that guaranteed proportional representation in parliament, government and supreme judicial bodies to minorities that constituted more than 8% of the population according to the 1981 census.⁶ Only the Serb minority was effected by this suspension. The representational rights at the national level for minorities that constituted less than 8% (entitled to elect a total of 5 representatives to the Parliament) remained in force, as did the provisions that provided proportional representation in bodies of local self-government. Also suspended were provisions relating to the creation, functioning, and international supervision of special autonomous districts (“kotarevi”)⁷ in which Serbs constituted a majority of the population under the 1981 census as well as those establishing a Court for Human Rights.

The Government’s asserted reason for the suspension was that, following population movements, there were no longer Serb majority districts. At the time, the Venice Commission expressed its view that the suspended provisions should be revised in order to provide for effective participation of minorities in public life.⁸

October 1995 amendments to the law on the election of members of Parliament provided for a total of eight minority representatives, 3 for Serbs, 1 each for Italians and Hungarians, 1 for Czechs and Slovaks, 1 for Ruthenians and Ukrainians, and 1 for Germans and Austrians.

On 15 March 1996, Croatia agreed that in order to fulfil the requirements for admission to the Council of Europe, it would *inter alia* implement the recommendations of the Venice Commission on the Constitutional Law on National Minorities.⁹ In October 1996, the Government created a commission headed by Vladimir Seks, President of the Parliamentary Committee for the Constitution, Rules of Procedure and Political System and president of the HDZ caucus, to propose a revision of the Constitutional Law. In May 1997, the Government agreed with the Venice Commission to establish a Council of National Minorities, the purpose of which was to create a forum in which minority representatives could regularly meet with Government representatives to discuss issues concerning minority protection policy.¹⁰ The Council was established in January 1998. In 1997, the Venice Commission recommended that any revision of the Constitutional Law also include relevant provisions of the “Letter of Intent.”¹¹

⁶ While the 1981 census was not specified in that section of the Constitutional Law dealing with parliamentary representation of minorities, the 1992 Law on Elections for Members of Parliament guaranteed proportional representation for minorities on the basis of the 1981 census. The 1991 Law on the Census provided that the census results were to be published between 1 January 1992 and 31 December 1993.

⁷ The special autonomous districts were to be established in the regions of Glina and Knin.

⁸ Opinion on the Croatian Constitutional Law Amending the Constitutional Law of 1991, 20 June 2000, Section 3, referring to the findings from the Report on the Implementation of the Constitutional Law (CDL (96) 26), adopted at the Commission’s 27th Plenary Meeting, Venice, 17-18 May 1996.

⁹ Opinion No. 195 (1996) on Croatia’s request for membership of the Council of Europe, paragraph 9.vii.

¹⁰ The Government Office for National Minorities was established by government decree in December 1990, prior to Croatia’s international recognition as an independent state.

¹¹ The Venice Commission indicated in its June 1997 Memorandum that “[t]he authorities of the Republic of Croatia should consider including in the Revised Constitutional Law the guarantees of political representation and educational and cultural autonomy which are included in the “Letter of Intent.” Second Report on the State of Progress of Co-operation between the Venice Commission and the Republic of Croatia, 18 March 1998, Chapter 2.1.

In its March 1998 report, the Venice Commission re-iterated the importance of Croatia adopting a revised Constitutional Law and noted the negative impact of the suspension of large parts of the Constitutional Law on displaced persons and refugees belonging to minorities.¹²

In April 1999, the Council of Europe's Parliamentary Assembly adopted a resolution calling on the Government to "adopt a constitutional law revising the suspended provisions of the 1991 Law {...} in compliance with the recommendations made by the Venice Commission and taking into account new realities, by the end of October 1999 at the latest."¹³

October 1999 amendments to the law on the election of members of Parliament specified that the five representatives (for minorities with less than 8%) would be distributed as follows: Italians, Hungarians, and Serbs each entitled to elect one, Czechs and Slovaks elected one, and Ukrainians, Ruthenians, Jews, Germans, and Austrians elected one. As noted by the Venice Commission in December 1999, this arrangement reduced the national level representation of Serbs from three to one representative and the Slovene and Bosniac minority were given no right to representation.¹⁴ This scheme for minority representation was implemented in the 2000 parliamentary election with the result that there are five minority representatives in Parliament at the present time according to the above formula.

The January 1997 Letter of Intent by the Government of the Republic of Croatia on the Completion of Peaceful Reintegration of the Region Under the Transitional Administration provided a number of minority representation guarantees, including the right of Serbs in Eastern Slavonia to be represented in local self-government consistent with the Constitutional Law, the right to have Serb sub-prefects in both counties of Eastern Slavonia and proportional representation in local health, police and judiciary, the right to appoint the Joint Council of Municipalities, and the right to appoint deputy ministers in the Ministry of Public Works, Reconstruction and Construction, Ministry of Interior, Ministry of Justice, and Ministry of Education. The Letter of Intent also provided that after the 2001 census, proportional representation would be guaranteed for Serbs and other national minorities in the Parliament.

¹² The Venice Commission noted "the undoubted disincentive resulting from the suspension of certain provisions of the Constitutional Law, in particular for displaced persons and refugees belonging to minorities. Any prolongation of the suspension of the constitutional guarantees which by the same token would prolong uncertainty regarding the legal system to be applied in the long term to minorities, would put the latter at a disadvantage." Second Report on the State of Progress of Co-operation between the Venice Commission and the Republic of Croatia, CDL-INF(98)7, 18 March 1998.

¹³ Resolution 1185 (1999) Honouring of obligations and commitments by Croatia, April 1999, paragraph 9.iv.

¹⁴ In 1997, Slovenes and Bosniacs ("Muslims") were deleted from the specific list of minorities that appear in the preamble to the Croatian Constitution which states that "the Republic of Croatia is established as a nation state of the Croatian nation and state of members of autochthonous national minorities: Serbs, Czechs, Slovaks, Italians, Hungarians, Jews, Germans, Austrians, Ukrainians, and Ruthenians and the others who are its citizens." Despite constitutional amendments as recent as 2001, these two minorities as well as Roma continue to be excluded from the Constitution's list of minorities.

In 2000, the Venice Commission reiterated the position expressed in its 8 December 1999 Secretariat Memorandum on Progress in Co-operation with Croatia. "On 12 December 1997 the Parliament of the Republic of Croatia adopted amendments to the Constitution whereby, among others, the list of minorities expressly mentioned in the preamble of the Constitution was amended in such a way as to delete the mention of "Muslims" and "Slovenes" and to include "the Germans, Austrians, Ukrainians and Ruthenians". The Commission had not been able to assess the possible effects of this amendment on the work of the Croatian commission for the revision of the Constitutional Law and on the composition and the activities of the Council of National Minorities. However, it became clear later, when the electoral law was adopted, that this amendment had negative effects on the representation of the minority groups whose mention in the Preamble was deleted." Opinion on the Croatian Constitutional Law of amending the Constitutional Law of 1991, 20 June 2000.

Florijana Andrašeca 14	Telephone:	Fax:	E-Mail:	File Name:
10 000 Zagreb, Croatia	+ 385 1 309 6620	+385 1 309 6621	osce-croatia@oscecro.org	Background Report - CLNM 20.08.2002 final

In late April 2000, the Parliament considered a revised Constitutional Law. The Government forwarded a draft to the Venice Commission on 3 May 2000. The Commission responded with a preliminary report on 10 May, indicating that “the draft constitutional law, as such, did not seem to offer an adequate response to the political needs of minorities in Croatia.”¹⁵ The Commission also expressed its regret that despite a commitment from the Government and the Commission’s repeated offers of assistance, that “no consultation had taken place at an earlier stage of the Constitutional Law’s drafting.”¹⁶ On 11 May 2000, the Parliament adopted the draft law without substantial changes as well as a “Conclusion” instructing the Government to prepare a new draft law for presentation to the Parliament within six months.

The 2000 law re-introduced proportional representation in Parliament, Government and supreme judicial bodies for minorities that account for more than 8% of the population. However, the law provided that implementation of this provision would be suspended until after the official results of the 2001 census. If the provision had been implemented immediately, Serbs would have been entitled to proportional representation based on their share in the 1991 census, 12%. The law also repealed the suspended sections of the prior law concerning special status districts. For minorities with less than 8%, the law provided for a total minimum of five and up to a maximum of seven parliamentary representatives. However, as indicated above, the 1999 amendments to the law regulating the election of representatives to the Parliament only provided for a total of five minority representatives. These two laws currently regulate elected minority representation on the national level.

In June 2000, the Venice Commission recalled its observation in 1996 that while events could justify a revision of provisions such as those that provided for special status districts, “this revision should not lead to the abolition of any special status but should rather institute a regime of local self-government adapted to the new situation.”¹⁷ The Commission re-iterated its 1997 observation that Croatian authorities should consider including guarantees of political representation and educational and cultural autonomy that are included in the “Letter of Intent.” The Commission welcomed the re-introduction of proportional representation at the national level for minorities in excess of 8%, noting that “this may have an encouraging effect to the return process of refugees.” The Commission noted however that “the practical effects of this provision will mostly depend on the general return policy of the [] Government, including fair and speedy procedures concerning citizenship.” In conclusion, the Commission found that the 2000 legislation “still lacks as a whole rules at the

¹⁵ “The Venice Commission’s Rapporteurs examined the draft constitutional law as a matter of urgency. On 10 May they submitted to the Government of Croatia and to the Parliamentary Assembly of the Council of Europe a preliminary report (CDL (2000) 31). They found that the draft constitutional law, as such, did not seem to offer an adequate response to the political needs of minorities in Croatia.” Opinion on the Croatian Constitutional Law Amending the Constitutional Law of 1991, 20 June 2000.

¹⁶ Opinion on the Croatian Constitutional Law Amending the Constitutional Law of 1991, 20 June 2000.

¹⁷ Opinion on the Croatian Constitutional Law Amending the Constitutional Law of 1991, 20 June 2000, Section 3: refers to the findings from the Report on the Implementation of the Constitutional Law (CDL (96) 26), adopted at the Commission’s 27th Plenary Meeting, Venice, 17-18 May 1996: “Although recent events are capable of justifying a revision of certain provisions of the Constitutional Law of 1991 (...) this revision should not lead to the abolition of any special status but should rather institute a regime of local self-government adapted to the new situation. In this respect, it is of course for the national legislature to determine the principal characteristics of that regime. However, the provisions should, in line with Recommendation 1201 (1993) and with the European Charter of Local Autonomy, guarantee that concentrated minorities will enjoy the right to regulate and manage an important part of public affairs.”

constitutional level to regulate or to set out the frame of an effective participation of minorities in public life and rules as to the establishment, functioning and competencies of bodies representing minorities at the local and national level.” It again expressed its regret that consultation did not take place at an earlier stage and re-iterated its availability to cooperate in the revision of the law.

In July 2000, the Government forwarded to the Venice Commission a draft law developed by a committee of experts and minority representatives headed by the Minister of Justice Stjepan Ivanisevic. After a series of consultations, a new draft law was produced. In July 2001, the Commission stated that the draft law constituted “an important step forwards in the protection of national minorities in Croatia.”¹⁸ While finding that the draft provided a “comprehensive and coherent framework,” the Commission recommended various improvements. The Commission noted that the draft provided “plural” vote for minorities and observed that the minority self-government provisions provided “in general, a viable and adequate substitute for the abolished special status regime provided for in the Constitutional Law of 1991 and never implemented.” However, the Commission noted that the competencies of these minority self-governments were minimal and that others should be added. The Commission concluded that the proposed draft was “an adequate response to the needs of minorities in Croatia.”

The Croatian Constitution as amended in November 2000 explicitly contemplates that Parliament can adopt legislation that provides a special right to national minorities to elect representatives to the Croatian Parliament. Consistent with this provision, the Government’s Program issued in February 2000 stated that it would propose “adequate solutions for assuring positive discrimination in electoral legislation so as to provide, along with general civil rights, for their [minorities] special rights as well in the proposing and election of their representatives.”¹⁹ In April 2001, the Constitutional Court upheld the Constitutional Law’s provision of special election rights including proportional representation for minorities (so-called “positive discrimination”).²⁰ The Court also noted that different types of electoral rights for different minorities were consistent with the Constitution.²¹

¹⁸ Opinion on the Constitutional Law on the Rights of National Minorities in Croatia adopted by the Venice Commission at its 47th Plenary Meeting, 12 July 2001.

¹⁹ The Government of the Republic of Croatia, The Programme of Activities of the Government of the Republic of Croatia for the period 2000-2004, Zagreb, 8 February 2000, point 4.1.4. Minorities: “The Government will remove all obstacles thwarting the full civil integration of national minority members in Croatian society. To this end it will propose, among others, adequate solutions for assuring positive discrimination in electoral legislation so as to provide, along with general civil rights, for their special rights as well in the proposing and election of their representatives.”

²⁰ Constitutional Court of the Republic of Croatia, 12 April 2001, U-I-732/1998. Relying on both the Constitution and the Framework Convention for the Protection of National Minorities the Constitutional Court stated that “it is evident that the application of the principle of equality does not always provide for sufficient protection. If the principle of equality was immediately applied alone, . . . the special characteristics and specific interests of the minority national and ethnic communities in the society would be neglected, which might, in certain cases, lead to discrimination. Therefore, the exclusive individual protection, limited to the protection of classic fundamental rights of individuals, is no longer considered sufficient. In accordance with that, the application of the principle of positive discrimination contained in Article 15, Paragraph 3 of the Constitution, points at the detachment from the strictly individual concept of the protection of minority members in Croatian society, i.e., at the acceptance of the constitutional and legal concept of minority rights as the collective rights of minority communities.”

²¹ *Id.*, “Legal regulations which take into consideration the specific conditions of the members of national minorities . . . are not considered an act of discrimination neither in relation between the majority population and

Current round of drafting legislation - 2002

In February 2002, a government official announced at a public roundtable on minority rights that the draft law prepared with the Venice Commission's advice would not be presented for parliamentary procedure. At the same gathering, the Deputy Speaker of the Parliament Mato Arlovic explained that the reason for the withdrawal was that the draft would not muster the necessary two-thirds vote in Parliament.²²

The Government established a new Working Group in March 2002 to develop a new draft Constitutional Law. The ten-member Working Group, of which five were ministers and four Government officials, was tasked to complete a draft by the end of June 2002. It was mandated to consult with a broad range of actors, including relevant parliamentary committees, representatives of national minorities in Parliament, the Venice Commission, other international organizations and non-governmental organizations. After development of a draft proposal, the Government conducted a series of consultations with political parties and minority representatives.

While this consultative process was taking place, the results of the 2001 census were officially released in mid-June 2002, revealing that the Serb minority accounted for 4.5% of the total population, a decrease by two-thirds from 1991. No other minority accounted for more than 1% and together minorities accounted for slightly less than 7.5% of the population, which is half of the 1991 census results. Serb representatives criticized the census results for failing to include a large number of Croatian Serb refugees currently outside the country. Fear of declaring Serb minority status was also proposed as a reason for the low percentage.

The release of the census results also brought into focus a related issue, *i.e.*, the need for by-elections in those localities in which minorities are under-represented in the bodies of local self-government. The 2001 Law on the Election of Members of the Representative Bodies of Local and Regional Self-Government Units calls for such elections within 90 days after the census results are published. That deadline will expire in mid-September 2002. However, as noted by the Venice Commission in March 2002, that legislation remains incomplete as to how such elections are to be implemented.²³

Both before and after the introduction of the draft law into parliamentary procedure, the Mission conducted a series of discussions with minority representatives, the Government as

ethnic and national communities or minorities on one hand, nor in the mutual relation of those communities or minorities on the other.”

²² Article 82, paragraph 1 of the Croatian Constitution provides that laws regulating the rights of national minorities must be passed by a two-thirds vote of all representatives.

²³ Consolidated Opinion on the Law on the Election of Members of Local and Regional Self-Government Units of Croatia, adopted by the Venice Commission at its 50th Plenary Meeting in Venice 8-9 March 2002, published on 12 March 2002: “A serious failing of this Law is that, while it provides, under Article 9, that the statutes of local and regional authorities shall determine the number of seats to be held by ‘Croatian citizens, members of ethnic and national communities or minorities, in accordance with the proportional share of their members in the total population of the unit’, there is a remarkable absence of clear provisions governing how such a composition of the relevant bodies is actually to be achieved. As mentioned, Article 61 provides for additional elections in cases where the elections have not resulted in proportional representation of national minorities. It is not clarified, however how such additional elections will be held and who may participate in them; only the minorities which are under-represented?”

well as with opposition representatives. The Head of Mission met with Deputy Prime Minister Granic in early May to discuss the issue of the draft law and to offer the assistance of both the Mission and the OSCE High Commissioner on National Minorities. The High Commissioner, Ambassador Rolf Ekeus, visited Croatia in February 2002 when he discussed his assistance immediately subsequent to the withdrawal of one proposal and prior to the preparatory phase of the new draft law. Staff from the High Commissioner's office travelled to Croatia in mid-May to engage in consultations on this question with minority representatives and others. The efforts to find a political consensus on the Constitutional Law were also discussed in a meeting that Head of Mission had with President Mesic in early July.

In these meetings and meetings with other Government officials, the Head of Mission stated the Mission standpoint on the imperative of consultation with national minorities in order to ensure that the Law is seen as legitimate and useful by the national minorities themselves. He also expressed concern that the use of the 2001 census to fix the level of representation of national minorities at the national, regional, and local level could eventually lead to under-representation, especially in those communities where the rate of refugee return is high. Finally, the Head of Mission mentioned the importance of providing adequate competencies to the minority self-governments.

A draft of the Constitutional Law was formally presented to the Head of Mission on 17 July during a meeting with the Deputy Prime Minister. The Government subsequently advised the Mission that this was to be considered delivery to the international community at large. While the mandate establishing the Working Group specifically indicated that it should consult with the Venice Commission, the Government has not formally requested an opinion from the Commission. Despite the fact that the international community was given very little time for preparation of comments, the recommendations of the High Commissioner on National Minorities were submitted to the Croatian authorities on 26 July 2002.

The new draft which had been discussed with minority representatives contained two options for the election of minority representatives to the Parliament, one of which provided a dual vote for minorities. However, in the draft submitted by the Government to parliamentary procedure on 22 July the dual voting option as well as proportional representation in local executive and state administrative and judicial bodies had been eliminated.²⁴ The draft presented to Parliament established that declared ethnicity in voters' lists would provide the basis for elected representation. Although this model addresses the Mission's concern regarding level of representation in communities with a rapidly changing demographic profile, it poses other problems related to personal integrity.

The draft that was eventually submitted to Parliament in an urgent parliamentary procedure in the last week in July provided minorities with a right to elect at least five minority representatives in the Parliament. For those minorities with more than 1.5% of the population as reflected in the census (Serbs only), the level of minority representation is guaranteed at

²⁴ Instead of proportional representation, the proposed law provides for "representation . . . 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." This re-iterates the requirement of Article 8 of the Law on the State Administration System that provides for such representation in all levels of state administration, including that in local and regional self-government units. In self-governments where the draft Constitutional Law requires proportional representation in the elected bodies, "representation of a national minority shall be ensured in its executive body."

one. The number of additional minority representatives elected would be determined through the following formula: the number of voters of the national minority (Serbs) that participated in the election divided by the average number of voters required to elect one member in the Parliament. Minorities with less than 1.5% of the population would have a collective right to elect four representatives.

In the Parliament's debate, Deputy Speaker Mato Arlovic, Chair of the Committee for the Constitution, Political System and Standing Orders and a leader of the largest government party (SDP) proposed amendments that were supported by the Committee. He suggested that minority representatives would be elected from party lists, and that the competencies of local minority self-government would be strengthened. In discussions with the Government, the main opposition party (HDZ) expressed the interest to increase the number of seats for the Croat Diaspora in exchange for support of the Government's proposal.

Minority representatives, while generally supportive of the draft proposal as it existed prior to submission to the Parliament, gradually withdrew their support for several reasons, in particular the elimination of the dual vote option for members of Parliament and the elimination of proportional representation for minorities in local executive bodies as well as bodies of state administration and the judiciary. Minority representatives also opposed the use of the urgent procedure. Most minority representatives in Parliament have indicated that they would not support a law that does not entitle national minorities to positive discrimination concerning representation in Parliament. Several minority representatives indicated that the law was "losing quality" as a result of the Government's bargaining with the HDZ to secure sufficient votes to ensure adoption. Minority representatives also opposed the so-called "third option" for minority representation in the Parliament, namely election from party slates as proposed by the leader of the Parliament.

Furio Radin, the Chair of the Parliamentary Committee for the Protection of Human Rights and Rights of National Minorities, who is also representative of the Italian minority in Parliament, commented that the draft law finally presented by the Government to the Parliament was "diluted." Among the amendments proposed by Radin that were supported by the Committee, three were most important. First, explicit incorporation into the Constitutional Law of the standard contained in Article 15.3 of the Croatian Constitution that permits the Parliament to adopt legislation ensuring a special right to national minorities to elect representatives into the Parliament. Second, proportional representation in executive bodies at all levels of government. Third, greater specificity of the cultural autonomy granted to national minorities.

Milan Djukic, the sole Serb representative in Parliament, indicated that he would likely vote against any proposal that did not provide the type of guarantees that were enshrined in the 1991 law, *i.e.*, proportional representation for minorities in Parliament and territorial autonomy for Serbs in several regions. Djukic also indicated that the adoption of the Constitutional Law would mean little for Serbs as long as other rights, including the right to return, repossession of property, and convalidation were not uniformly available.

The Head of the Serb National Council, Milorad Pupovac, re-iterated the position that positive discrimination, particularly in the form of the dual vote for minorities, should be re-incorporated in the proposal. Pupovac also supported the need for proportional representation in executive bodies of local self-government and sought legal status for the Council of National Minorities established in the Constitutional Law.

Florijana Andrašeca 14	Telephone:	Fax:	E-Mail:	File Name:
10 000 Zagreb, Croatia	+ 385 1 309 6620	+385 1 309 6621	osce-croatia@oscecro.org	Background Report - CLNM 20.08.2002 final

Further Procedure in Fall 2002

With the abandonment of the urgent procedure, normal parliamentary procedures will be followed. During the extraordinary session in late July, the Parliament completed the first reading and voted to forward the Government's proposal for a second reading. During a second reading, the draft law along with any amendments will be considered. A second reading must be completed within six months, i.e., the end of January 2003, or the law must be withdrawn and re-submitted.

From the public debate and the Mission's meetings, it appears that some crucial outstanding issues remain to be solved. These include the modalities for minority representation in Parliament and the proportional representation of minorities in local executive bodies and state administrative and judicial bodies. Other areas where clarifications are warranted are the competencies of regional and local minority self-governments and the Council of National Minorities, as well as safeguards for their financing and provisions for how the Government should respond to their concerns. There is also an opportunity to adjust and clarify several technical issues in the draft Law. The uncertainties regarding the procedures for electing minority MPs and regional and local representatives should be addressed in the related electoral law.

Finally, it should be considered to what extent the rights provided by related legislation to which the Constitutional Law on National Minorities makes reference should be entrenched in the Constitutional Law itself.