



Organization for Security and Co-operation in Europe

Mission to Croatia

Headquarters

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Roundtable

Implementation of Article 22 of the Constitutional Law on the Rights of National Minorities: Employment in Administrative Bodies of Local and Regional Self-government Units

Summary of Discussion

Overview

On 27 November 2006, a Roundtable on implementation of the Constitutional Law on the Rights of National Minorities (CLNM) related to employment of national minorities in administrative bodies of local and regional self-government units was held in Parliament. The Roundtable was co-organized by the Parliament Committee for Human Rights and Rights of National Minorities, the Central State Administration Office, and the OSCE Mission to Croatia. The Roundtable, which was held on the fourth anniversary of the CLNM's adoption, brought together 50 participants, representatives of local and regional self-government units, representatives of Councils of National Minorities, Members of Parliament, and the Central State Administration Office (CSAO) and other Government bodies. Other participants included the Ombudsman, representatives of civil society and international organizations, and a representative of the OSCE High Commissioner on National Minorities.

The Roundtable was organized as a follow-up to the October 2005 OSCE Conference "Constitutional Law on the Rights of National Minorities: Three Years Later (2002 – 2005)", which identified the Article 22 guarantee of minority employment in state and local administration and judiciary as an aspect of the CLNM where implementation lagged.¹ The Roundtable was intended to take note of developments and provide a forum for discussion of

¹ Article 22 of the CLNM provides as follows:

- (1) In a local self-government unit and in regional self-government unit (hereinafter: self-government unit), in which, pursuant to the provisions of this Constitutional Law, proportional representation of members of its representative body needs to be ensured from among the ranks of members of national minorities, the representation of members of a national minority shall be ensured in its executive body.
- (2) The members of national minorities shall be ensured representation in the state administration and judicial bodies in compliance with the provisions of a special law, taking into account the share of members of national minorities in the total population at the level at which the state administration or judicial body was established and the acquired rights.
- (3) Members of national minorities shall be ensured representation in the administrative bodies of self-government units in compliance with the provisions of a special law regulating local and regional self-government and in compliance with the acquired rights.
- (4) Members of national minorities shall have priority in the filling of posts as per Paragraphs 2 and 3 of this Article, under equal conditions.

legal and practical questions related to implementation of Article 22(3), including the development of employment plans as provided by special legislation adopted in late 2005.² Another relevant development in October 2006 was the adoption of a Government Decree regulating the centralized register of civil servants, including information on national origin useful for CLNM implementation.

The Roundtable was intended to focus special attention on issues such as how the general supervisory authority provided by law to the CSAO in relation to local and regional self-government units applies to CLNM implementation, how and when minority members can invoke national origin during the recruitment process, voluntary declaration of minority status as well as how the right of priority in employment under equal conditions should be implemented.

Article 22(3) of the CLNM provides that national minorities “shall be ensured representation” in administrative bodies of local and regional self-government units, realization of this right to be specified by other legislation. That special legislation - Article 20 of the Law on Amendments to the Law on Local and Regional Self-Government Units - limits the exercise of the Article 22(3) right to municipalities and counties where a national minority constitutes 15% and 5%, respectively, of the population, although no such limit was contained in the CLNM. These correspond to the same localities in which national minorities are entitled to proportional representation in elected bodies and representation in executive bodies as specified in Articles 20 (3), (4) and Article 22(1), respectively, of the CLNM. Similar to the practice for local and regional elections, the CSAO uses the 2001 census as the basis for determining which localities meet these thresholds. However, Article 20 (7) of the CLNM contemplates that the census will be updated by the most recent voter registration lists. Hence it can be seen that reform of the legislation and practice related to voter registration lists is linked to full implementation of several CLNM guarantees.

Introductory Addresses

A series of introductory addresses were given by the Head of the OSCE Mission to Croatia, Ambassador Jorge Fuentes, the Deputy President of Parliament’s Committee for Human

² Article 20 of the Law on Amendments to the Law on Local and Regional Self-Government Units introduces a new Article 56a that provides as follows:

Members of national minorities, who, in compliance with the provisions of Article 20 of the Constitutional Law on the Rights of National Minorities (Official Gazette, No. 155/02), have the right to proportional representation in representative bodies of local and regional self-government units, shall have the right to representation in the executive and administrative bodies of those units.

The authorities of local and regional self-government units shall, by way of a recruitment plan, determine the number of filled-up work posts in the administrative bodies of local and regional self-government units and plan the recruitment of the necessary number of members of national minorities for the purpose of exercising representation in compliance with the Constitutional Law on the Rights of National Minorities referred to in Paragraph 1 of this Article.

When members of national minorities referred to in Paragraph 1 of this Article apply for an announced vacancy, they shall have the right to invoke the exercise of the rights to which they are entitled in compliance with the provisions of the Constitutional Law on the Rights of National Minorities.

Local and regional self-government units referred to in Paragraph 1 of this Article shall be obliged to conduct the recruitment policy of new employees, that is, employees who are recruited to fill vacancies, in such a manner as to ensure the respect of rights of members of national minorities, in compliance with the provision of Article 22, Paragraph 4 of the Constitutional Law on the Rights of National Minorities.

Rights and Rights of National Minorities (Committee), Ratko Gajica, and Antun Palarić, State Secretary, Central State Administration Office (CSAO).

Ambassador Fuentes stressed the importance of full implementation of the employment guarantee of national minorities in public service. He noted the importance of addressing the remaining challenges to CLNM implementation through discussion between those in Parliament who adopted the law, local officials responsible for its implementation, and the central government authority responsible for supervising implementation.

Mr. Gajica noted that the importance of the CLNM was demonstrated by the Committee's co-sponsorship of the Roundtable. He observed that the CLNM was adopted to ensure that equality of national minorities was ensured. He concluded that with the further development of civil society, minority rights would be adequately protected, significantly reducing the need for special legislation such as the CLNM.

Mr. Palarić welcomed the participants, noting that the participation of local and regional officials guaranteed that subsequent to the Roundtable there would be steps forward taken in the implementation of Article 22 of the CLNM, including the issuance of guidelines or possible amendments to relevant legislation.

Legal Framework and Applicable Standards

In his introduction to the legal framework and applicable standards, Mr. Palarić noted progress in minority policy since the early 1990s. He highlighted the Government's efforts to implement the CLNM in achieving minority political representation, noting that updating voter registration lists (to more accurately reflect the number of voters, including national minority voters) was important to ensure appropriate representation in elected bodies as well as in local administration. He indicated that amendments to the Law on Local and Regional Self-Government Units had been adopted at the request of Parliament's Committee for Human Rights and Rights of National Minorities.

Statistics on Minority Employees. Mr. Palarić indicated that the CSAO had collected information on the levels of minority employment in local administration, which information would be included in the Government's next annual report to Parliament on CLNM implementation. Related to the availability of statistical data for the development of employment plans, Mr. Palarić noted the adoption of the Government decree related to the Central Register of Civil Servants that will contain personal data on civil servants, including national origin.

Supervision by the CSAO. Mr. Palarić stated that while full CLNM implementation was desirable, the CSAO's authority was limited and had to respect the constitutionally guaranteed autonomy of local and regional self-government units. Mr. Palarić noted that CLNM implementation was a particular challenge to the many small local self-government units. He stated that the CLNM had been 100 per cent implemented in elected bodies, 80 per cent implemented in executive bodies (through political appointments), and more than 50 per cent implemented in administrative bodies of local and regional self-government units. He noted that consideration of minority preference under the CLNM was appropriate when filling vacancies that arose from the departure of staff or when new positions were created, consistent with the minority applicant meeting the job requirements and having qualifications equal to or better than Croat candidates. Mr. Palarić also noted that the Government was preparing the Central Employment Plan for the state administration, including those aspects

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related to minority employment goals for the year 2007. He stated that state bodies had no right to ask job applicants about their national origin, commenting that minorities were entitled to change their declared status.

In response to a question about the scope of the CSAO's supervisory authority in relation to the adoption of employment plans by local self-governments, Mr. Palarić indicated that it was unclear whether the CSAO could sanction local authorities for failing to act, observing that the CSAO usually only responds once local authorities have taken an action that is deemed inappropriate or illegal. Acknowledging that some local authorities have not yet developed employment plans, Mr. Palarić suggested that it was uncertain whether the CSAO has authority to ensure that plans were developed, although the CSAO could inquire.

Ms. Miroslava Nina Mišković, Head of the CSAO Department for Supervision of Local and Regional Self-Government and Cooperation, provided information about the legal framework, noting that local and regional self-government units needed to develop employment plans. She re-iterated the need for central authorities to observe the autonomy of local governments and acknowledged their budget limitations. She observed that based on the information provided to the CSAO by local officials, considerable progress had been made in implementing Article 22. She provided statistics on the numbers of minorities employed in the administration of specific local and regional self-government units that are required to comply with the CLNM guarantee. In order to save time for discussion, the OSCE Mission to Croatia requested that the statistical information be provided in writing so it could be distributed to all participants. On the issue of CSAO supervision, Ms. Mišković noted that all local statutes should be sent by local authorities to the county office for state administration. She noted that she had not been informed of any statutes being amended.

Local Perspectives: Achievements and Challenges

The Mayor of Knin, Josipa Rimac, presented information about the activities of officials in Knin related to implementation of the CLNM as well as other minority-related issues, including return. She commented that co-operation between local officials and representatives of national minorities was important for implementation of the employment guarantee. The Mayor indicated that Knin had adopted a statute on the issue of national minority employment. She stated that national minorities were involved in the budget process. She stated that "co-existence" was important for survival in the Knin area. The Mayor indicated that in her view, job applicants must first be qualified, and then minority status could be considered. Ms. Rimac stated that an improved economic situation improves employment options for all, including national minorities. Mayor Rimac also informed about the presence of national minority employees in town institutions such as the fire brigade, kindergarten, and public services as well as schools and hospital.

Discussion

After the presentations, there was an exchange of views between participants highlighting specific aspects of implementation of Article 22 in the context of employment in local and regional self-government units. No specific recommendations or follow-up measures were agreed. Some participants raised related issues such as the need for implementation of the CLNM guarantee of employment of national minorities in the state administration and judiciary, some local officials being interested in the number of national minorities employed in the state administration in their county. Others raised the need to update voter registration lists, including designation of national minority voters. Both issues will be addressed in separate Roundtables organized by the OSCE Mission to Croatia.

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Some representatives of national minorities highlighted that job applicants who were national minority members were able to invoke the priority in employment during the recruitment process without difficulty. It was noted, however, that after a job applicant invokes the CLNM priority, it is important to ensure that local officials properly consider the priority in making hiring decisions. Some participants asked for further information on specific measures to implement the guarantee. While some representatives commented that particular attention should be focused on employing national minorities in trainee positions, others noted that ensuring appropriate minority representation in the work force of local governments should mean representation at all levels of responsibility, not only entry level or less responsible positions. Some participants also queried how national minorities could find out about job vacancies in local and regional governments. Some representatives of national minorities suggested that Councils of National Minorities should undertake greater efforts to inform national minority members on rights related to minority employment.

Local and regional officials provided information on the steps taken to date in implementation of the CLNM, their cooperation with representatives of national minorities, and problems related to implementation. One local official characterized three types of relations between national minorities and authorities at the local level:

- Political agreement between political parties, e.g., Knin
- CLNM and minority protection laws implemented, good atmosphere, e.g., Istra
- Some communication between national minorities and local authorities, but cooperation limited

and concluded that four years after adoption of the CLNM, a national strategy was needed.

Some local officials indicated that they needed a systematic solution from the central Government in order to implement the employment guarantee given that employment is connected to the overall general economic situation. One local official asked how to prioritize between job applicants, each of whom has legal priority, i.e., a national minority and a homeland defender. Some local officials noted that the development of employment plans was linked to the annual budget cycle and needed to be co-ordinated with the development of the budget. Others noted that not all national minorities choose to declare their national minority status in order to invoke the employment priority. One official noted that implementation could not happen overnight, that the CLNM could only be implemented with new additions to the workforce. One local official expressed his concern that the international community misperceived the situation of minority employment, viewing the situation as less positive than it was.

The Ombudsman, Jurica Malčić, noted that his office encountered issues related to implementation of the minority employment guarantee as follows:

- Individual cases of national minority members who tried to invoke the priority in employment guarantee when applying for a job vacancy;
- During his work visits to various counties, the issue was raised in discussion with Councils on National Minorities and with local and regional officials;
- In the Ombudsman's 2004 and 2005 annual reports to Parliament.

The Ombudsman noted that in his last two Annual Reports as well as during his work visits, he had warned about non-implementation of the minority employment guarantee. Noting that the participants included local officials as well as the CSAO, Mr. Malčić noted that initially

there was a question whether the CLNM was directly implementable. He indicated that although he had expected that the law would have been directly implementable, problems arose and further special laws had to be adopted to facilitate implementation of the CLNM, resulting in delays. He observed that during the Roundtable there had been considerable discussion about the need for political will to implement the CLNM employment guarantee. In his view, political will was relevant when adopting a law; once the CLNM was adopted, there was no more room for political will, the law must be implemented.

The Ombudsman noted that the Government's Annual Reports on Implementation of the CLNM contained little specific information about Article 22. He indicated that the statistical information provided by the CSAO during the Roundtable was an essential starting point for discussing implementation that it would have been useful to have in advance of the Roundtable, and that he was interested to include it in his next Annual Report to Parliament. He also observed that the CSAO is apparently over-burdened with a wide range of responsibilities, proposing that the CSAO be re-structured, noting the importance of its supervisory role in relation to local and regional self-government units.

The Deputy President of the Parliament Committee for Human Rights and Rights of National Minorities, Mr. Gajica, noted that implementation of Article 22 was important for the benefit of both national minorities and society as a whole. He referred to three contexts – legal, political, and social - in which the CLNM was being implemented. In terms of the legal, he noted that with sufficient will the law could be directly implemented. To the extent additional implementing legislation was needed, realization of the CLNM's guarantees would be further delayed. In terms of the political context, he cited examples where he believed the authorities had missed an opportunity to send a positive message by hiring minority candidates. In relation to the social context, he noted the need to overcome the lingering resentment of national minorities, including as competitors for property and jobs.

A representative of the Delegation of the European Commission to Croatia underlined the importance of CLNM implementation and development of a non-discrimination policy, which is part of Chapter 19 of the EU *acquis*, to the EU accession process. He indicated that implementation of the CLNM was important because of the subject matter, but also because it was important to see that once laws were adopted they were fully implemented. In its 2006 Report, the EC had noted limited progress in CLNM implementation, with specific gaps remaining. He observed that it would not be desirable if the 2007 Report noted the same gaps. He concluded that not only local officials, but the central Government should take the necessary steps to move forward.

Conclusions

Closing remarks were given by the Head of the CSAO, the Deputy President of the Parliament Committee, and the Head of the OSCE Mission to Croatia.

Mr. Palarić reflected on the variety of views expressed by participants on the status of implementation, stating that the Government has worked actively to implement and had initiated all normative measures, including new laws and the registry of civil servants. He indicated that with regard to the Central Employment Plan for state administration, this issue would be resolved in 2007 and that significant progress had been in evidence in CLNM implementation in state administration in 2006. He concluded that he was convinced that the CLNM was mostly implemented, and where it was not, it was due to a lack of vacancies.

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Mr. Gajica agreed that there was progress toward implementation, but he expressed the view that progress lagged behind what was possible. He noted that while Roundtable discussions are useful, follow-up measures are required to move forward.

Mr. Fuentes noted the variety of views expressed, agreeing that not all solutions can be found at one Roundtable and additional steps must be taken to identify problems, make recommendations, and move forward with implementation. He concurred that it was no longer a matter of political will, but a need for adopted legislation to be implemented. He concluded that it was necessary to show progress in the coming period and that it was undesirable that another year would pass without being able to reflect more progress toward implementation.