



Organization for Security and Co-operation in Europe

Mission to Croatia

Headquarters

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Background Report

Implementation of the Constitutional Law on the Rights of National Minorities (CLNM) and Related Legislation

I. Introduction

The Constitutional Law on the Rights of National Minorities (CLNM) was adopted by the Croatian Parliament on 13 December 2002. As required by Article 82(1) of the Croatian Constitution, the CLNM was adopted by more than the required two-thirds majority (101) of all representatives (115 for, 4 against, 2 abstentions).

The CLNM was published on 23 December in the Official Gazette (NN 155/02). On the date of publication, the CLNM came into immediate effect (Article 45) and the prior CLNM was repealed (Article 44). Publication triggered two 90-day deadlines that expired on 23 March 2003; the first, remedying minority under-representation in 5 county and 83 municipality and town self-governments that resulted from the May 2001 elections; the second, Government appointment of the Council for National Minorities at the national level. The first deadline expired without substantial implementation at the local and regional level. The Government issued relevant decisions within a relatively short period after the expiration of the second deadline.

Full implementation of the CLNM will require harmonization of related legislation, *e.g.*, laws pertaining to parliamentary, regional and local elections as well as laws relating to the judiciary and state administration. As one of the first steps toward implementation, the Parliament adopted on 11 March 2003 amendments to the law regulating the election of local and regional representative bodies relevant to minority representation, as well as local and regional advisory minority councils. In late January and early February minority representatives spoke publicly about the need for the Parliament to act quickly so as to meet the 90-day deadline. Although the amendments have now been adopted, there are remaining ambiguities about the meaning and manner of their application that seem likely to delay implementation. Amendments to the law regulating parliamentary elections relevant to minority representation were adopted and published on 2 April in the Official Gazette (NN 53/03).

In its opinion of 25 March 2003, the Council of Europe's Venice Commission welcomed the adoption of the CLNM stating that it represents "... in many ways, a significant improvement as compared to earlier drafts commented upon by the Venice Commission". However, the opinion

went on to state that "... a certain number of issues still require further clarification", particularly special laws whose adoption are still required for full implementation of the guarantees in the CLNM"¹.

Implementation of the CLNM will also require clarification by relevant Government bodies of the manner in which particular guarantees are to be implemented, such as minority representation in the state administration and judiciary. To date, the Mission has observed few significant steps in that direction. Thus, four months after the adoption of the CLNM, a substantial number of open questions remain.

II. Introductory Provisions, Definitions, Etc.

The CLNM contains an updated list of international instruments, including conventions, under which Croatia is obligated to respect and protect minority rights and human rights (Article 1). The list has been updated from that contained in the now repealed CLNM from 2000. It recognizes and protects all rights included in the list of instruments without discrimination on the basis of national origin as well as race, sex, religion, etc. (Article 2).

The CLNM's definitions limit its applicability in two significant ways. First, by limiting the definition of national minorities to citizens, the guarantees are only available to citizens (Articles 4 and 5). The use of this definition has been criticized by the OSCE High Commissioner on National Minorities (HCNM) and the Council of Europe's Venice Commission. This limitation can be particularly problematic when it works in tandem with Croatia's Law on Citizenship, since the Law imposes stricter eligibility criteria for naturalization of non-Croats than Croats (such as a five-year period of continuous residency).

Second, the CLNM also restricts the definition of a national minority to "traditionally settled" groups, which has been criticized by the Council of Europe's Venice Commission although it is derived from the text of the Framework Convention for the Protection of National Minorities. It remains unclear whether there are minorities currently present in Croatia that would not be considered "traditionally settled" and thereby excluded from the CLNM's guarantees.

Consistent with the recommendations of the HCNM and the Venice Commission, the CLNM's definition of national minority is not limited to a specified list of minorities. The Law on the Election of Representatives to the Croatian Parliament (**MP Election Law**) mentions and gives minority rights to all 22 minorities counted in the 2001 census. However, an inconsistency remains between these laws and the Croatian Constitution which contains a list of ten specified minorities from which some minorities present in Croatia (and granted representation rights through the amendments to the Law on the Election of Members of Representative Bodies of Local and Regional Self-Government Units (**Local Election Law**) are not specified. Among others, these include Albanians, Roma, Bosniacs and Slovenes.

¹ Opinion on the Constitutional Law on the Rights of National Minorities of Croatia, adopted by the Venice Commission at its 54th Plenary Session (Venice 14-15 March 2003), Opinion No. 216/2002, CDL-AD (2003) 9, 25 March 2003, paragraph 7 (hereinafter "Venice Commission Opinion"). "The Commission noted, among other, that full implementation of the guarantees provided by the Constitutional Law to ensure the effective protection of the rights of national minorities require the adoption of special laws and regulations The Commission therefore reiterated its readiness to co-operate with the Croatian Government in the preparation of these laws However, the Croatian Government had not forwarded the draft amendments to the Law on the Local Elections to the Venice Commission and has not requested its co-operation in the revision of this law." *Id.* At paragraphs 3, 5.

III. Minority Representation in Elected Bodies

Parliament (Article 19) + Amendments to MP Election Law

Article 19(1) and (2) of the CLNM guarantees national minorities the right to elect to the Parliament a minimum of 5 and a maximum of 8 representatives from special constituencies. Serbs, as the only minority whose total population exceeds 1.5 per cent, are guaranteed a minimum of 1 and a maximum of 3 seats (Article 19(3)), while all other minorities (those under 1.5 per cent) are guaranteed a minimum of 4 seats (Article 19(4)).

Article 19(2) further stipulates that the right to elect those representatives would be regulated by the MP Election Law. The previously applicable MP Election Law (adopted in 1999) only provided for the election of a maximum of five (5) minority representatives from special constituencies involving 10 different minorities². The increase in the number of seats for minorities envisaged by Article 19 thus required revision of those provisions of the MP Election Law that are related to minority representation³.

Four separate proposals for amendments to the MP Election Law were submitted by political parties for the Parliament's consideration. These proposals addressed a wide range of issues beyond provisions needed to implement Article 19 of the CLNM. On 12 March 2003, two of the four proposals, *i.e.*, those proposed by the Social Democratic Party (SDP) and the Croatian Peasants' Party (HSS), passed the first reading. However, on the same date, the Parliament instructed the Committee for the Constitution, Standing Orders and Political System (Committee) to prepare limited draft amendments to the current MP Election Law, which would include only those changes necessary to bring it into conformity with the Constitution (following 2001 amendments) and the CLNM. On 20 March, the Committee forwarded proposed amendments to the Parliament for its consideration.

On 2 April, the Parliament adopted amendments to the MP Election Law (88 for, 40 against, 5 abstentions), including several relevant to the implementation of Article 19 of the CLNM. The first provides for the election of eight (8) minority representatives in a special electoral unit that comprises the entire territory of Croatia (amended Article 16); three (3) will represent the Serb minority. The second sets out the formula for the minority constituencies (amended Article 17).

The amendments on minority representation received the full support of the governing coalition, as well as the Croatian Social Liberal Party (HSL) and the Istrian Democratic Congress (IDS). The opposition Croatian Democratic Union (HDZ), the Croatian Bloc (HB) and the Democratic Centre (DC) voted against the changes. An HDZ proposal providing an alternative formula that guaranteed only 1 seat for Serbs, with 2 additional seats elected according to a non-fixed quota based on Serb voter participation, was defeated.

An additional amendment put forward by the national minority bench in the Parliament was also rejected, whereby minority voters would have been given a double voting right, *i.e.*, minority

² The five minority representatives are currently elected to the Parliament from the following special minority constituencies: 1 Serb, 1 Italian, 1 Hungarian, 1 Czechs and Slovaks together, and 1 Germans, Austrians, Ruthenians, Ukrainians, and Jews together.

³ As a result, Article 39(1) of the CLNM provides that the Article 19 scheme for minority representation can only go into effect as of the effective date of a new or amended MP Election Law.

voters would have been allowed to vote for candidates on both party and minority lists⁴. The Italian representative abstained during the final voting on the basis that no such provisions were included. The representative for the Serb minority did finally vote in favour of the amendments, as did the representative for the Czech and Slovak minorities and the representative for the Austrian, German, Ruthenian, Ukrainian and Jewish minorities.

The minority constituencies given by amendments to the MP Election Law are as follows (number in parentheses is minority percentage in 2001 census):

- Serbs (4.54%) elect three representatives;
- Italians (0.44%) elect one representative;
- Hungarians (0.37%) elect one representative;
- Albanians (0.34%), Bosniacs (0.47%), Montenegrins (0.11%), Macedonians (0.10%), and Slovenes (0.30%) together elect one representative;
- Czechs (0.24%) and Slovaks (0.11%) together elect one representative;
- Austrians (0.01%), Bulgarians (0.01%), Germans (0.07%), Poles (0.01%), Roma (0.21%), Romanians (0.01%), Russians (0.02%), Ruthenians (0.05%), Turks (0.01%), Ukrainians (0.04%), Vlachs (0.00% - total 12 in Croatia), and Jews (0.01%) together elect one representative.

Notable features of amended Article 16 include:

- Guarantees Serbs the maximum number of seats (3) allowed by the CLNM;
- Increases the number of minorities that have a right to representation from 10 in the current MP Election Law to 22, the total number of minorities counted in the 2001 census;
- Allocates the additional fifth non-Serb minority seat to the five “former Yugoslavia” minorities, including three minorities, Albanians, Bosniacs and Slovenes, that are more numerous than minorities that currently control other seats;
- Continues status quo for Italians and Hungarians who retain the right to one (1) representative and Czechs and Slovaks who retain the right to one joint representative;
- Adds more minority groups to the second of the two seats that are currently shared among more than one minority. Five minorities currently share this joint seat. The amendment added seven minorities, for a total of 12.

There was much public speculation and discussion about the amendments needed to align related election legislation with the CLNM and how far in advance of parliamentary elections they would have to be undertaken. The latest date for parliamentary elections consistent with the Constitution is late March or early April 2004⁵. Article 4 of the Constitutional Law for the Implementation of the Constitution provides that “[t]he laws regulating the election of representatives to the Croatian Parliament shall be passed one year before the holding of regular elections for the representatives of the Croatian Parliament, at the latest”. However, the Ministry of Justice, Administration, and Local Self-Government as well as Members of Parliament have taken the position that amendments to the MP Election Law needed to conform with the CLNM did not constitute a “new law” and hence could be adopted less than one year prior to the election.

⁴ Article 15.3 of the Croatian Constitution permits such “positive discrimination” in favour of national minorities in the election of representatives to the Parliament.

⁵ Article 73 of the Constitution requires that national elections must be conducted no later than 60 days after the expiration of the mandates of Members of Parliament. The current Parliament was seated on 2 February 2000.

Local and Regional Self-Government Units (Article 20 and 39(2)) + Amendments to Local Election Law

Article 20 guarantees national minorities that reach certain population thresholds the right to elect minority representatives to local and regional representative bodies. The guaranteed number of minority representatives in self-government units is determined by the 2001 census, the results of which were published in June 2002.

Each minority group that accounts for more than 5 but less than 15 per cent of a *local self-government unit's* total population is entitled to at least one member in the municipal government. If at least one representative from each minority group that reaches this threshold was not elected during the regular election, the number of representatives in the municipal government must be increased by one member for each such minority group (Article 20(2))⁶.

Each minority group that accounts for more than 15 per cent of the total population in a *local self-government unit* is entitled to proportional representation. If proportional representation was not achieved during the regular election, the number of representatives in the government is to be increased by the number necessary to reach this level for each such minority group (Article 20(3)).

Each minority group that accounts for more than five per cent of the *regional self-government unit's* total population is entitled to proportional representation. If proportional representation was not achieved during the regular election, the number of representatives in the county government is to be increased by a number necessary to reach this level for each such minority group (Article 20(4)).

Article 39(2) of the CLNM set a 90-day deadline that expired on **23 March** for remedying current minority under-representation in 5 county and 83 municipality and town self-governments that resulted from the 2001 elections⁷. This deadline expired without substantial compliance by local authorities. The Mission is aware, however, of actions taken by a limited number of local authorities to add the required number of minority representatives to come into compliance with Article 20 within the deadline⁸. The Mission is also aware of continuing actions after the deadline by local authorities to add the required number of minority

⁶ In instances where only one minority group reaches the threshold, only one member would be added to the municipal body, resulting in its total membership being an even number. Article 9a of the amendments to the Local Election Law specifically provides an exception to the general rule contained in Article 28 of the Law on Local and Regional Self-Government Units that representative bodies must have an uneven number of members. Article 9a allows governing bodies to have an even number of members when this results from adding members to meet CLNM requirements.

⁷ These levels of minority under-representation are based on statistics contained in the Government's explanation of its proposal for amendments to the Local Election Law, which indicate that appropriate minority representation was achieved during the 2001 election in 61 municipalities and towns and 5 counties. The Government also provided statistics indicating that there are six (6) municipalities in which Croats constitute a numerical minority and in which Croats must be added to the governing bodies consistent with Article 9.d of the Local Election Law.

⁸ For example, Karlovac municipality in central Croatia revised its local statute prior to adoption of the CLNM and seated two (2) additional Serb representatives in January. Since the winning party in Karlovac (HDZ) had no minority candidate on the 2001 slate, one (1) Serb was taken from the second-place list (SDP) and the second from the third-place list (HSS). Bogdanovci municipality in the Danube Region adjusted its local statute providing the legal basis for seating two (2) additional minority representatives, one (1) Ukrainian and one (1) Serb, to the council. In late March, Jasenovac, Novska, Hrvatska Kostajnica, and Sunja municipalities in central Croatia adopted statutory decisions specifying the appropriate levels of minority representation.

representatives⁹. Government officials have acknowledged that the deadline has been missed, but cite the large number of changes required as well as the need to educate the public as justifications for the delay.

Delay in compliance is particularly notable given that provisions of the Local Election Law applicable until 23 December 2002 required that minority under-representation should have been cured through by-elections to be held no later than 15 September 2002¹⁰. However, the CLNM retroactively eliminated the by-elections and substituted other methods for remedying the under-representation that has continued for nearly two years.

The Ministry of Justice, Administration and Local Self-Government informed the Mission in the beginning of 2003 that it was receiving numerous inquiries from local authorities regarding implementation, and in mid-February 2003 the Ministry forwarded written information to local authorities. The Ministry's opinion, however, was that implementation was the responsibility of local authorities.

In those jurisdictions where an insufficient number of minority representatives were elected in 2001, the CLNM provides that appropriate representative levels are to be obtained within 90 days in one of two ways. First, additional minorities must be seated based on the party slate results in the 2001 election (Article 20(2), (3), and (4)). It has been a subject of dispute whether this provision means that minorities should be taken from only the party slate that ranked first in the election or whether minorities should be taken from any party slate regardless of how it fared in the election as long as it included minority candidates. The Ministry of Justice advised the Mission that in its opinion the latter interpretation was the correct one. In the examples of implementation of which the Mission is aware, this interpretation was followed (see footnotes 7 and 8).

From the Mission's contacts with local authorities, it has emerged that there is some reluctance to add minority representatives who were not elected during the regular election but whose name appeared on a party slate. Some local authorities view this process as altering the will of the voters as expressed at the election and also indicate concern about the shifts in political power that could result from adding minorities to the councils. Some express their intent to conduct new elections in any event. Some minority representatives also express dissatisfaction with this method of adding minorities since they do not view this system as providing any guarantees that the individuals seated would actually represent minority interests and/or views. The Member of Parliament for the Italian minority also stated similar reservations about this manner of adding minorities, indicating his view that new elections for all seats would be preferable.

Second, if the required number of minority representatives cannot be obtained by taking them from the 2001 party slate results, a by-election must be conducted. Article 20(6) of the CLNM provides that the right to elect minority representatives, including by-elections, would be regulated by the Local Election Law. Because the CLNM both repealed relevant portions of the Local Election Law and added new features regarding minority representation in self-

⁹ For example, Gracac, Obrovac, Lipik, Pakrac, Donji Kukuruzari, Lecevicica, Slivno added minority representatives in April.

¹⁰ Article 61 of Local Election Law, repealed by Article 43(2) of the CLNM. See also Venice Commission opinion, paragraph 24, as cited in footnote 1.

government units, adoption of new provisions by the Parliament was necessary prior to the conduct of any such by-elections.

On 11 March 2003, the Parliament adopted amendments to the Local Election Law. The amendments were published on 21 March in the Official Gazette, coming into force on the same date. On 25 March, the Ministry of Justice, Administration, and Local Self-Government issued written instructions to all County Offices of State Administration regarding actions necessary for implementation of the amendments to the Local Election Law as related to the CLNM.

While by-elections are not required in all localities where minorities are under-represented, the Parliament's amendment of the Local Election Law only days prior to the expiration of the 90-day deadline is a substantial cause for the delays in compliance by local authorities. Indeed, the Ministry of Justice has advised the Mission that in its opinion it was inappropriate for local authorities to adjust representation as required by the CLNM until the Parliament amended the Local Election Law. Despite the amendments, numerous questions remain regarding implementation given the lack of precise language in a number of new provisions, as well as conflicts between new provisions and existing law.

Amendments to the Local Election Law re-impose the obligation on local and regional self-government units to adjust their statutes to accurately reflect the appropriate number of minority representatives to be elected (Article 9)¹¹. The statutes must be amended to specify the appropriate number of minority and Croat representatives within 30 days of the effective date of the law, *i.e.*, no later than **21 April 2003** (Amendment Article 6). Most local authorities as well as the Ministry of Justice saw this as a necessary prerequisite action prior to seating minority representatives in those jurisdictions where minority members must be added to comply with the CLNM. According to current information, it appears that most but not all local jurisdictions required to adjust their statutes have done so. As planned, the Ministry of Justice has circulated an inquiry to all local officials to inquire about the status of compliance.

According to the instructions issued by the Ministry, a local mandate commission or similar body should identify whether the representative body has the sufficient number of minority members. If not, the appropriate number must be appointed from the 2001 party slate results as described above. If there is an insufficient number of minorities obtained through this process, the representative body should inform the County Office of State Administration that will in turn inform the Government of the need to call a by-election¹². Article 9b(1) of the amendments to the Law on Local Elections indicates that any by-election conducted to remedy minority under-representation will be called by the Government¹³.

Several amendments proposed by the HDZ during the parliamentary debate changed the Government's proposal, and were incorporated in the adopted amendments. The first purports to impose the additional eligibility requirement of "actual residence" (as distinguished from

¹¹ Article 43(2) of the CLNM repealed Article 9 of the Local Election Law that provided that the statutes of self-government units would determine the number of minority representatives in the unit in accordance with proportional representation. The requirement to include in the local statutes the number of Croats to be elected was not repealed by the CLNM.

¹² For example, preliminary information available to the Mission indicates that by-elections will have to be conducted in Pozega-Slavonia County as well as the Town of Pozega for Serb representatives.

¹³ In addition, Article 4(9) of the Local Election Law requires that not less than 30 days or more than 60 days pass between the Government's call of the election and the actual conduct of the election.

registered residence) in the self-government unit in order for minorities to participate in regular or by-elections. Amended Article 9b(3) states as follows:

Only those members of minorities who have the right to be represented, and who, apart from having the right to exercise universal suffrage, **also reside** and have permanent residence in the local or regional self-government unit, shall have the suffrage (active and passive) at the **regular** or by-elections for representatives of national minorities.

During the debate, the opponents of the amendments objected to the term “reside” because it is not further defined in law and is thus vague and subject to arbitrary application. During the Committee’s debate, a HDZ representative stated that the intention of the amendment was to prevent a repetition of occurrences in the prior election where Serb refugees arrived in buses from Serbia to vote in the local elections. Thus, the intent of this amendment is to disenfranchise Serb refugees who have registered permanent residence in a self-government unit but who do not regularly reside there, including those unable to repossess their occupied private properties. By making this provision applicable to both regular and by-elections, the HDZ amendment would appear to conflict with the Local Election Law that does not contemplate special minority constituencies in regular elections (see below).

As written, Article 9b(3) provides that any by-elections should be conducted from special minority constituencies, *i.e.*, only voters of the minority group that must be added to the governing body will participate in the by-election for such seats. Thus, minority representatives in self-government units will be elected in two different ways, some through universal suffrage from party slates, and in the event an insufficient number are obtained in this way, through minority-only by-elections. Minority representatives have voiced dissatisfaction with the notion of having members of the same body elected in different types of elections. This same provision would apparently be applied to remedy under-representation of Croats in those self-government units where they constitute a numerical minority. (Such representation is guaranteed by Article 9d of the Local Election Law.)

A second amendment proposed by the HDZ purports to limit minority voters to one vote in both regular and by-elections for self-government units, requiring minorities to choose whether to vote for minority lists or to exercise the universal suffrage¹⁴. As noted above, by suggesting that minorities could vote for minority lists in regular elections, the amendment arguably contradicts Article 11 of the Local Election Law that does not contemplate minority lists in regular elections.

A further problem with this amendment involves its application to by-elections which are required to cure minority under-representation resulting from the 2001 elections. If minorities are limited to one vote, those minority voters who voted in the 2001 election would be disallowed from voting in any by-election. Strict application of this provision would mean that only those minority voters who did not participate in the 2001 elections would be eligible to participate in the by-elections for minority representatives. Such an interpretation could lead to lack of implementation of this guarantee until the next regularly scheduled election in 2005 since the eligible pool of voters would be negligible. As a result, and regardless of the effects of

¹⁴ This provision states as follows: “In the regular or by-elections for representative bodies of local or regional self-government units, the voters may only vote either for the lists nominating the candidates for representatives of national minorities, or for the general lists.”

this amendment on the outcome of future elections in 2005 and beyond, its immediate application to by-elections intended to cure current minority under-representation is undesirable.

Media editorial comments have called on the Government to ensure that all minority voters can participate in the upcoming by-elections, whether or not they voted in 2001. The Member of Parliament for the Italian minority commented that these amendments were intended by the HDZ to delay by-elections as long as possible so that the HDZ would continue to control self-government units. The President of the Serb People's Council (SNV) asserted that the aim of the HDZ proposal was to prevent dual voting (so-called "positive discrimination") for minorities in local and regional elections and to create confusion so as to delay implementation of the CLNM. The Italian representative noted, however, that the dual vote had not previously been provided for minorities in local and regional elections. Minority representatives have indicated that after the amendments were officially published they would seek an interpretation from the Parliament's Committee for Legislation. Depending upon that interpretation, they might seek review by the Constitutional Court.

Legislators have recognized that the use of the 2001 census as the basis for minority representation may freeze representation of minorities at an inadequately low level in some areas, in particular in the areas of refugee return. Thus, prior to each election, the census results as they relate to the number of minorities present in the respective self-government unit must be conformed to "... possible changes (*i.e.*, increase or decrease) registered in the last confirmed voters' list of that unit" (Article 20(7)). Clarification is still required as to what methodology will be used and which body will be responsible to adjust the 2001 census results (which include persons of all ages) to the voters' lists (which are limited to persons 18 years and older). The amendments to the Local Election Law did not provide any clarification on this point.

As the CLNM only provides the minimum thresholds guaranteed for minority representation in self-government units, Article 21 provides the option that in self-government units where minorities are not a majority of the population, the unit's statute can provide that minorities have a right to more seats than they would otherwise be entitled to under the CLNM given their share of the population.

IV. Minority Representation in Non-Elected Bodies

Executive Bodies (Article 22(1))

The CLNM ensures minority representation in the *executive bodies* of those municipalities and counties where proportional representation in elected bodies is required (Article 22(1)). For municipalities, representation is ensured when the minority population exceeds 15 per cent of the total population, while for counties a minority's total population must exceed five per cent of the total population. The extent of representation and manner of appointment are, however, not further specified in Article 22¹⁵.

¹⁵ The Ministry of Justice has, however, informed local authorities, *e.g.*, Knin "poglavarstvo," that the composition of local executive bodies could not be changed during the term of office to comply with the CLNM if this resulted in the dismissal of a current member.

State Administration and Judiciary (Article 22(2))

The CLNM ensures minority representation in *state administration and judicial bodies* “... 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 acquired rights”¹⁶ (Article 22(2)). In order to implement this guarantee, the Parliament must amend the 1993 Law on the State Administration to be consistent with the CLNM. Under the current Law, minority representation in state administration at the state, county and municipal levels is linked to the eight per cent minority threshold contained in the repealed CLNM. Amendment of specific laws regulating the judiciary is also required (*e.g.*, Law on Courts, Law on the State Judicial Council, and Law on the State Prosecutor’s Office).

Given the definitions of terms used in Article 22, it appears that there will be types of public sector employment that are subject to the minority representation guarantees in Article 22(2) and others that are not. Article 22 refers to “bodies of state administration” that are defined in Article 3 of the Law on State Administration as ministries, state administrative organizations, and offices of the state administration. However, a significant amount of public sector employment is provided by “public institutions” defined under the Law on Institutions. These public institutions include schools, universities, and hospitals. This public employment will be exempt from the CLNM’s minority representation guarantee.

As public sector employment is one of the most important fields in which equal opportunity should be ensured, the Mission believes that any Government plan for implementing Article 22 guarantees in terms of prospective employment and promotion of minorities should also be voluntarily extended to employment in public institutions.

During the meeting in Zagreb on 11 March 2003 of the Council of Europe’s Advisory Committee on the Framework Convention for the Protection of National Minorities, the Council of Europe representatives noted the Advisory Committee’s concerns expressed in its 2001 opinion regarding the low representation of minorities in the state administration and the judiciary¹⁷. During the conference, the Council of Europe representatives suggested that advertisements for judicial and state administration positions include a reference to the minority representation provisions of the CLNM.

Government information, current as of 31 October 2002, indicates that 94.4 per cent of all court personnel are Croats, while 5.6 per cent are national minorities, of which 2.6 per cent are Serbs (contrasting with 4.5 per cent of their share of the population) and 3.0 per cent are other minorities (contrasting with 2.9 per cent of their share of the population)¹⁸. Government

¹⁶ Clarification is required as what the legislature intended by “acquired rights” previously obtained by minorities with regard to representation in the state administration and judiciary.

¹⁷ “As regards participation of persons belonging to national minorities in state administration as employees, the Advisory Committee finds that the situation is disconcerting as regards persons belonging to the Serb minority, but that it is very unsatisfactory also with regard to some, but not all, other national minorities ...”; “The Advisory Committee is aware that the extraordinarily low representation of national minorities within the executive and in the judiciary is partially a result of past discriminatory measures (often related to the conflict of 1991-1995) aimed at curtailing, in particular, the number of persons belonging to the Serb minority in various bodies, including in courts.” Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Croatia, adopted on 6 April 2001, paragraphs 55 and 56.

¹⁸ Article 40 of the Law on Courts authorizes the Ministry of Justice, Administration and Local Self-Government to maintain a registry containing personal data including national origin of all judicial employees. The statistics provided by the Ministry relate to the following courts: municipal, county, commercial, Supreme Court,

information provided to the Council of Europe in July 2000 indicates that 2.8 per cent of personnel in bodies of state administration (excluding the Ministry of the Interior and the Ministry of Defence)¹⁹ were Serbs and two Roma were employed in these bodies²⁰.

To date, the Government has not announced any plans for the development of prospective hiring and promotion schemes necessary to implement the CLNM's minority representation guarantees. In discussions with the Mission, the Ministry of Justice indicated that it had advised the State Judicial Council, the body responsible for the appointment of judges, of the need to implement the minority representation guarantee of Article 22. Reportedly, the State Judicial Council has responded that it applies the principle of equality in the selection of judges and thus could not use set criteria to give priority to a certain category of persons. The Ministry indicated in response to inquiries by the Mission that it had no intention at the present time to alter its advertisements for judicial positions to make reference to the CLNM requirement.

Government officials have expressed concerns to the Mission that implementation of the CLNM provisions regarding minority representation in the judiciary and state administration will be difficult given the limited number of positions available for new employment. In order to assess the situation, the Mission has tabulated the number of advertisements for state administration and judicial positions published in the Official Gazette since the beginning of 2003. From 1 January until late April 2003, 239 positions in the judiciary (198 in courts, 41 in the State Attorney's Office), including 54 judges and 13 deputy state attorneys, 913 positions in state administrative bodies at all levels of government, and 108 positions in public institutions were advertised in the Official Gazette.

Administrative Bodies of Self-Government Units (Article 22(3))

In *administrative bodies of self-government* (e.g., municipal offices for urban planning), minority representation is ensured in compliance with acquired rights. However, the extent of representation is not further specified. Clarification is required as to what the legislature intended by "acquired rights" previously obtained by minorities with regard to representation in the administrative bodies of self-government. The current Law on Local and Regional Self-Government Units does not provide for representation of minorities in the administrative bodies of self-government units. Hence, implementation of this provision will require amendments to that Law.

The CLNM also grants priority to national minorities for non-elected posts specified above "under equal conditions" (Article 22(4)). It remains unclear, however, if "equality" in this sense is to be applied between different minorities, e.g., all minorities considered equally for priority

Administrative Court, and Supreme Commercial Court. In addition, the statistics relate to the State Attorney at the municipal, county, and state level.

¹⁹ Article 33 of the Law on Public Servants and Employees authorizes the Ministry of Justice, Administration and Local Self-Government to maintain a registry containing personal data including national origin of all employees of bodies of state administration, with the exception that the personal data on employees of the Ministry of the Interior and the Ministry of Defence are maintained by those ministries. See also Article 2 of the Rulebook on the Manner of Conduct of the Personal Records of the Public Servants and Employees.

²⁰ Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Croatia, adopted on 6 April 2001, paragraph 55.

in providing minority representation, or whether the minority is guaranteed equal conditions in relation to the majority²¹.

V. Councils of National Minorities

Local/Regional Councils of National Minorities (Articles 23-24) + Amendments to Local Election Law

Articles 23-24 provide for the first-time establishment of local and regional Councils of National Minorities (“Council”). The question whether a minority is eligible to elect members to a Council is determined by its share of the population as reflected in the 2001 census, adjusted (*i.e.*, increased or decreased) by the voters’ list (Article 24(6)). In accordance with Article 24(1), each national minority group that accounts for more than 1.5 per cent of the total population of the self-government unit is entitled to elect members to a Council. That right also accrues to each minority group that has a population of more than 200 in a local self-government unit, and more than 500 in a regional self-government unit. Finally, even in those self-government units in which the above conditions are not met, the right to elect a representative accrues to each minority group that has a population of at least 100 in the local or regional self-government unit (Article 24(3)).

As highlighted by the Ministry of Justice, the formation of Councils is an option for minorities that wish to do so, not an obligation. However, the formal mechanism by which minority communities can express their interest to the Government in forming such a Council is as yet unclear other than responding to a Government-initiated call for election. Further, each minority that reaches the specified thresholds is entitled to form its own Council. Thus, in some municipalities, there may be multiple minority councils. In Vukovar-Sirmium County in Eastern Slavonia, for example, there are 11 minorities eligible to form a Council.

Article 24(2) stipulates the number of Council members at the municipal, city and county level (10, 15, and 25, respectively). Local and regional Councils are treated as non-profit legal persons, a status that is obtained by registration in the Register of Council of National Minorities (Article 25). The Ministry of Justice has confirmed that the Register is yet to be established. Funding for Councils must be provided by self-government units, while specific programme funding may come from the State budget (Article 28).

Council competences are specified in Articles 31, 32(2), and Article 38(1). The Councils will have only consultative status. The lack of governing power delegated to these bodies has been criticized by the OSCE HCNM and the Council of Europe’s Venice Commission. A Council can make proposals to self-government units on how to improve the situation of minorities and propose candidates for local offices.

Self-government units are obliged to consult these Councils with regard to acts affecting the rights of minorities (Article 32). Acts deemed incompatible with minority rights can be challenged by a Council and suspended by the Ministry of Justice, Administration and Local Self-Government, depending upon the initiation of a Government challenge at the Constitutional Court within 30 days (Article 32 (2)-(6)). Two or more Councils (in the same self-government unit or different self-government units) may establish a co-ordinating body.

²¹ See also Venice Commission opinion at paragraph 27, as cited in footnote 1. (“It is not clear which kind of equality is meant and what criteria will be applied to bring about equality”.)

(Article 33(1)). In this context, the continuing role of the Joint Council of Municipalities (JCM), established in Eastern Slavonia by the Erdut Agreement and the 1997 Letter of Intent, will likely be subject of review.

The amendments to the Local Election Law adopted in mid-March contain provisions regarding the election of members of these Councils, including the obligation of the Government to call the election. By decision adopted in closed Government session on 27 March 2003, the Government issued a call for the election of Councils to be conducted on 18 May 2003. Based on that decision, the Ministry of Justice issued written instructions regarding the conduct of these elections that were distributed to county state administrative offices on 3 April. These instructions set out a schedule of activities to be conducted by local officials in advance of the 18 May election date. Although there was significant discussion in the media of the Government's 27 March decision reached in closed session to call the Council elections, the Government's decision calling the election was not published until 16 April when it appeared in the on-line edition of the Official Gazette. It appeared a few days later in hard copy.

By decision dated 10 April 2003 and published 16 April, the Government issued the list of all localities in which minorities were entitled to elect Councils and representatives, including the number of members to be elected to each Council²². This list was amended by a Government decision published on 29 April adding several more localities in which Council elections should be conducted.²³ On 14 April, the Constitutional Court appointed the members of the State Election Commission, a decision that was published on 16 April²⁴. On that same date, the State Election Commission issued three Obligatory Instructions. The first set out a series of deadlines for the Council elections, including a midnight 28 April deadline for submission of candidate nomination papers, a 30 April deadline for publishing candidate lists, the date for announcement of the location of polling stations, the dates for media blackout, etc²⁵. According to the instructions issued by the Ministry of Justice, the deadline for voters to register was 4 May. However, on 3 May, the Government published an announcement in major newspapers informing that *inter alia* the deadline for voter registration was extended to 9 May. The Mission has been informed that some minority voters who attempted to register after 4 May were turned away on the basis that the registration deadline had expired. The Mission has also been informed that the Ministry in at least one instance advised local election officials that the Government's decision to extend the deadline was contrary to law.

Given the size of the Councils, minority groups must put forward large numbers of candidates. For example, the Serb People's Council (SNV) estimated that Serbs are entitled to propose 3070 candidates for approximately 240 Councils throughout the country. Serbs as well as other minority groups including Roma informed the Mission that they would have a difficult time being adequately prepared to participate in the Council elections. Some minorities publicly indicated they would not participate in the election given the shortage of time in which to

²² It is unclear whether the lists included in the Government decision are based on the 2001 census or on the census as adjusted by the voters' list.

²³ This decision was published after the deadline for candidate nominations.

²⁴ Article 26(3) of the Law on Local Elections provides that the Constitutional Court will appoint the members of the State Election Commission, whose chair will be the President of the Supreme Court and whose four members and deputies will be members of the Supreme Court or other "distinguished lawyers". The members of the Commission include two judges of the Supreme Court and two judges of the Administrative Court. The deputies include three members of the Supreme Court, one member of the Administrative Court, and one member of the Zagreb County Court.

²⁵ The second and third instructions issued by the State Election Commission involved procedures for candidates.

prepare. After the first meeting of the national-level Council of National Minorities (see below), the Member of Parliament for the Italian community was quoted in the media as stating that the election deadline was too tight and that the election should be postponed. Other members of the national Council expressed the same concern.

The Government indicated its view that minorities had been given sufficient time to prepare, since the CLNM was adopted in December and minorities had been aware since that time that these elections would eventually be called. The Head of Mission in a meeting with Deputy Prime Minister Ante Simonic urged the Government to provide support to minority associations to enable them to adequately prepare for the elections. He also called on minority communities to participate in these elections. The Mission has also provided financial support to an election-support NGO (“GONG”) to disseminate information about the election.

The degree of preparation for the 18 May election among minorities and local authorities varied from community to community. Some election officials did not receive information or forms from the central Government, whereas others were well prepared for the election. Similarly, some minorities were not informed about the upcoming election, while others were well organized for their participation both as candidates and voters.

According to media reports, after the close of nominations on 28 April, out of a total possible 470 councils and 140 representatives for which minorities were able to nominate candidates, representatives of 16 minorities put forward nominations for less than half that number, 221 councils and 42 representatives. The Council elections will be conducted in 119 towns and municipalities²⁶.

A potential problem has arisen with regard to election participation of the Bosniac minority. A significant number of members of this community identify and registered themselves on voters’ lists as “Muslim”, a minority group term recognized in the former Yugoslavia but used neither in the 2001 census nor in the Law on Local Elections. Concerns have thus been raised that this difference in terminology may lead to a disfranchisement of members of this community on election day from electing candidates for Bosniac Councils. According to media reports, the Ministry of Justice on 9 May issued instructions to county administration offices specifying that voters who are registered as Muslims should be allowed to vote in elections for Bosniac Councils and representatives.

National Council of National Minorities (Articles 35-36, 42)

Articles 35 and 36 of the CLNM provide for the establishment and functioning of the national Council of National Minorities (“National Council”). Article 36(1) authorizes the Government to appoint 12 members to the National Council. Seven members are to be proposed by the local and regional Councils of National Minorities. The five additional appointed Council members are selected directly by the Government. The criteria to be applied during the process of

²⁶ Despite the boycott announced by the Italian Union, Italians nominated candidates for Councils in the cities of Umag (Istria) and Pakrac (Western Slavonia). Ukrainians, Germans, Slovaks, and Ruthenians were the only minorities to nominate candidates for all the positions to which they were entitled. Slovenes, although entitled to a total of 43 Councils, only nominated 8; Serbs, although entitled to 241 councils and 10 representatives, only nominated 91 councils and 1 representative; Albanians nominated 14 Councils out of a possible 27; Bosniacs 22 Councils out of 37; Czechs 9 out of 16; Roma 16 out of 24; Hungarians 31 out of 35; Montenegrins 7 out of 8; Macedonians 3 out of 4. In a number of instances, minorities were only able to nominate a partial slate of candidates, whereas in other instances a single minority had more candidates than positions.

Government appointments “... shall take into account the share of members of particular national minorities in the total population ... as well as the fact that the composition of the Council shall reflect their identity and specific quality, historical values, ethnic, cultural, and every other diversity” (Article 36(4)). All minorities Members of Parliament are also members of the National Council (Article 36 (2)). The Government appoints the National Council’s President and two Deputy Presidents from among the members of the National Council. At least one Deputy must be a representative of the Serb minority (Article 36(3)). The OSCE HCNM has questioned the direct involvement of the Government in the appointment of the President of the National Council.

Article 42(1) of CLNM required the Government to appoint the members of the National Council no later than 23 March 2003, *i.e.*, 90 days from the effective date of the CLNM. In mid-February, the Government publicly solicited nominations for the five members that it appoints directly. By the nomination closing date, the Government received 41 eligible nominations. By decision dated 27 March, the Government appointed five members selected from the nominations as well as the five current elected minority representatives in the Parliament²⁷. In addition, the Government on the same date appointed the President and Deputy President of the National Council²⁸. These decisions were published in the Official Gazette (NN 53/03) on 1 April 2003²⁹. Since the local and regional Councils of National Minorities have not been established within the 90-day deadline, the National Council will be originally composed of only the direct Government appointees and the minority Members of Parliament (Article 42(2)).

The Council held its constitutive session on 16 April at which it adopted several conclusions. First, it declared the Council formally established. Second, it would inquire with the relevant Government bodies about the recently called elections for local and regional Councils of National Minorities. Third, it determined that funding of NGOs would continue according to the currently applicable Government criteria.

Unlike local and regional Councils of National Minorities, the National Council is not a legal person. It is granted limited competences and has only a consultative role (Article 35(2)). This lack of governing power was criticized by the OSCE HCNM and the Council of Europe’s Venice Commission. The National Council has the right to co-operate with international organizations and the competent bodies of parent countries of members of national minorities (Article 35(3)). The National Council must submit to the Parliament a bi-annual report on substantive issues within the scope of activities of the National Council and a quarterly report on expenditure of funds (Article 37(3)).

²⁷ The Government issued a decision appointing the following individuals (from the respective minority) as members of the Council: Aleksandar Tolnauer (Jewish); Sinisa Tatalovic (Serb); Zef Mirdita (Albanian); Sead Berberovic (Bosniac), Dragutin Lalovic (Montenegrin). In addition, the Government appointed the following minority representatives in the Parliament as members of the Council: Zdenka Cuhnil (Czech); Milan Djukic (Serb); Borislav Graljuk (Ukrainian); Furio Radin (Italian); Tibor Santo (Hungarian).

²⁸ The Government issued a decision appointing Aleksandar Tolnauer as President and Sinisa Tatalovic as Deputy President.

²⁹ According to information received from the Government, the Government also issued a decision on 27 March that the additional members added to the national-level Council of National Minorities based on the recommendations of the yet-to-be-formed local and regional level Councils of National Minorities will be representatives of minorities other than those already appointed. As of the date of this report, this decision has not been published in the Official Gazette.

The National Council may ask the Government to supervise the implementation of the CLNM and other laws regulating minority rights (Article 38(2)). It also has the right to submit a constitutional complaint to the Constitutional Court, challenging violations of the minority rights and freedoms provided by the CLNM and special laws (Article 38(3)). However, the exercise of this right is dependent upon the Parliament's amendment of the Constitutional Law on the Constitutional Court in order to: 1) allow non-legal persons (such as the National Council) to submit a constitutional complaint, as only legal and physical persons are currently permitted to do so; or 2) amend the CLNM to give legal personhood to the National Council similar to that provided in the CLNM for local and regional Councils of National Minorities.

The Government must establish an Expert Office to perform "expert and administrative tasks" for the National Council (Article 36(6)). Until such an Expert Office is established, the assigned tasks are to be performed by the existing Government Office for National Minorities (Article 42(3)). The Government must submit an annual report to the Parliament on implementation of the CLNM (Article 37).

VI. Language, Education, Culture, Association, Public Information Rights and Freedoms

While minority representation rights have been the primary focus of discussion, the CLNM also contains provisions related to minority language, education, culture, association and public information. Article 7 includes a list of rights that are further specified throughout the text of the law. These rights are largely already provided for through specific laws regulating the use of minority language and education in minority language. In comparison to the previous CLNM, however, the new CLNM enshrines more comprehensive provisions regulating the social and cultural rights of national minorities.

Language Rights (Articles 9-10, 12-13, 43)

Minorities have the right to use their surnames and names in their minority language and have it so entered in all official registers (Article 9(1)). Forms for personal identity cards are also to be printed in minority language and script (Article 9(2)). The Mission is currently reviewing the practices regarding the use of surnames and names in official registers and with personal identity cards. The Mission was informed, for example, by the Police Administrations in Osijek-Baranja and Vukovar-Sirmium Counties in Eastern Slavonia that requests for personal identity cards in minority language and script are processed in accordance with Article 9 in relation to Article 12, which mandates that a particular minority must in this regard represent at least one third of the total population of a self-government unit in order to have an identity card issued in minority language (see below).

The CLNM also guarantees the public and private use of minority language and script (Article 10). The equal official use of a minority language and script in the local self-government unit is guaranteed where a minority comprises at least one third of the population, or where contemplated by international agreement or the statute of the local or regional self-government unit (Article 12(1)-(2))³⁰.

³⁰ Article 43 of the CLNM repealed Article 4 (1(1)) of the Law on Use of Language and Script of National Minorities that set a higher threshold of a majority of the population for equal official use of minority language and script in local self-government units.

Implementation of these provisions at the local level still remains to be realized in most areas with the exception of the use of Italian in Istria. For example, the Mission has been informed by members of the Czech minority in the Daruvar area of Western Slavonia and surrounding villages that repeated requests to local authorities to introduce bilingual signs at public institutions like courts and police stations remain unaddressed. Rights specified in these articles are augmented by rights further provided in the Law on Use of Language and Script of National Minorities (see section on Education Rights below).

Education Rights (Article 11)

Minorities have the right to education in their language and script (Article 11(1)), but minority students are obligated to learn the Croatian language and script (Article 11(5)). This right has previously been implemented through the Law on the Education in the Language and Script of National Minorities that further specifies minority education rights. Several minority schools have already been established in this manner before the adoption of the CLNM, for example a Hungarian minority school in Eastern Slavonia and Italian minority schools in Istria. Article 11(8) re-confirms this right, whereby members of national minorities may establish pre-school, primary and secondary schools and institutions of higher education.

In the case of minorities in the Danube Region of Eastern Slavonia, certain education rights were also enshrined in the 1997 Letter of Intent following the peaceful reintegration of the Danube Region upon the end of the UN Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES). In September 2002, the Government received a request for the official registration of Serb minority language primary schools in Vukovar but those requests remain pending approval at the local level. Further requests are to be expected for other schools in the Danube Region, as well as in future return areas in other parts of Croatia where Serb communities are expected to re-establish themselves.

Teachers of minority education can either be members of national minorities or persons not belonging to national minorities who possess the required level of language skills (Article 11(6)). Institutions of higher education are required to conduct the education of teachers in minority language and script so that they may teach in those areas relevant to the national minority, *i.e.*, literature, history, geography and culture (Article 11(7)). Finally, students attending majority language schools should be provided with the opportunity to learn minority languages (Article 11(9)).

Associational Rights (including Religion) and Display of Symbols (Articles 14-16)

The official use of minority signs, symbols and anthems are allowed, in conjunction with the use of official signs, symbols and the anthem of Croatia (Article 14(1)-(2)). For example, members of national minorities may sing the national anthem of their country of origin after performing the Croatian national anthem, and display that country's national flag together with the flag of Croatia while celebrating the national holidays or other events of the country of origin. Minorities have the right to establish associations, which may be publicly funded (Article 15(1)-(2)), and are free to associate with the country with which they share ties (Article 16(1)).

Minorities are granted freedom of religion (Article 16(4)). Following the adoption in July 2002 of the Law on the Legal Status of Religious Communities, the Government signed agreements

with representatives of the Islamic community and the Serb Orthodox Church in Croatia. The agreements specify religious education in public schools and pre-schools, as well as religious rites for persons working in State institutions such as the armed forces and the police. The Government's Commission for Relations with Religious Communities is now drafting a single agreement with five other religious communities in Croatia.

Portrayal of Minorities in Media and Minority Access to Media (Articles 17-18)

Television and radio programming (in minority languages) to provide relevant information to members of national minorities and to promote the culture, religion and other values of national minorities is mandated under Article 18(1). Funding for such programming is also mandated at the state, regional and local level under Article 18(2). At the national level, for example, the Mission notes that such regular coverage is currently limited to the airing of a one-hour programme by Croatian Television (HTV) on minority-related issues, while coverage of national minorities is still not a regular component of news programming³¹. HTV has, however, recently informed the Mission that it envisions having regional studios broadcast programmes in minority languages by the latter half of 2003.

VII. Summary Conclusion

Since the entry into force of the CLNM on 23 December 2002, some central developments have taken place with regard to amending related election legislation. On 11 March 2003 amendments to the Local Election Law were adopted in order to conform to Article 20 of the CLNM regarding minority representation in self-government units. The MP Election Law was likewise amended on 2 April in order to correspond *inter alia* with Article 19 of the CLNM with regard to adequate minority representation in the Parliament. Serbs, Croatia's largest minority, were granted the maximum number of parliamentary seats (3) allowed under the CLNM. Further, with regard to the creation of new representative and advisory mechanisms for national minorities set out in the CLNM, the Government appointed five members to the national-level Council of National Minorities shortly after the official deadline of 23 March.

However, many issues related to the implementation of election rights in the CLNM remain open. Although originally scheduled for 15 September 2002 under previous legal provisions, and then again for 23 March 2003 under the new CLNM, neither the appointment of minority representatives nor alternatively the holding of by-elections has taken place in a significant number of the 5 counties and 83 municipalities and towns in order to correct the under-representation of national minorities in these areas.

Further, it has not yet been announced how minority representation in state administration and judicial bodies as well as executive bodies will be secured in line with Article 22 of the CLNM. Laws regulating the judiciary must still be amended in order to come into compliance with the CLNM.

The Government published on 16 April the call for the first-time election of minority councils at the local and regional level to be conducted on 18 May 2003. Minorities nominated less than half the number of candidates to which they were entitled under the CLNM by the 28 April nomination deadline. It appears that at least a significant part of the under-nomination of

³¹ Results of a monitoring programme by the Croatian Helsinki Committee for Human Rights (HHO), entitled "Politics in HTV Programming," released on 16 April 2003, at: www.hho.hr/english/politicsonhtv.htm

minority candidates results from a lack of minorities being able to organize within the time allowed. Though the Government has fulfilled its obligation to appoint five members in the National Council, this Council will initially only comprise the Government's appointees and the minority Members of Parliament since the seven additional members have to be nominated by the still non-operational local and regional minority councils.

Finally, several provisions in the CLNM on education and other rights remain to be fully addressed by relevant authorities. Some of these rights have, however, already been implemented before the entry into force of the CLNM.

The Mission will continue to monitor and report on these and other issues relevant to ensuring the full and timely implementation of the CLNM.