The Position of National Minorities in the Republic of Croatia – Legislation and Practice

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I. The Protection of the Rights of National Minorities in International Documents

The United Nations

Only in the last 15 years the international community has started paying more attention and implementing concrete measures for the protection of national or ethnic, religious and linguistic minorities. The most important measures at the level of the United Nations was the adoption of the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities* and the establishment of a *Working Group for National Minorities* which acts within the *Subcommittee for the Promotion and Protection of Human Rights.*

The most important document for the protection of the rights of national minorities is the aforementioned *Declaration.* It was adopted by the General Assembly of the UN in 1992 with a conclusion that the protection of the rights of national, religious or linguistic minorities was a component part of one of the basic aims of the United Nations – to promote and encourage respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion. In the document, there is a request for the governments of member states to adopt all appropriate measures to protect the existence of minorities and make it fully possible for them to realise their human rights and freedoms, to participate in public life, to enjoy their cultures, religions and languages, in private and in public, and to establish and maintain peaceful contacts with other members of their group and with persons belonging to other minorities.

Apart from this *Declaration*, other UN documents in which, directly or indirectly (starting from the principle of equality of all people), the necessity of the protection of rights of national minorities is emphasised, are *The Charter of the United Nations* (1945), *General Declaration on Human Rights* (1948), *Convention on the Prevention and Punishment of the Crime of Genocide* (1948), *International Convention on the Elimination of All Forms of Racial Discrimination* (1965), *International Covenant on Civil and Political Rights* (1966), *International Covenant on Economic, Social and Cultural Rights* (1966), *Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief* (1981), *Convention on the Rights of the Child* (1989) and some other documents.

The *Working Group for National Minorities*, established in July 1995, is a body composed of five members of a subcommittee closely cooperating with government institutions and international organisations, nongovernmental organisations, representatives of minorities and university graduates who are experts in the field of national minorities. The main tasks of the *Working Group for National Minorities* is to supervise the implementation of the *Declaration*, to plan a solution of the problems the minorities are faced with and to recommend further measures for the promotion and protection of human rights.

Some of the problems the *Working Group for National Minorities* deals with are multicultural and intercultural education, recognition of the existence of minorities, participation of the minorities in public life, including their autonomy, integration measures, inclusive development and the prevention of conflicts.

Council of Europe

In many of its documents, the Council of Europe also emphasises the need for preventing any kind of discrimination and the protection of the rights of the national, religious and linguistic minorities. Some of these documents are the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (1950), the *European Social Charter* (1961) and the documents and reports from different topical meetings. The documents of the Council of Europe, wholly devoted to the issues of the national minorities are the *European Charter for Regional or Minority Languages* (1992) and *the Framework Convention for the Protection of National Minorities* (1994).

The *European Charter for Regional or Minority Languages* is a document whose primary concern is the protection of minority languages and dialects of Europe in danger of possible extinction and thus also the preservation of cultures, customs and traditions of the peoples or groups using these languages. In the Charter, cultural diversity is referred to as one of the fundamental principles on which the community of sovereign and territorially integral European states is based. In order to preserve such languages and dialects, the governments of the signatories are requested to ensure their being used in education and in the media, in the economic, social and cultural life and, as far as possible, in administrative and legal contexts. Croatia ratified this Charter in November 1997.

The *Framework Convention for the Protection of National Minorities* of the Council of Europe is the most important international document for Croatia protecting the rights of the national minorities also because the countries signatories have agreed to implement concrete measures provided for in this Convention. Croatia ratified it in October 1997 and submitted two regular reports to the Advisory Committee of the *Convention*: the first in March 1999 and the second in April 2004. The *Framework Convention*, which entered into force on 1 February 1998, is a document by which the signatories commit themselves to adopt adequate measures for the promotion of equality of persons belonging to the national minorities in all areas of the economic, social, political and cultural life and to maintain the conditions for the expression, maintenance and development of their cultures and identities. This Convention offers guidelines or a framework for each particular state to adopt the national legislation and government policy according to its aims. The obligations that the countries have undertaken by signing the *Framework Convention* are the prohibition of any discrimination, the promotion of equality, the maintenance of conditions to preserve the minority cultures, religions, languages and traditions, freedom of association, expression, opinion and belief, access to the media, linguistic freedoms, education in the minority languages, international cooperation, participation in the economic, cultural, social and public spheres and the prohibition of forced assimilation.

In addition, at the meeting in Copenhagen in 1993, the EU countries adopted the political criteria for the countries' entering the Union among which also "the respect and protection of national minorities". The countries who are candidates for accession have to show that they have adopted the measures for the protection of minorities.

Beside the protection of the rights of minorities by the *European Charter for Fundamental Freedoms,* the EU in 2000 adopted two directives which provided for the direct protection of the rights of minorities; one on the prohibition of discrimination imposing on the present and future member states full prohibition of any form of discrimination, and the second, on equal

treatment in employment and prohibition of any discrimination when employing people. In the draft of the European Constitution, the protection of minorities is also provided for and these rules have at present been very strictly applied in relation to Romania and Bulgaria particularly regarding the Roma minority. The provision for the protection of the national minorities in the European Constitution is a success with regard to France which two years ago did not even recognise the existence of minorities.

II. An Overview of the Croatian Legislation Providing for the Rights of National Minorities

Ever since 1990, in the preamble of the Constitution of the Republic of Croatia (the official gazette *Narodne novine* no. 41/01 – hereinafter referred to as NN) it has been laid down that Croatia is established as the national state of the Croatian nation and the state of the "members of autochthonous national minorities: Serbs, Czechs, Slovaks, Italians, Hungarians, Jews, Germans, Austrians, Ukranians and Ruthenians and the others who are its citizens...", and they are guaranteed equality with the citizens of Croatian nationality. Major criticism of the constitutional provisions providing for the protection of national minorities is the fact that the Constitution does not explicitly mention the Bosniaks, the Slovenes and the Roma being minorities. The Bosniaks, in the sense of the formal name of the particular national minority did not exist at that time, and 43,469 Muslims living in 1991 were not recognised as a national minority. The Slovenes (23,376) and the Roma (6,695) were also simply put into the category of "others" and the same happened to the Bulgarians, Poles, Romanians, Russians, Albanians, Montenegrins and Macedonians. These minorities were thus placed in an unequal position and it was in fact corrected only at the end of 2002 by the adoption of the *Constitutional Act on the Rights of National Minorities* (NN 155/02*).* In addition, in Chapter III entitled *Protection of Human Rights and Fundamental Freedoms*, all citizens are guaranteed equal rights and freedoms, including all national minorities. This is laid down and implemented in a separate *Constitutional Act.* The Constitution provides for, but does not prescribe as obligatory, the right of the members of national minorities "to elect their representatives in the Croatian Parliament" whereby "the constitutional concept of minority (political) rights as the collective rights of minority communities" is also possible (Jasna Omejec: *Političko predstavljanje nacionalnih manjina u Parlamentu: Usporedba hrvatskog sa slovenskim i rumunjskim izbornim sustavima* (Political Representation of National Minorities in the Parliament: A Comparison of the Croatian and the Slovenian and Romanian Election Systems), p. 4. A possible interpretation of this provision is that the members realise this right by double voting. *The Constitutional Act on the Rights of National Minorities* (hereinafter referred to as: CARNM) provides for an obligatory representation of national minorities in the Parliament and also establishes a concrete number of the minority members in that body but does not explicitly lay down any method of electing the minority members. Finally, the *Act on the Election of Representatives in the Croatian Parliament (Sabor)* of 2003 also left open the issue of a double voting right, so that the parliamentary elections in 2003 were carried out in such a way that the representatives of the national minorities had to decide whether to make use of their general right to vote or the right to elect the minority representatives in the Parliament.

The first *Constitutional Act on Human Rights and Freedoms and the Rights of Ethnic or National Communities or Minorities* (NN 65/91) was adopted in December 1991. This Act guaranteed the national minorities and communities their human rights and freedoms, cultural autonomy, a proportional participation in the representative and other bodies, a special status

of the municipalities where the members of a national minority are the majority, a proportional distribution of employees at municipal courts and in the police administration in accordance with the composition of the entire population, education in the language and script of the minority, court protection and other rights.

This Act mostly remained a dead letter, particularly in relation to the Serbs, because its provisions were systematically violated. The violations were particularly frequent during the war in Croatia. According to the Act of 1991, the members of minorities whose percentage amounted to more than 8% had the right of representation in the Parliament, the Government and judicial bodies in proportion to their participation in the entire population, while the minorities of less than 8% had altogether the right to elect 5 representatives. Pursuant to this Act, the territorial autonomy of two districts where the Serbian population was in the majority was provided for (the district of Knin and of Glina), and a possibility was established to elect the representatives of the national minorities in the bodies of local and regional self-government. In the amendments to this Act of 2000 (NN 105/00), the number of the representatives of the minority of less than 8% was increased to at least 5 and not more than 7 representatives. In both versions of this Act, the minorities were guaranteed representation in the bodies of local self-government "in proportion to their participation in the entire population of a particular unit of local self-government". Since Croatia in 1997 signed and ratified the *European Charter for Regional or Minority Languages* and the *Framework Convention for the Protection of National Minorities* of the Council of Europe obliging the signatories to adopt the provisions of these two documents in the national legislation, the amendments of 1991 were made with an aim to harmonise domestic laws with the provisions of these international documents. In the amendments of 2000, the 22 minority communities living in Croatia and being given the constitutional and statutory guarantees of their rights and freedoms were for the first time explicitly listed.

In September 1995, shortly after the military operations "*Bljesak"* and *"Oluja"* ("Flash" and "Storm") carried out in the territory of Western Slavonia and the so called Krajina (resulting in mass departures of mostly the ethnic Serb population), the Croatian *Sabor* abolished most provisions of the Act, particularly those relating to the members of Serbian nationality. Instead, several new Acts were adopted according to which the members of the minority peoples or groups, particularly the Serbs, were put in an even worse position. Despite the fact that the ethnicity of those affected by those laws was not explicitly mentioned in any of them, the final result of their implementation was the takeover of private property thus preventing the Serbian refugees from returning to Croatia. The first such Act was adopted in September 1995; according to the *Act on Renting Flats in the Liberated Territory* (NN 73/95), the persons of Serbian nationality who had left the formerly occupied and then liberated areas lost their tenancy rights over their flats and houses. According to this Act, the tenancy right over such real estate "ceased to exist by virtue of the law if the tenancy-right holder left and did not use it for more than 90 days". Taking into consideration other statutory provisions and administrative barriers to returning, the chances of an owner reclaiming his or her property in such a short period of time were slim or did not exist at all. This Act ceased to be valid in July 1998.

Pursuant to the *Act on the Temporary Takeover and Administration of Property* (NN 73/95), all movable and immovable property in the formerly occupied territory of the Republic of Croatia was put under the temporary administration of the State, and the citizens whose property had been taken in such a way, were given a statutory period of 8 days to lodge appeals against such decisions. The owners were forbidden to use freely their property (to

exchange it, sell it, etc.), unless they intended to rent it or sell it to "Croatian citizens or members of the Croatian people who had been forced to leave the Federal Republic of Yugoslavia (Serbia and Montenegro) or the occupied territory of the Republic of Bosnia and Herzegovina", i.e. mostly to ethnic Croats.

An absurdly short deadline to appeal – taking into consideration the fact that the owners of the Serbian nationality had mostly taken refuge to other countries – made it impossible for such property to remain in the hands of the Croatian State and of ethnic Croats. This Act ceased to be valid by the decision of the Croatian *Sabor* in July 1998.

The *Act on the Areas of Special State Concern* (NN 44/96) contained a provision on encouraging settlement in the areas of special State concern/formerly occupied areas by the so called "settlers" – Croatian citizens, Croatian emigrants and the Croats from Bosnia and Herzegovina, and Serbia and Montenegro. These "settlers" were accommodated in the houses and other immovable property facilities taken away from the previous owners on the basis of the *Act on Temporary Takeover and Administration of Property* . This Act was amended in July 2002 (NN 88/02). The most important amendment concerned the abolition of the local housing commissions and all cases were transferred to the competence of the Ministry of Public Works, Reconstruction and Construction whereby the obstacles to the restitution of property were avoided having often occurred at a local level. The owners were thus able to sue the temporary users of their property via the State Prosecutor' Office. The deadline for the return of property was also defined (31 December 2002). Although the programme of the return of property was not completed within the given period of time, according to the data provided by the Ministry, the amendments significantly speeded up the whole process. *The Programme of Return and Care for Displaced Persons, Refugees and Dislocated Persons* (NN 92/98) developed in June 1998 made the situation of refugees and displaced persons somewhat easier. However, its complete implementation has not taken place to this date. The programme was developed in cooperation with the international organisations UNHCR and OSCE which have given support to its implementation. It abolished the aforementioned discriminatory laws. By this programme, the Government of the Republic of Croatia has committed itself to finding alternative accommodation for the previous owners of the occupied real estate units and to taking all the necessary measures to evict the temporary owners in emergency proceedings. A multiple use of property, which to a lesser extent exists even today, was pronounced unlawful. In addition, the persons who cannot get their property back in a short period of time "are entitled to be compensated for their private property according to the market conditions".

Two Acts regulating the use of the minority languages were adopted in May 2000, at the beginning of the mandate of a six-member-coalition of the left-of-centre parties. These are the *Act on the National Minorities' Right to Education* (NN 51/00) and the *Act on the Use of Languages and Scripts of National Minorities* (NN 51/00). In the *Act on the National Minorities' Right to Education*, it is emphasised that the national minorities are guaranteed the right to education in the minority language at all educational levels and the realisation of this right may be encouraged, among other things, by positive discrimination. To be more concrete, it is possible to have a class with fewer students than normally required and the students, members of the national minorities are given priority when enrolling in the schools if the number of registered students is larger than the school's capacity (Article 7). In addition, a special part is added to the curriculum and as far as the content is concerned, it is "connected with some special characteristics of the national minority (their mother tongue, literature, history, geography, cultural heritage)". It is envisaged that most members of the

administrative organs of such educational institutions must be members of the national minorities (Article 12) and that the Ministry of Education and Sports is obliged to ensure the necessary number of assistants and advisers who are members of the national minorities or who know their languages (Article 13). The necessary funds for the functioning of such schools are allocated in the State Budget (Article 16).

The *Act on the Use of Languages and Scripts of National Minorities* (NN 51/00) provides for the official use of the languages and scripts of national minorities in the representative, executive, administrative and judicial bodies at the level of municipalities and counties. These bodies are responsible for an equal use of the minority languages in all their activities, actions and official documents and for the employment of the necessary number of employees able to perform the procedures in the languages and scripts of the national minorities (Article 21). In addition, the names of streets, squares, cities, traffic signs and other official inscriptions in the places where a language of a minority has the status of an official language must be written in that particular minority language.

As already mentioned, the political representation of national minorities is also guaranteed by law both in the Parliament and in the bodies of local and territorial self-government. According to the *Act on the Election of Representatives in the Croatian Sabor (*a consolidated version in NN 69/03), the representatives of 22 national minorities are given eight seats for which the elections are held in a separate constituency. Pursuant to Article 19 of the *Constitutional Act on the Rights of National Minorities,* the members of national minorities participating in the total population of Croatia with more than 1.5% are guaranteed at least one and not more than three seats, while the minorities who participate with less than 1.5% elect at least four representatives of all national minorities. It is important to mention that until April 2003, only the members of the 10 so called autochthonous minorities had enjoyed the right of representation in the Croatian *Sabor*: the Hungarians, Serbs and Italians each had one representative, the Czechs and Slovaks together had one, and the Austrians, Germans, Ruthenians, Ukranians and Jews altogether had one representative. The right of representation in the Croatian *Sabor* had not been given to the Bulgarians, Poles, Roma, Romanians, Russians, Turks, Albanians, Bosniaks, Montenegrins, Macedonians and Slovenes.

After the adoption of the *Constitutional Act on the Rights of National Minorities,* the amendments to the *Act on the Election of Members of the Representative Bodies of the Units of Local and Territorial (Regional) Self-Government* were made. The amendments (NN 45/03) provided for the organisation of elections of the representatives of national minorities in the units of local and regional self-government in accordance with the CARNM. A whole new Article was added (9a) which prescribed for the possibility of calling by-elections if adequate representation was not achieved in the regular elections. The *Act* also provided for the election of members of the Council of National Minorities in the local self-government units because the prerequisites for the existence of these bodies were created only by the adoption of the CARNM.

The *Erdut Agreement* is another important document providing for a long-term regulation of some important issues for the inhabitants of Eastern Slavonia and thus also for the members of the Serbian national minority. In November 1995, this bilateral agreement was signed by the paralegal local Serbian authorities of the region and the Croatian Government. Although it was adopted immediately upon the liberation of the Croatian territories so that its priorities were demilitarisation and the prevention of the exodus of the Serbian population and the so-called peaceful reintegration of Baranja, Eastern Slavonia and Western Srijem, the Agreement

also covered some long-term issues such as the return of refugees and displaced persons, the maintenance of peace and security, the organisation of the police, the organisation and monitoring of the elections, the protection of human and civil rights, etc. By the *Erdut Agreement,* the representatives of the Serbian national minority were granted political representation at the local and state level (in the Croatian *Sabor*) and a counselling body in the form of the Council of the Serbian National Minority. Thanks to the adoption of this Agreement, in January 1997 Croatia was admitted as a full member of the Council of Europe.

However, according to some reports, the local population and the UNHCR and the OSCE are not satisfied with the attitude of the (former) government towards some important issues concerning the protection of human rights. The *Minority Rights Group International* is still pointing to some dubious areas such as "human rights, property rights, the return of internally displaced persons, discrimination of people who used to live in the region before the war and the position and the proportional representation of the local Serbian community" (*Minority Rights Group International: Minorities in Croatia,* 2003, p. 11).

III The Constitutional Act on the Rights of National Minorities and Its Enforcement

The enforcement of the provisions of the *Constitutional Act* concerning the political representation of national minorities is based on the results of the census of 2001 which has undergone public criticism. Since the census did not include the Serbs who at that time were outside Croatia, the president of the Serbian National Council and vice president of the SDSS, Milorad Pupovac, was of the opinion that those additional 130,000 refugees of Serbian nationality who at the time of the census had lived in Serbia or Montenegro (*MRGI*: *Minorities in Croatia*, p. 15) ought to be included in the census. Some other human rights activists, like Žarko Puhovski, thought that the census was a realistic presentation of the current situation or the result of some form of ethnic cleansing of the Serbian population that had occurred during the war. There was a discussion on the reasons for the decrease of the members of the national minorities because their number was almost half of what it had been in the census of 1991 and it fell from 15 % (without taking into account 8.2% of Yugoslavs and 0.4% of those uncommitted) to only 7.47%. The most drastic fall was recorded with the Serbian national minority where the present 201,631 make 4.54% of the total population of the Republic of Croatia (in comparison with 12.2% before the war). A decrease was also registered with the Czechs, Hungarians and Italians and a huge gap was reported in the number of registered Roma – 9,463 and numerous estimations showing that there were between 30,000 and 40,000 of them (the Government of the Republic of Croatia: The National Programme for the Roma, p. 2). This gap is explained by the "decision of the Roma people to declare themselves in the census as some other national minority" which suggested that they feared discrimination and "unsolved status issues" (*ibid*). The Roma themselves were to blame for such a situation because they did not register their new-born children. However, it was also the fault of the governmental institutions which had completely marginalised the Roma having made their integration into society quite difficult. Very significant is also the large increase in the number of inhabitants of Croatian nationality who in 1991 constituted 78% of the population and in 2001 almost 90%. Apart from a physical decrease of the number of members of national minorities, the increase can be explained by the fact that some of the people, especially those of a "mixed" origin, declared themselves not as members of a national minority but as Croats. This was the result of their fear of discrimination and stigmatisation in the broadest sense. During the periods of peace, the reasons for the decrease in the number of members of national minorities were the migrations

from the rural into the urban centres resulting in assimilation, emigration during the war, an increase in "mixed" marriages, a higher social mobility and the substitution of the national identity by the professional, social or regional ones. However, despite the natural elements leading to the assimilation of the minority population, the most important factors of the decrease in the number of minority members in the last 15 years have been the consequences of the unfavourable political climate towards national minorities.

The Constitutional Act on the Rights of National Minorities and the Political Representation of National Minorities

Following the multiple amendments and interventions by the international organisations (Council of Europe, OSCE) and by the persons who in Croatia are committed to advance the position of minorities, the *Constitutional Act on the Rights of National Minorities* was adopted in December 2002 and was positively assessed by both these organisations. Their most important provisions providing for the realisation of the rights of national minorities are considered to be those regulating the issues of the minority representation in the Parliament and in the bodies of local and regional self-government which was made possible in the first half of 2003 by the amendments to the two Acts concerning the parliamentary and local elections. Apart from the representation in the representative bodies at the state and local levels, the *Constitutional Act* provides for the right of the members of national minorities to be represented in the administrative and judicial bodies.

Pursuant to the amended *Act on the Election of Representatives in the Croatian Sabor,* the minorities have been given 8 seats of which three are for the representatives of the Serbian minority. Some minorities, particularly the Italian and Hungarian ones, participating in the total population by less than 1.5%, have been given preference over the others. By being the so called autochthonous minorities, they have made provisions for their rights on the basis of the previously signed agreements on the mutual protection of minorities between the country of residence and the country of origin. This, of course, has been a good solution for the members of these minorities but has shown that it is not only the *Constitutional Act* that has been taken into consideration. If that had not been the case, the Bosniaks (20,755), more numerous than even the Italians (19,636) and Hungarians (16,595) would have had their representative in the Croatian *Sabor.* The professionals have given several reasons for the explanation that the existing election system for the representatives of national minorities in the Croatian *Sabor* cannot solve the problem of inequality of electoral chances of national minorities: the minorities are guaranteed fewer seats in the Parliament (8) than the number of minorities in Croatia (22); the winner is, as a rule, a candidate of a minority with a greater number of voters (e.g. 20,755 of Bosnian voters as opposed to 4,270 of the Macedonian ones or 10,510 of Czech voters as opposed to 4,712 of the Slovak ones); the problem of the criteria according to which the minorities are joined to elect together one representative; the issue of the legitimacy of representation of the representatives who are elected in such a way, particularly bearing in mind the fact that they also represent the minorities they do not belong to (Jasna Omejec: *Političko predstavljanje nacionalnih manjina u Parlamentu: Usporedba hrvatskog sa slovenskim i rumunjskim izbornim sustavima* - Political Representation of National Minorities in the Parliament: A Comparison of the Croatian with the Slovenian and Romanian Election Systems*,* p. 9). Some criticism to the CANM has been that the Act does not protect ethnic Croats in the municipalities where they constitute a national minority (there are six of such municipalities) which is explained by an allegation that an ethnic Croat cannot be a national minority in Croatia. However, despite these open issues, the level of the parliamentary representation of minorities is larger than in many other European countries

(Slovenia, Hungary, France, etc.) The Croatian *Sabor* has established a Committee for Human Rights within which there is a subcommittee for the rights of national minorities with the aim of monitoring the application of the principles laid down in the *Constitutional Act* and in international documents. The committee is composed of 15 members and seven of them are the representatives of the national minorities in the Parliament.

The *Constitutional Act* also provides for the representation of national minorities by making it possible for them to participate in the units of local and regional self-government and by establishing the Council of National Minorities. Some experts have criticised the *Constitutional Act* for not prescribing but only offering the possibility of double voting for the members of national minorities, and for not providing for a minority self-government at the national level but offering coordination by the Council.

However, the minority self-government at the national level with more authority than the present one of an exclusively counselling nature of the Council and the coordination bodies was provided for in the Bill of October of 2000. The proposal of the work group was rejected for political reasons and the "fear" that the Serbian national minority could re-establish itself as a constitutive element in Croatia. The *Serbian Democratic Forum* has criticised the *Constitutional Act* primarily because of the non-existence of the minority self-government at the state level because "the coordination bodies are not legal persons and are not a direct form of the minority self-government at the state level – just like the Council is not a direct representative of the national minorities at the national level because it is nominated by the Government of the Republic of Croatia" (Serbian Democratic Forum: *Presjek stanja manjinskih prava u Republici Hrvatskoj u odnosu na provedbu Ustavnog zakona o pravima nacionalnih manjina* - An Overview of the Situation Regarding the Minority Rights in the Republic of Croatia in Relation to the Implementation of the Constitutional Act on the Rights of National Minorities – 30/08/2004). Zdenka Ćuhnil, a member of the Parliament of the Czech minority is also very critical of the lack of the minority self-government at the national level: "In order to function properly and to have its full purpose and justification, the minority self-government should be consistent from top to bottom, which means from the local and municipal levels via the regional and territorial levels to the state level. It would then be clear that the state level connects and coordinates all the Councils of a minority and it would be able to present the problems of national minorities more clearly, particularly the problems of the minorities that are dispersed over a larger state territory. In this way, the problems of national minorities are perceived only locally and are not reflected at the top level, especially if a particular minority has not yet succeeded in getting its representative in the Council of National Minorities" (*STINA: Edukativno-informativni servis za prava manjina i međuetničku toleranciju* – Education and Information Service for the Rights of the Minorities and Inter-ethnic Tolerance – 31/05/2004 No. 3).

The Councils of National Minorities can be elected into the local self-government units where a national minority participates in the total population with at least 1.5%, or into the units where more than 200 members of a national minority live, or into a unit of the territorial (regional) administration where there are more than 500 members of national minorities. The members of the Councils are elected in direct local elections, and the candidates may be nominated by the associations of national minorities or informal groups of members of national minorities. The Councils are exclusively counselling bodies cooperating with the bodies of local and regional self-government. These government bodies do not have any statutory obligation of enforcement or operation in accordance with their recommendations. However, within their powers, the Councils have four basic rights: the right to participate in

the process of decision-making, the right to be informed, the right to positive discrimination (e.g. employment in the bodies of local self-government) and the right to influence public media. They may also propose statutory acts aimed at improving the position of minorities, as well as nominate candidates for the bodies of government administration and self-government (Davor Gjenero: *Novi oblik manjinske samouprave* - A New Form of Minority Self-Government, STINA Newsletter No.2).

The election of the representatives of national minorities in the units of local and regional self-government is also provided for in the amendments of the *Act on the Election of Members of Representative Bodies of Units of Local and Territorial (Regional) Self-Government* (NN 45/03) on the basis of the instructions in the *Constitutional Act on the Rights of National Minorities.* In the municipalities, towns and counties where a minority makes 5-15% of the population, it has the right to be represented. In the units in which it participates in the population with more than 15% it is entitled to proportionate representation.

According to the law, the representative bodies of the units of self-government (municipalities, towns and counties), where the minorities have the right to representation, have the duty of harmonising their statutes with these two acts in order to determine the minimal number of representatives of the minorities. If they fail to do so, a "newly elected representative body" is constituted to carry out this duty (Article 3). In March, the Parliament Committee of Human Rights asked the Government to remove from the *Act on Local Elections* some already existing "contradictory provisions" and to reject the Government's proposal according to which only the citizens who have permanent residence in particular areas and who "actually live" there would have the right to vote in the local elections. The Committee declared such a provision as discriminatory. Milorad Pupovac is of the opinion that this provision has been a back-door approach "to remove from the voters' register the citizens who have not yet returned" ("*Jutarnji list",* 17 March 2005).

According to the law, the electoral committee calls the elections and if necessary also the by-elections with the aim of achieving the corresponding representation of members of national minorities. The local elections for the Councils of National Minorities were held in May 2003 and because of a low turnout (13%), the elections for the Committees were repeated in February 2004, as well as the by-elections for the representatives of national minorities in the representative bodies of local and regional self-government. However, the turnout was again very low, only 8.12%, which indicated the existence of multiple problems in the preparation and organisation of the elections. Immediately after the by-elections, the parliamentary members of the national minorities analysed the results of the elections. They were all very satisfied with the fact that the elections were held because it was the realisation of one of the provisions of the *Constitutional Act.* However, the representatives also expressed their criticism because the elections had taken place separately from the elections for local and regional self-government and from the parliamentary elections, so that a large number of members of national minorities feared to declare themselves publicly as members of national minorities. There were also numerous organisational and technical problems such as the voters' lack of information, the voters' not being registered, lack of space and funds, etc. (*STINA: Edukativno-informativni servis za prava manjina i međuetničku toleranciju* - Education and Information Service for the Rights of the Minorities and Inter-ethnic Tolerance, 03/05/2004, No.1). According to Aleksandar Tolnauer, the president of the Council of National Minorities, the Council took an initiative to change and simplify the statutory procedure of the elections for the Councils and the representatives of national minorities. However, many Councils have not yet been constituted (on 18 February 2005

there were 263 of a possible 471 according to the census of 2001). It was mainly because the local institutions had not earmarked the funds. In addition, most municipalities, towns and counties had not created the conditions for the representation of minorities in their bodies. The reluctance of the competent people to apply the permitted principle of positive discrimination for the minorities to be able to realise their right to be represented in the bodies of the central government administration and local and regional self-government, the judiciary, system of education, etc. are mentioned as important reasons for such a situation. Another reason that is often given is the lack of sensibility for the minority issues, insufficient communication among the government institutions dealing with the minority issues, the political parties of minorities and their nongovernmental organisations, as well as their political credibility, lack of funds, insufficient education of the members of the minority self-government, etc.

According to the SDF, the most important problem in the implementation of the provision of the *Constitutional Act* on the establishment of the Councils is insufficient financing because "many self-government units do not have sufficient funds or simply do not want to finance the Councils of National Minorities". The *Constitutional Act* does not provide for any measures in the case of insufficient funds or sanctions to be applied to local self-government units which do not implement law. The SDF also points to the fact that "the minorities still do not have access to the positions in public administration and, at the administrative level, in municipalities, towns and counties and that there is no proportionate representation in the judiciary" emphasising that such representation is more important for the life of the members of national minorities than their representation in the Parliament. In addition, it is practically impossible to get the data on the number of representatives of national minorities in the administrative bodies of municipalities, towns and counties.

A positive example of the cooperation with the local authorities is that of the Italian community in Istria. There, thanks to the agreements with the IDS (Istrian Democratic Party) and with other local parties, it is made possible that in all places, including those with the participation of the Italian minority with less than 5%, the Italians have a councillor in the bodies of local self-government. According to the Statute of the Istrian county, the Italians are granted the position of at least the deputy mayor, two mayors and one deputy county governor (Furio Radin: *A Round Table: Political Representation of Minorities,* Begovo Razdoblje, 20-22 May 2004). The importance of the possibility of cooperation with the local authorities is also emphasised by Nenad Vukadinović, president of the Council of Serbian National Minority in Ogulin. According to him, the fact that the Council there very soon started its activities can be ascribed to an excellent cooperation with the local authorities (*STINA: Edukativno-informativni servis za prava manjina i međuetničku toleranciju* - Education and Information Service for the Rights of the Minorities and Inter-ethnic Tolerance, 03/05/2004, No. 1).

It is worrying, however, that some representatives of national minorities again warn of the fact that the statutory provisions on the participation of the representatives of local minorities in the municipal and town councils will not even be realised in the following local elections on 15 May 2005 "because many units of local self-government have not harmonised their statutes with the provisions of the *Constitutional Act on the Rights of Minorities*." Neither the president of the SDSS, Milorad Pupovac nor the representatives of the State Office for Administration know the exact number of municipalities yet which have not harmonised their statutes with the provisions of the CANM (*Pupovac: Odgoditi izbore u općinama koje ne provode Zakon o manjinama – Postpone Elections in Municipalities where the Act on Minorities is not Implemented, "Jutarnji list",* March 2005).

In addition, in the case of the Serbian national minority, large discrepancies have existed between the realisation of the minority rights in the Danube region (where as a result of the Erdut Agreement, the social exclusion of minorities is overcome) and in the so called *Krajina,* where the Serbian minority is almost completely excluded from the participation in the work of institutions. Davor Gjenero explains that on the basis of such a situation we can come to the conclusion that the Government, and particularly SDSS as their coalition partner, when solving the issues connected with the Serbian national minority, they in fact act within the framework of the Erdut Agreement and not according to the *Constitutional Act on the Rights of National Minorities* and that they have "to some extent given up on the *Krajina*".

On the basis of the *Constitutional Act on the Rights of National Minorities*, the Council for National Minorities has been established – an "umbrella" counselling body of national minorities which by its proposals, opinions and pieces of advice to the bodies of State authority initiates the measures for improving the life conditions of national minorities. A body constituted in such a way is very rare in other parts of the world and it is typical of South-Eastern Europe. The members of the Council are elected by the Government of the Republic of Croatia. It is composed of seven persons nominated by the Councils of national minorities, five distinguished cultural, scientific, professional and religious workers and the representatives of national minorities in the Croatian *Sabor.* Because of the fact that the Croatian Government appoints the president and the two vice presidents and establishes a professional service of the Council to perform administrative and professional tasks, some experts believe that there is a certain parallelism between this body and the Government Office for National Minorities.

The Statutory Prohibition of Discrimination on the Basis of Nationality and its Enforcement

One of the basic provisions of the Constitutional Act on National Minorities is the prohibition of discrimination on any basis and the guaranteed equality of rights and freedoms to all citizens of Croatia. However, discrimination at the institutional level is still present particularly with regard to the employment and education of the Roma and the employment of the Serbs. In its report on the return of refugees and displaced persons, the *Human Rights Watch* describes several cases of refugees of Serbian nationality who were openly told that they could not be employed because of their ethnicity (Human Rights Watch: *Broken Promises: Impediments to Refugee Return to Croatia*, p. 53*).* They also report on several cases where the institutions, particularly the judicial ones, have annulled the announcements for job vacancies when the only successful candidates were of Serbian nationality. This has been the case with Ninko Mirić, the president of the SDF in Vojnić and the president of the court in Vojnić prior to the war who, in the past five years, has applied for the position of a judge in several job advertisements. Although he was the only candidate fulfilling the necessary requirements for the job, he was refused every time. Nikola Sužnjević was also refused for the positions of municipal court and magistrate's court judge in Gvozd on two occasions. They both claim that the reason for their applications being rejected was their Serbian ethnicity (conversations with Ninko Mirić and Nikola Sužnjević). According to the OSCE data, in places like Dvor, Gvozd, Vojnić and Hrvatska Kostajnica, the Serbs are practically the only candidates for judicial positions but these positions have still remained vacant (*The OSCE Status Report No. 12,* 12 July 2003*).* An attorney-at-law from Osijek, Dražen Latinović, who, as a lawyer of Serbian nationality, temporarily took refuge abroad in 1991, was removed from the Register of the Croatian Bar Association without any justified

reason. Although he successfully appealed twice and his appeals were admitted by the Constitutional Court, the Croatian Bar Association did not change its decision. Latinović has still not succeeded in getting a licence to work as an attorney-at-law ("*Feral Tribune*", 21 July 2004). These examples illustrate very well that the number of ethnic Serbs in judicial organisations is far from being proportionate even in the places with a significant Serbian population. They also point to the fact that the local institutions most probably violate the law and as far as we know, such conduct has not been sanctioned. According to the Government statistics of 31 October 2003, 95% of the total number of those employed in the judicial institutions are Croats and the remaining 5% are distributed among the Serbs (who constitute 4.5% of the total population) and other minorities which participate in the total population by 2.9% (*The OSCE Status report 13,* December 2003, p. 20). Moreover, this statistic is more or less the same as that of 2002 despite the additional employment of 66 judges and state prosecutors of which 65 are Croats.

These data point to the fact that since 2002, no efforts have been made to achieve a proportionate representation by way of positive discrimination or some other measures. In addition, taking into consideration the fact that the aforementioned persons are to some extent known to the public and have still been discriminated against for their national affiliation, we cannot but ask ourselves how many "ordinary" people have experienced such treatment. According to the writing of the *Human Rights Watch*, at the end of 2003, 1,500 to 2,000 people returned to Gračac and only one of them obtained employment in a municipal institution. In the territories to which people have returned, you cannot find people of Serbian nationality employed in health care, education, police, local administration, postal services and electric energy supply services (HRW: *Broken Promises*, p. 55*).* Milorad Pupovac, a representative of the Serbian national minority, has recently also warned of the fact that in eastern Slavonia, "it is difficult to see a policeman who belongs to the Serbian minority". He also said that "the employment policy in the judiciary must be changed and the members of the Serbian national minority must not be prevented from working in the State administration and in the judiciary" ("*Slobodna Dalmacija",* 9 September 2004*).* A recent example of the violation of labour and other rights is the case of 4,000 former workers of the "Borovo" complex who were discharged in December 1991 because of their Serbian nationality. As early as in March 2001, the workers filed a complaint with the Municipal Court in Vukovar asking for severance pay and recognition of their years of service. However, there have been no signs so far that this very important case of 4,000 "Borovo" workers who have been deprived of their rights will be solved.

A most recent research of the Serbian Democratic Forum on the discrimination of the Serbs when looking for employment (SDF: *Informacije o zapošljavanju Srba povratnika, odnosno pripadnika srpske nacionalne manjine na područjima od posebnog državnog interesa – Information on the Employment of Serbian Returnees/Members of the Serbian National Minority in the Areas of Special State Concern,* 14 October 2004) also shows discouraging results regarding the employment chances of the Serbs in the areas of special concern of the State. In the municipality of Dvor, the Serbs participate in the total population by 60% but of 300 employed persons, only 7 are of Serbian nationality. In the police in Glina, only 2 employees belong to the Serbian national minority and only one in education, which is more than in many other municipalities such as Pakrac and Lipik where the municipal authorities refused to give the data to the SDF. In these places, according to the Erdut Agreement, the local hospital was obliged to employ 4 returnees of Serbian nationality but failed to do so. It also repeatedly annulled the job advertisements for nurses when the successful candidates were of Serbian nationality. In Korenica and in Plitvička Jezera, there are 430 returnees who

are capable of working but only 42 of them are employed in the private sector. There are no Serbs employed in the bodies of local authorities, public services or judicial institutions. A similar situation exists in Udbina where there are 280 Serbs of working age and only 20 of them are employed. Only a few are employed in the bodies of local authorities because there the Serbian National Party won in the elections. In Gospić, there are 52 Serbian returnees and in Otočac, there are 73 of them and none is employed. In Knin, no Serbs are employed in the municipal administration or in the local offices of the state administration. No Serbs are employed in the Croatian Forestry Industry, Croatian Postal Services, Fire Department or Oil Industry (*INA*). In the public sector, there are altogether 18 employees and a drastic example of discrimination is the wholesale trade company JOLLY where the donor had set the condition of equal employment of Serbs and Croats but the owner soon fired all the Serbs. In Benkovac and Kistanje, no Serbian returnees are employed. The same is the case in Vojnić where the Serbs constitute the majority of the population. In Gvozd and in Topusko, there are altogether 3,430 Serbs (from a total of 6,989 inhabitants) and only 14 persons of Serbian nationality are employed.

In Daruvar and in the surrounding municipalities, there are no Serbs employed in the public and state services and like in all other municipalities, the usual practice has been to annul the job advertisements if the only candidate meeting the conditions is a Serb (all the obtained data on employment were received from the *Serbian Democratic Forum* which had obtained them from the Ministry of the Economy, Labour and Entrepreneurship, Labour Administration and Market, 14 October 2004).

"Hate Speech" and National Intolerance

"Hate Speech" and violence based on national affiliation are also still present in Croatia. These phenomena have more clearly been defined in the most recent amendments of the Criminal Act. They constitute a significant step forward in relation to the previous versions of the Criminal Act. Yet another and according to many a more serious problem is the reluctance of the competent institutions to implement the statutory measures in order to prevent racial discrimination and violence and contribute to the atmosphere of tolerance, dialogue and cooperation. In spite of the statutory measures, beside the racist graffiti, the devastation of religious objects and nationalistic incidents at sports events, several nationalistic appearances of politicians also took place last year. We shall only mention an HDZ (Croatian Democratic Community) councillor in the City Council of Dubrovnik who publicly spoke of the Jews and Serbs in a negative context, insults and a physical attack on a young man of Serbian nationality in Vodice, or Andrija Hebrang's (vice president of the Government) public comments regarding the HTV journalist Zoran Šprajc who has changed his previous surname (Jovanović). On the basis of a decision by the Croatian Government, at the end of October last year the monuments of an Ustasha minister, Mile Budak, and a military commander, Jure Francetić, in Sveti Rok and in Slunj were removed. The erection of such monuments brings shame not only on all the citizens of the Republic of Croatia because of the anti-fascist civilisation achievements that are weaved into the fabric of the today's Europe but represents also a threat and unease to the members of national minorities who suffered most under the Ustasha regime and to all other citizens of Croatia who are against the glorification of the *NDH* (Independent State of Croatia) and its racist policy. The initiative of the Croatian Government to remove the monuments of Budak and Francetić was thus an important step forward in the relationship of the Croatian authorities towards those historical events. It shall certainly have a positive impact on the feeling of safety and affiliation of the national minorities in the society in which they live. After the removal of these monuments, the

municipal authorities in most of the 17 places where there was a street named after Mile Budak changed the name on their own initiatives.

Other Rights of National Minorities

Apart from the right to representation in the representative bodies at the State and local levels, in administrative and judicial bodies and in the councils of national minorities, the *Constitutional Act* guarantees the minorities the use of the names and surnames in the languages of national minorities for both private and official purposes (Article 9); the use of the languages and scripts of the national minorities both publicly and privately, including in "signs, inscriptions and other information in accordance with the law" (Article 10); the minorities have the right to education in their languages and scripts at all levels of education and schools may organise such classes for a small numbers of students, while the programme for such classes must contain parts concerning particular national minorities (Article 11); an equal official use of the languages and scripts of national minorities "is accomplished in the territory of a unit of local self-government when the members of a particular national minority constitutes the majority of the population of such a unit (Article 12); the use of symbols and insignia of the national minorities in accordance with the statutes of local communities that are obliged to adopt such provisions (Article 14): associations, endowments and foundations of a cultural nature may be established (Article 15); links and cooperation may be established with the mother nation; the members of national minorities may freely express their religious affiliation (Article 16), and the media, in cooperation with the State institutions, are obliged to make the minorities' access to the media easier, with a possibility of financing such programmes from the budget (Article 18). Some national minorities also realise their rights on the basis of intergovernmental agreements between Croatia and their mother countries. These are the bilateral agreement between Croatia and Hungary on the mutual protection of the Hungarian and Croatian minority in the respective countries signed in 1995, the bilateral agreement on the protection of the national minorities of the Republic of Croatia with the Republic of Italy of 1996 and the agreement on the normalisation of relations between the Republic of Croatia and the then Federal Republic of Yugoslavia also of 1996.

As for the implementation of these provisions of the Constitutional Act, except in the field of education, there are fewer problems than in the previously analysed areas. The cultural activities and the programmes of associations and institutions of national minorities are regularly financed from the State Budget and the Council of National Minorities, composed exclusively of the members of national minorities, decides on the very allocation of funds. There have been no major complaints as to the freedom of religious denomination, although the Catholic Church in many respects functions as the "official" church in Croatia. In December last year, the Office for Human Rights of the Government of the Republic of Croatia organised a public debate on the position of women in religious communities, with the presentations made by the representatives of Catholic, Orthodox, Islamic, Jewish and other religions. The representation of the minorities in the media is mostly still considered unsatisfactory, although "hate speech" and prejudice are more rarely present in the media. There are several initiatives for the media which would deal with the problems of national minorities, the most recent one being the initiation of a radio station for the Serbs and Italians living in the wider area of Zadar, Split, Šibenik and Knin initiated by the nongovernmental organisation *Institute for Peace and Peace Reporting ("Slobodna Dalmacija",* 10 September 2004). The use of the languages and scripts of national minorities in private and in public has also been provided for by the *Constitutional Act on the Rights of National Minorities* in the way that it is realised in the local community in which the particular minority constitutes at

least one third of the entire population. Like many other provisions of the *Constitutional Act,* this one also in practice depends on the political will of the local authorities. The official use of the Italian language is thus permitted in the territory of the Istrian county on the basis of the statutes of local communities even where the Italian minority constitutes less than one third of the total population. In addition, in Beli Manastir, the Hungarian national minority participating in the total population with 8.5% asked for the introduction of the Hungarian language as an official language, referring to the rights acquired prior to 1991 (Centre for Peace, Legal Advice and Psychosocial Help, Vukovar and the Community of Serbs in Rijeka: *Alternativni izvještaj o primjeni Okvirne konvencije za zaštitu prava nacionalnih manjina u Republici Hrvatskoj* – An Alternative Report on the Application of the Framework Convention for the Protection of the Rights of National Minorities in the Republic of Croatia*,* July 2004, p. 42).

On the other hand, in the municipalities of Vojnić, Krnjak, Gvozd, Donji Kukuzari, Dvor and Korenica, the local self-governments do not allow the official use of the Serbian language, although the national minority in these places meets the threshold provided for in the *Constitutional Act.* The Serbs in Vukovar are legally not in a position to realise the official use of the Serbian language because their participation in the total population of the town is a little less than one per cent smaller than one third (*Alternativni izvještaj* – An Alternative Report*,* p. 42). The use of personal names and the names of toponyms in the minority languages is also permitted by law but only in the local communities where the minority language is at the same time an official language. Here, the Italian minority has realised much greater rights than the other minority communities in Croatia; in July last year, a meeting was held in which the Croatian Prime Minister, the state secretary of the Ministry of Foreign Affairs, the representatives of the Italian Union and the representative of the Italian minority, Fulvio Radin, were present. At that meeting, Ivo Sanader promised that all the commitments from the agreement between the Republic of Croatia and Italy of 1996 would be met. These are: the speeding up of the process of issuing ID cards to the Croatian Italians in two languages, organising bilingual information windows in the police administrations in Pula and Rijeka, bilingual inscriptions, the use of two languages in the State administration and the allocation of larger sums in Croatia for the schools in the Italian language (IskonInternet/HINA, 20 July 2004).

As for the supplementary education for the minorities and the instruction in the minority languages, both are guaranteed by law but the implementation is also difficult because there are no adequate textbooks and teaching plans in the minority languages. There is also a lack of adequately educated personnel. In this respect, the members of the Roma and Serbian national minorities face the largest problems. There are no programmes for the current school year according to which the children of Serbian nationality in the Danube region would study the most recent Croatian history and this has been the seventh generation of children in that part of Croatia who do not study the most recent Croatian history. The Roma children are in an even worse position because they are often not even able to realise their fundamental right of being taught in the Croatian language (more on this in the Chapter entitled *The Roma and the National Programme of the Government of the Republic of Croatia for the Roma).* The right to education in their minority languages is realised by the Italians in Istria and the Hungarians in eastern Slavonia, as well as the Serbs in eastern Slavonia but in separate schools. The right to maintaining links with their mother nations is freely realised by all national minorities in Croatia. This, however, does not apply to the prisoners of Serbian nationality in Lepoglava, convicted of war crimes whose families are not allowed to visit them "for security reasons", and the prisoners themselves, the citizens of Serbia and

Montenegro, are not allowed to travel to these countries to visit their families or to attend funerals.

The representatives of the national minorities were in a position to express their perception of the implementation of the Framework Convention on the Protection of the National Minorities of the Council of Europe whose provisions mostly correspond to those in the *Constitutional Act.* At the seminar on the implementation of the Framework Convention held on 20 and 21 September 2004 in Cavtat, organised by the Office for National Minorities of the Croatian Government and the Council for National Minorities, the representatives of the national minorities expressed their dissatisfaction because of the lack of care of the State for the minorities, the lack of sensibility of the majority towards the problems the minorities are facing, the unsatisfactory approach of the media to these problems, insufficient funds, as well as their worries connected with a decrease of the number of minorities and a good statutory regulation which is badly applied or not applied at all ("*Vjesnik",* Panorama, 25 September 2004, p. 8).

In addition, the conclusions were made at the seminar as to the territories in which the State institutions should undertake additional measures to improve the life conditions of national minorities: census, particularly with regard to the Serbs, Roma and Bosniaks, the application of the *Act on the Use of Languages and Scripts of National Minorities* in relation to their numbers and acquired rights, lack of counsellors, slow administration when recognising the rights guaranteed by the *Act on the Education in the Languages and Scripts of National Minorities*, the approach of the media towards the national minorities and a delayed establishment of a Fund for the Encouragement of Pluralism and diversity of the electronic media, ensuring the conditions for the work of the Councils and representatives of the national minorities and inadequate representation of the minorities in the State administration, judicial bodies and public companies. As for the question of insufficient representation of the Bosniaks and Slovenes in the Croatian Constitution, which the representatives of these two national minorities systematically complain about, in October last year, a representative of these minorities in the Croatian *Sabor,* Šemso Tanković, warned that "not a single point of the Agreement had been observed but to the contrary – a systematic discrimination of Bosniaks in Croatia was being carried out". He added that the Committee of the SDA , whose member he was, asked him to cancel the arrangement with the Government if such a policy continued ("*Jutarnji list", Tanković: Ako se ne riješi problem Bošnjaka, raskidam koaliciju s HDZ-om* - If the problem with the Bosniaks is not solved, I shall cancel the coalition with the *HDZ,* 13 October 2004.). After these announcements, the Prime Minister Sanader promised that in the amendments to the Constitution, both the Slovenes and Bosniaks would be reintroduced into the preamble of the Constitution without specifying when that would be ("*Slobodna Dalmacija": Sanader se pokazao dobrim partnerom* – Sanader Has Presented Himself as a Good Partner*,* 28 October 2004.

IV. The Roma and the National Programme of the Government of the Republic of Croatia for the Roma

The Roma are socially the most endangered national minority in Croatia. According to the data by the Open Society Institute, more than 50% of the Roma live off social welfare, the unemployment rate is 92%, and last year, only 200 Roma students attended primary school. Only a small (unregistered) number attended university. In October 2003, the Government of the Republic of Croatia developed the *National Programme for the Roma* aimed at developing an overall and a long-term plan for a systematic improvement of the life of the Roma and preventing their marginalisation that is present in almost all fields of social and public life. The bodies of the State administration, local and territorial self-government, other government institutions, nongovernmental organisations, international organisations and what is most important, the Roma people and their organisations should participate in the implementation of the programme. The funds for the programme should mostly be provided from the State Budget, but for 2005, only 2 million HRK have been earmarked which is less than 10% of the necessary funds which makes the implementation of the programme more difficult. For example, the Croatian Employment Agency as the initiator of various measures for the employment of the Roma as one of the most important ways to improve their living conditions, did not receive any money for that purpose ("*Slobodna Dalmacija",* 15 June 2004).

Hand in hand with this project another important project for improving the living conditions of the Roma has been organised and Croatia takes part in it. It is called *A Decade for the Inclusion of the Roma* which is the result of the conference *The Roma in the Growing Europe: Challenges for the Future,* held in 2003 in Budapest and organised by the Open Society Institute, World Bank, the European Commission in cooperation with the UNDP, The Development Bank of the Council of Europe and the Governments of Finland and Sweden. At this Conference, high officials of eights countries of South-East Europe – Bulgaria, Croatia, the Czech Republic, Hungary, Macedonia, Romania, Serbia and Montenegro and Slovakia have taken on the obligation to undertake all the necessary measures to improve the lives of the Roma and to eradicate poverty and social exclusion. The decade that will last from 2005 to 2015 has in Croatia been given its implementation action plan which the Croatian Government will analyse in early October.

On the proposal of the Office for National Minorities, the Government established a Commission for the monitoring of the implementation of the national programme for the Roma, composed of the representatives of all relevant ministries, the State Institute for the Protection of the Family, Motherhood and Youth, the Office for the National Minorities of the Republic of Croatia, the Office for Human Rights of the Government of the Republic of Croatia, the County of Međimurje, the City of Zagreb, a representative of a nongovernmental organisation for human rights, seven representatives from among the Roma councils at the local and regional level and the Roma Associations.

The concrete measures that need to be taken in order to advance the position of the Roma have been grouped and the Commission composed of 22 members is divided into five working groups. The first working group was responsible for the inclusion of the Roma in the cultural and social life and for the implementation of international documents, the second one for the rights concerning status and non-discrimination, the third one for science, education and sports and the fourth one for the social and health protection and employment, and the fifth one for regional planning and housing.

Differing from the conventional wisdom that the Roma are less organised than other minority communities which is often mentioned as one of the main reasons of their extremely bad social position, the *National Programme for the Roma* contains the information that in the elections for the councils of national minorities held in May 2003 more than 38% of the Roma voters took part which is much more than in the case of other national minorities. Unfortunately, because of large discrepancies between the census (9,463) and the realistic assumptions about the real number of the Roma (30,000-40,000) and the fact that a large number of the Roma does not have Croatian citizenship, only a smaller number of the Roma can take part in the elections for the councils, so that the number of their representatives is also much smaller and less representative than it would be the case if all the Roma were registered and if their citizenship was taken care of.

As for the very implementation of the National Programme, the Government Office for the National Minorities organised on 11 and 12 February this year a *Workshop on the Implementation of the National Programme for the Roma* where some ministries presented the present implementation of the Programme. In the course of 2004, a Committee for the monitoring of the implementation and work groups was organised. A few seminars for the training of young Roma in the duration of a few days were organised and financed by the Council of Europe and the OESCE mission. The Government Office for National Minorities published a handbook entitled "*My Rights"* in the Roma and in the Croatian language. According to the report of the Ministry for the Protection of Environment and Regional Planning, 12 settlements in which there are Roma settlements started developing a development plan for the regional planning of the locations where the Roma live, and the Institute of Social Sciences *Ivo Pilar* has been engaged in the development of a sociological study "*The Locations Inhabited by the Roma – Situation and the Advancement of the Development of Settlements and Aspirations for the Forms of Housing"*. The Ministry of Science, Education and Sports reported about it having organised preschool educational groups for about 300 Roma children, that in the preschool and primary school education 18 Roma assistants were organised, 29 scholarships were given for secondary school children and the funds were earmarked to pay for students' residences in Čakovec and Varaždin for the Roma children. The Ministry of Justice proposed the initiation of a project of rendering free legal aid to the Roma to solve the status issues. However, after the Croatian Government had provided HRK 70,000 of the requested 200,000 for this project, the Croatian Bar Association, which had agreed to be the executor of the project in the name of the Ministry, gave up the previously agreed cooperation, so that the project was abandoned and the funds were returned to the State Budget. Because of the lack of funds, the project of education for the acquisition of knowledge and skills within the prison system has not been initiated. However, the programme of free legal aid for the Roma does take place but it is carried out by the nongovernmental organisations such as the Croatian Helsinki Committee, the Croatian Law Centre, and the Organisation for the Rights of Women B.a.b.e . The Open Society Institute supports the preschool project for the Roma in Baranja and in some other locations in Međimurje. As for the Ministry of Health and Social Welfare, according to their report, 15 professional workers are employed in various social welfare centres which operate in the settlements with the Roma population, while other foreseen measures are either partly implemented or are not implemented at all.

The Ministry of the Interior reports that with respect to the status issues of the Roma, short term and long term goals and an action plan have been established, as well as mobile teams which have gone through a programme of education. In some counties, mobile teams have

already been on the ground in order to collect the necessary data by which it will be easier to establish the citizenship of the Roma people and other status questions. However, for most counties there are still no data for the number of Roma whose citizenship has not been established. The Croatian Employment Agency is responsible for the programme of employment of the Roma which has become one of the priorities to achieve the most equal inclusion of the Roma into society. However, the Croatian Employment Agency did not receive the necessary funds for the last year so that the plans have not been realised. In their letter it is said that in the field employment office in Čakovec, the employment of two Roma persons has been planned but it is not said when this is supposed to happen.

The conceptual policy of the programme has been criticised. Namely, in 2004 there was no action plan for its implementation on the basis of which certain working groups could ask for money from the State Budget and the Commission was supposed to have it developed before 15 December 2004. Second, some members of the Commission, i.e. the leaders of the working groups are at the same time also the advisors at the competent ministries which is a limiting factor for external monitoring or exerting pressure on the ministries responsible for acting according to the National Programme. In addition, there have been many obstacles in the sector of education, like for example a lack of the "completion strategy" according to which the Roma children, when they reach the necessary level of education, would leave the exclusively Roma classes and join those "mixed" ones. Teachers who work with the Roma children are not motivated enough by the State and according to the reports from the field, the work with the Roma is mostly experienced as an unpleasant obligation. The preschool education is financed from the budget of the Ministry of Education and Sports and not from the funds for that particular purpose. Furthermore, there are problems connected with the extended day programme in schools and other out-of-school activities which is the responsibility of the local communities. The Roma assistants, who do not have adequate education, do not function as equal associates of teachers and their labour status has not been legally defined. In addition, the National Programme does not provide for the education of the teachers which is the task of some nongovernmental organisations (a conversation with Jagoda Novak, the Open Society Institute). According to the members of some nongovernmental organisations who regularly and frequently visit the Roma living in the Međimurje County, the institutions there do not have any employment programmes for the Roma and the representatives of the local authorities openly tell the Roma how they will never find jobs in Međimurje. On the other hand, the Roma themselves say that whenever they try to find a job in the county, the very mentioning of their surname disqualifies them automatically (a conversation with Bojan Munjin, the head of the Civil Society Department at the Croatian Helsinki Committee, 5 October 2004).

As has already been mentioned, last year no funds were earmarked from the State budget for the implementation of the measures for the employment of the Roma. The example of Veljko Kajtazi speaks of the lack of will of some institutions to help the Roma. According to the National Programme, six Roma consultants should be employed at the Croatian Employment Agency to deal with the Roma issues. One of the candidates was Veljko Kajtazi, a person with all the necessary qualifications for the post, supported by Vera Babić, a state secretary for employment in the Ministry of the Economy, Labour and Entrepreneurship.

However, in the Croatian Employment Agency, Kajtazi's application was rejected with a dry bureaucratic explanation that the Agency's Rules do not allow his employment despite the fact that the National Programme prescribes the harmonisation of the Rules and the Statute (a conversation with the attorney-at-law, Lovorka Kušan).

V. Return of Refugees and Displaced Persons

The return of refugees of Serbian nationality largely depends on the legal and economic conditions surrounding the return and on the political climate in the country. In March 2004, the Government established a new body for the coordination of the return, "A Commission for Refugees, Returnees and the Restitution of Property" with the task of carrying out the provisions established in the *Agreement on the Cooperation between the Future Government of the Republic of Croatia and the Representatives of the Serbian Independent Democratic Party in the Croatian Sabor* which was in December 2003 signed by the representatives of the Government and SDSS. An organised return of the Croatian citizens of Serbian nationality from Serbia and Montenegro and Bosnia and Herzegovina started only in the summer of 1998, after the adoption of the *Programme of Return and Care for Refugees and Displaced Persons* and only about a year ago, as part of the UNTAES programme, the return of refugees to the Danube region began. The most dynamic period of return was that from 2000-2003 when the discriminatory provisions of some Acts were abolished and when some steps regarding the reconstruction of damaged property, the restitution of property and the process of obtaining citizenship were taken. In that period, 46,068 refugees of Serbian nationality returned. It is more than one third of the total number of refugees who have returned up to this date.

According to the official data of the state community of Serbia and Montenegro, in that country, there are around 245,000 Serbs who have taken refuge from Croatia. According to the data obtained from the Croatian Government, the number of Serbs who have taken refuge from Croatia amounts to not more than 300,000 (Ministry for Public Works, Reconstruction and Construction of the Republic of Croatia: *A Report on the Return of Refugees and Displaced Persons in the Republic of Croatia from 2000-2003: Restitution of Property, Housing and Accommodation, Reconstruction, Zagreb, October 2003).* According to the data of the Centre for Peace, Legal Advice and Psychosocial Help, in Serbia and Montenegro and Bosnia and Herzegovina, there is a total number of 210,000 registered persons of Serbian nationality from Croatia, while the number of internally displaced Serbs amounts to 1,702 (*An Alternative Report,* p. 11). The Serbian Democratic Forum has given the number of 300,000 to 350,000 Serbs who left Croatia during the four years of war (SDF: *Shadow Report on the Implementation of the Framework Convention of the Council of Europe on Protection of Minorities in the Republic of Croatia, May 2004).* The OESCE claims that there are around 110,000 Croatian Serbs registered as returnees to Croatia, while around 208,000 of them still live outside the country: 188,675 in Serbia and Montenegro and 19,027 in Bosnia and Herzegovina (OSCE: *Izvješće o statusu broj 14 o napretku Hrvatske u ispunjavanju međunarodnig obveza od prosinca 2003. do 5. srpnja 2004 – A Report on Status No. 14 Regarding Croatia'a Progress in Fulfilling the International Obligations from December 2003 to 5 July 2004).* According to the data obtained from the UNHCR, in the course of 2004, around 100,000 refugees living in Serbia and Montenegro were re-registered as refugees.

According to the data of the Ministry of the Sea, Tourism, Traffic and Development, from 1 September 2004, from the beginning of the process of return in 1995 until 1 September last year, 325,072 refugees have returned to Croatia. From this number, 212,910 are displaced persons of Croatian nationality and 112,162 of Serbian nationality - 80,431 from Serbia and Montenegro, 7,923 from Bosnia and Herzegovina and 23,808 are displaced persons who lived in the Croatian Danube region. The data obtained from the UNHCR show that by the end of January this year, 238,923 persons have returned to their homes and 131,021 from abroad. These statistical data from the UNHCR show that in the course of 2004, approximately 400-

500 people returned to Croatia every month, which is almost a half of the average in the previous year (2003). However, during January 2004, 198 persons returned to Croatia from abroad, while in January this year, 399 of them have returned.

It is very important to take into account the estimation that only 60% of registered returnees are actual returnees, while the others constantly travel from the country of return to the country in which they live awaiting the realisation of the conditions for a sustained return (SDF: *Shadow Report....,* p. 9). Major obstacles in the process of a sustainable return are the issues connected with Croatian citizenship, reconstruction and restitution of property, deprivation of tenancy rights of the owners of socially owned flats, social and retirement rights and the problem of the implementation of the *Amnesty Act* and the experience of unequal treatment of those suspected of war crimes based on their national affiliation. In addition, ethnically motivated incidents and the devastation of property of Serbian refugees aimed at preventing their return are still happening, although less frequently than before. In February 2004, in the villages in the hinterland of Zadar, three houses were burnt and two were devastated. When commenting on these incidents, the president of the SDSS, Milorad Pupovac, expressed his doubts that "in the region of the Zadar county, there were people and policies not bound by the State policy but continuing the policy of criminal actions aimed at preventing the return of refugees ("*Slobodna Dalmacija", Pupovac: Neka premijer javno osudi spaljivanje srpskih kuća* – Let the Prime Minister Publicly Condemn the Burning of Serbian Houses*,* 12 February 2004).

As for the return of displaced persons, the process has practically been completed. In January 2005, 238,923 cases of the return of displaced persons were recorded and there has been a constant decline for more than a year.

Restitution of Property

According to the estimation of the Croatian Government of 2003, on the basis of the *Act on the Temporary Takeover and Administration of Property* of 1995, between 16,000 and 20,000 private housing facilities, whose owners had taken refuge from Croatia mainly during the military operations "*Bljesak" and "Oluja"*, were given to temporary users. In the middle of 1998, the *Programme of Return and Care* was adopted according to which the municipal housing commissions were authorised to carry out the restitution of property. This system turned out to be inefficient, slow and open to corruption. Therefore, in 2002, the *Act on the Areas of Special State Concern* was adopted, the housing commissions were abolished and the responsibility for the implementation was given to the competent Ministry. The problem of the temporarily taken property of refugees is solved in the following order: first, the temporary users are moved out (because of the completed reconstruction of their property, because of unlawful use or because they already have some property) and by a temporary housing provision for the temporary users. According to the data of the Ministry of the Sea, Tourism, Traffic and Development of September 2004, the remaining occupied properties to be returned to the owners are 1,698 still occupied housing units while 1,357 owners are still receiving compensation for their property not yet returned.

However, the OSCE claims that only 1,000 of about 3,900 owners fulfilling the conditions for compensation have received a regular or a single monetary compensation for their used property (OSCE: *A Status Report No. 14,* p. 28). In addition, the Ministry claims that so far, the total number of 17,575 housing units have been returned and as many as 4,000 have not been taken back by the owners because their whereabouts are not known.

As for the accommodation of the temporary users, 1,648 cases have been solved, in 644 cases construction material has been provided and in 1,004 cases, alternative housing facilities must be provided. In the territories of special state concern, the total of 9,303 families have been provided for, being mostly the returnees from Serbia and Montenegro and Bosnia and Herzegovina. The process of restitution of the occupied property is most quickly and efficiently carried out in several counties in the north of Croatia. The largest number of still occupied housing units is in the territory of *Šibensko-Kninska* county, the town of Knin and in *Zadarska* and *Ličko-Senjska* counties. In these areas, the economic conditions for a return are the worst and there is very strong resistance by the local communities. In addition, the most ethnically motivated incidents have taken place in these regions. Furthermore, the return has been additionally slowed down by the fact that a large number of returned housing units are not fit for living because they are either damaged or plundered. Although these owners are entitled to the construction material to renew their houses, the OSCE claims that the delivery of the construction material for such users has not yet begun (OSCE: *Status Report No. 14,* p. 8).

What many nongovernmental organisations for the protection of human rights and individuals dealing with the return of refugees and returnees consider to be disputable in the *Act on the Areas of Special State Concern* is the established order of priority for accommodation, according to which the priority is given to the temporary users of someone else's property for which the owners have requested restitution, then come other temporary users of someone else's property and only then, the remaining applicants for the housing and accommodation. In the report of the Ministry of October 2003 it is written that the amendments to this Act of 2000 abolished all discriminatory provisions towards those applying for the reconstruction, as well as the priority lists. Since then, all the issues have been solved not later than a year from the date of the decision. However, in its *Alternative Report on the Application of the Framework Convention for the Protection of Rights of National Minorities in the Republic of Croatia,* the Centre for Peace from Vukovar and the Community of Serbs from Rijeka have made numerous comments on the return of refugees in general and particularly with regard to the restitution of property. They say that the "Government continues to give priority to the users of property (ethnic Croats from B&H) as opposed to the owners (ethnic Serbs who are refugees or displaced persons) although this is contrary to the Constitution and property laws. It thus makes their moving out impossible before the alternative accommodation solutions are provided. The sluggishness of courts and administrative organs also have an impact on the process, as well as the postponement or prevention of evictions of the temporary users who, in some cases, do have alternative accommodation or use several housing units" (*Alternative Report,* p. 13). In the *Report,* a number of nongovernmental organisations working in the field are cited and there is a warning that a large number of returned houses are in such bad conditions that it is impossible to live in them. This has not been mentioned in the minutes registering the restitution of property composed by the regional Offices for Refugees and Displaced Persons. Due to the fact that no pecuniary compensations are given for the damaged property, the owners' return is made additionally difficult although formally, their property has been returned.

In the middle of October last year, the president of the SDSS, Milorad Pupovac, also publicly criticised the government institutions stating that the "(occupied) private property was still being devastated, that the users were still given priority rather than the owners and that the government institutions were supporting such a situation". He also mentioned the fact that the Croatian State was buying off private property more than returning it, and it was "a

continuation of the policy of ethnic cleansing by different means" ("*Slobodna Dalmacija", Pupovac: The State Buys Off More than it Returns,* 12 October 2004). Pupovac also pointed to the fact that the Government Agency for Property Transactions (hereinafter referred to as: APT) in the last three years bought off more than 8,000 houses half of which had not been reconstructed and there was no information about how such bought off property was managed. In addition, he emphasised how on several occasions, the SDSS asked the Government Commission for the Implementation of the Agreement with the SDSS to provide the data regarding the situation with the housing units but did not receive any answers and therefore came to the conclusion that "the reconstruction had only started, and he was therefore surprised that they were talking about the finalisation of the return" ("*Feral Tribune", HDZ Prevents the Return of Serbs,* 22 October 2004). In the meantime, the scandal with the APT has escalated and under the pressure of the media, some measures have been taken to analyse the allegations that for years, the APT, assisted by the Agency MiS from Novi Sad, has been buying off and then selling real estate belonging to Serbian refugees. It was all done on the basis of forged documents.

Housing and Accommodation of the Former Tenancy- Right Holders

As for the accommodation of the former holders of tenancy rights, until September 2004, 6,538 applications for accommodation had been submitted and the deadline was 31 December 2004. Many organisations had comments on the legal framework for the solution of the housing problems of the former holders of tenancy rights. For example, the former holder of tenancy rights in the areas of special state concern fulfilled the preconditions for accommodation on the basis of the amendments to the *Act on the Areas of Special State Concern.* However, such persons were given the lowest level of accommodation priority so that practically nothing happened in order for their problems to be solved. Apart from the housing units within the area of special state concern, there is a large number of flats in Croatia which used to belong to the regime of the so called socially owned property and are not within the area of special state concern. They are mostly located in large towns. There have been 859 applications for the restitution of property of the former holders of tenancy rights in the socially owned property outside the area of special state concern, and 6,538 of applications in the areas of special state concern. According to the Ministry, the funds for the initiation of this programme were earmarked in the State Budget. Former holders of tenancy rights should be accommodated on the basis of the two Government programmes adopted in 2000 and 2003. However, according to these programmes, the "acquired" rights of ethnic Serbs were reduced to a humanitarian problem and are therefore limited (*Alternative Report,* p. 14). In addition, despite the data in the possession of the Ministry about a relatively small number of applications of the former holders of tenancy rights, some organisations allege that the real number of such flats is much greater. Thus the OSCE, according to the judgement of the European Court of Human Rights in Strasbourg in the case Blečić v. Croatia, has quoted the number of 23,700 court proceedings since 1991 for the abolition of tenancy rights of the former holders of tenancy rights in the socially owned flats (European Court of Human Rights: *Case of Blečić v. Croatia, Application No. 59532/00, Judgement*, Strasbourg, 29 July 2004). According to the data in the possession of the UNHCR, in 2001, as many as 30,777 former holders of tenancy rights whose flats had been taken were registered.

According to the data in the possession of the SDF, 21,516 judgements have been rendered so far on the basis of which the tenancy rights have been taken away. To this number, we must add an unknown number of flats taken after the liberation of the territory in 1995 on the basis of a statutory provision providing for the abolition of tenancy rights if the owner did not

return to his or her flat within 90 days. On the other hand, the Croats who had taken refuge from the occupied territories were able to keep their tenancy rights.

A possible explanation for such a small number of applications for the accommodation of such owners is that the remaining holders of tenancy rights have solved their housing problems in other countries during all these years of being in exile and have thus lost the right to being accommodated in Croatia. Namely, the document regulating this issue provides that "the applicants should not own or co-own any family unit or a flat in the territory of the Republic of Croatia or in the territories of other countries established upon the disintegration of the former SFRY (*Zaključak o načinu stambenog zbrinjavanja povratnika koji nisu vlasnici kuće ili stana, a živjeli su u stanovima u društvenom vlasništvu (bivši nositelji stanarskog prava) na područjima Republike Hrvatske koja su izvan područja državne skrbi – A conclusion on the mode of housing accommodation of returnees who are not owners of houses or flats and lived in socially owned flats (former holders of tenancy rights) in the areas of the Republic of Croatia which are outside the area of special state concern (*NN 100/03). In July this year, a judgement of the European Court for Human Rights was rendered in the case of Kristina Blečić, a citizen of Zadar of Serbian nationality who had sued the Republic of Croatia for depriving her of a socially owned flat. The Court upheld the decisions of the Constitutional Court and of the lower courts in Croatia which held that the Republic of Croatia had not violated the law when depriving Kristina Blečić of her tenancy right. The Court also held that at the time of deprivation, she was not a refugee but had voluntarily left the flat which was then given to some Croatian citizens who needed it. The Court ruled that a decision on balancing individual interest and the "increased social needs" caused by the war lied exclusively in the hands of national courts and it therefore upheld the decision to deprive Kristina Blečić of her tenancy right (ECHR: Case of Blečić v. Croatia, p. 8).

Reconstruction of Property Damaged During the War

According to the data of the Ministry, total war damage was established for 196,000 housing units, 334 school facilities and several hundreds of objects of the municipal infrastructure. Until September last year, 128,316 houses and flats damaged during the war had been reconstructed . As many as 8,400 additional applications have remained outstanding and these mostly concern the objects for which the reconstruction applications were submitted after the deadline had been extended. Since 2003, 70% of the users have been the returnees of Serbian nationality. However, according to the data in the possession of nongovernmental organisations in the field cited by the Serbian Democratic Forum, only "a small number" from the total number of the reconstructed houses belonged to the Serbs (SDF: *Shadow Report,* p. 13). According to the Agreement with the SDSS, the Government has extended the deadline for the submission of applications for the assisted reconstruction whereby several thousands of potential users have been given yet another chance to apply. Reconstruction aid is also granted by law for the damage caused by terrorist acts in the areas under the control of the Croatian Government. However, in practice, the implementation of this provision turned out to be very difficult both because of some statutory obstacles and because of the local courts' case law. By the adoption of the *Act on the Liability for Damage Caused as the Result of Terrorist Acts and Public Demonstrations* (NN 117/03), citizens were given a possibility to request "only the compensation of the damage that is the result of death, bodily injury or impairment to health".

Compensation for material damage may be sought in accordance with the *Act on the Liability of the Republic of Croatia for the Damage Caused by the Members of the Croatian Armed*

and Military Forces During the Homeland War (NN 117/03): However, this Act provides for the liability of the Republic of Croatia solely for the damage which does not have the character of "war damage", the latter being defined in such a way that it is very difficult to prove that some material damage has not been the necessary consequence of war events. There is also a problem of around 22,000 objects which were burned or mined during the military operations "*Bljesak*" and "*Oluja".* Such damage is compensated for on the basis of the *Reconstruction Act* and not on the basis of the aforementioned Acts (the number of damaged objects is given in the *Report on the Military Operation "Oluja" and After: I Part: Former UN Sector South,* Croatian Helsinki Committee). However, if an owner is of the opinion that it was not necessary for his or her property to be damaged or destroyed during war operations, it will be very difficult for him or her to prove before the court that the damage does not have the character of "war damage" and based on evidence seek compensation pursuant to the *Act on the Liability of the Republic of Croatia for the Damage Caused by the Members of the Croatian Armed Forces During the Homeland War.*

Status Rights

According to the Croatian *Citizenship Act*, all ethnic Croats, regardless of where they had lived prior to Croatia's independence, are entitled to Croatian citizenship, while the members of other nationalities realise their citizenship rights in a complicated and a long-lasting procedure. In some cases, this procedure is practically impossible to be carried out because those who have lived in Croatia for a long time and do not have Croatian citizenship must prove that they have lived in Croatia for at least 5 years. In most cases they are not able to provide such proof because of having been removed from the Register of Citizens (SDF: *Shadow Report...,* p. 10). Since the adoption of the *Act on Foreigners* in January 2004, these people may try to regulate their status if they return to Croatia within 12 months after this Act has entered into force.

Amnesty Act and War Crime Trials

Numerous cases of discrimination of the citizens of Serbian nationality in the court proceedings for war crimes have turned out to be an aggravating circumstance for a successful and sustainable return. Namely, only in 2001, the Office of the State Prosecutor ordered that war crime indictments against the citizens of Serbian nationality be examined and modified. As the result, as many as 21,000 people were amnestied. The citizens of Serbian nationality who live outside Croatia still have difficulties finding out whether the charges against them have been dismissed or not.

The research of the OSCE has shown that the citizens of Serbian nationality still represent a large majority of suspects in all stages of criminal proceedings for war crimes; thus in 2003, 37 people were arrested and 31 of them were of Serbian nationality. Out of 198 investigations, 186 were conducted against ethnic Serbs, and out of 53 indictments, 48 were issued against Serbs. Out of 101 accused persons, 84 were of Serbian nationality, and out of 37 convicted persons, 30 were of Serbian nationality. The rate of convictions against the citizens of Serbian nationality amounted to 94% (30 out of 32) and against the citizens of Croatian nationality 71% (5 out of 7). In the first six months of last year, the statistics were similar; 19 of 20 arrested persons were ethnic Serbs, 137 of 148 persons under investigation were also ethnic Serbs, all three indictments were against persons of Serbian nationality, and in 83 out of 102 trials, the accused persons were of Serbian nationality. Of 12 convictions, 10 were pronounced against the persons of Serbian nationality. In 2003 and in the first 6 months of last

year, there was a significant number of abandoned actions for the lack of evidence mostly against ethnic Serbs who were in the majority of cases the returnees (OSCE: *Status Report No. 14,* p. 34).

Public Sentiment Regarding the Return of Refugees

Apart from the already mentioned individual incidents against the returnees who are fewer and fewer, a good indicator of the mood of the potential returnees and the local population is a research organised by the Organisation for Security and Cooperation in Europe (OSCE) carried out in September last year. The research results showed that only 14% of Serbs who have taken refuge from Croatia express the intention of returning to Croatia. This intention is firm in the case of only 4% of the respondents and 5% of them do not intend to return in the following 5 years. A similar situation is the one with the refugees of Croatian nationality from Bosnia and Herzegovina: 8% of them do show such an intention and only in the case of 3% can we talk about the intention being a firm one. According to the respondents, the biggest obstacle to their return are fewer opportunities for their children in Croatia or in Bosnia and Herzegovina, a fear that they will not have the same living conditions that they have in their new place of residence, and their being reluctant to take their children away from the environment to which they have become used to. As to the priority conditions for a return, the Serbian refugees from Croatia and the Croatian refugees from Bosnia and Herzegovina mention adequate reconstruction of their homes, the economic motives and the possibility to organise a mass return to Croatia or Bosnia and Herzegovina. According to the OSCE data, 80% of Serbs who have taken refuge from Croatia applied for the restitution of property, and only 43% asked for the reconstruction of property. Most of them (37%) say that their applications are still being considered. In addition, a third of the surveyed ethnic Serbs (27%) say that they intend to sell their returned property.

As for the position of the local population regarding the return of Serbian refugees, 63% (Croats who live in the territories of return) do not think that a return of Serbian refugees is a good thing for Croatia. As many as 47% of the respondents of the reference group (inhabitants of the towns not directly affected by the war) are of the same opinion. As many as 7% of the respondents in both groups are of the opinion that all Serbs must be allowed to return, 30% that a return may be granted only to those who have not committed any war crimes, while 30% believe that Serbian refugees have voluntarily left Croatia and should therefore not be allowed to return. The highest percentage of surveyed Croats (42 % of the local population and 32% of the reference group) think that the Croatian Government should not assist the Serbs who have taken refuge, while some of them think that a smaller number of them should be offered assistance (20% and 26%). The majority of them also believe that the Croatian Government should not provide accommodation for the Serbian refugees in Croatia (57% and 47%) and that the destroyed houses of Serbian refugees should not be reconstructed (55% and 44%).

The surveyed Croats explain their viewpoints on the return of refugees of the Serbian nationality by the fear that their return will increase the negative tendencies in the territories to which they return, by the fear that the Serbs might start another war, and that the return will additionally increase an already high unemployment rate. In addition, even when they support the return, it is mostly because they believe that it would help Croatia enter the European Union, and also, because they think that Croatia is also the refugees' home country. The only encouraging piece of data is the fact that 55% of Croats who prior to the war had lived in the

territories from which the Serbs took refuge believe that it is more or less or entirely possible to live together with the Serbs again.

VI. Final remarks

The position and the rights of national minorities are today much better than in the past and in particular than in the 1990's. More has been done in the area of development of legislation being harmonised with international standards than in the very implementation of the laws. However, the positions of the Roma and Serbian national minorities are far from being satisfactory. As can be seen from the aforementioned examples, the members of the Roma minority are still deprived of some elementary human rights such as the right to a dwelling, health protection, education and employment. Discrimination of the members of the Serbian minority is still present, most of all in the area of employment and particularly in government institutions. The factors that slow down the return of refugees and that still exist, are the very slow pace of return and of property being reconstructed, many problems connected with obtaining citizenship, a fear of biased trials for war crimes, discrimination in employment and the lack of an overall strategy for the development of the economically undeveloped parts of Croatia to which the majority of refugees ought to return. In the middle of November 2004, the Croatian Prime Minister, Ivo Sanader officially visited Serbia and Montenegro where he agreed with the president Svetozar Marović to give full protection to the Croatian minority in Serbia and Montenegro and to the Serbian and Montenegrin minorities in Croatia. On that occasion, the Croatian minister of justice, Vesna Škare-Ožbolt and the federal minister for human and minority rights, Rasim Ljajić signed an Agreement on the Protection of National Minorities. At the end of January this year, at the ministerial conference of Bosnia and Herzegovina, Croatia, Serbia and Montenegro, held in Sarajevo, the ministers of these three countries signed the so called Ministerial declaration of the three countries of the region. By this document, the signatories have committed themselves to solve the issue of refugees and displaced persons by the end of 2006 enabling them to return to the places from which they had taken refuge or to integrate into a new local environment where they would, without discrimination, "enjoy the same rights and obligations as all other citizens".

A seminar on the implementation of the National Programme for the Roma held in February this year showed that with regard to the integration of the Roma into society, not much had been achieved. Those responsible for the goals of the Programme have up to now carried out only the preparations for any concrete work, and some, like the Ministry of Justice, the Ministry of Science, Education and Sports and the HZZO have not even earmarked the necessary funds to accomplish these goals. Different from these documents, the strategy for the improvement of the status of national minorities in the National Programme of Protection and Advancement of Human Rights in the Republic of Croatia from 2005 to 2008, adopted on 10 December 2004 by the Government Office for Human Rights, was not comprehensive. Separate goals are only the implementation of the National Programme for the Roma and the protection of the Croatian minority in the neighbouring countries and in emigration. Shortly after being presented, this proposal was withdrawn from the parliamentary procedure and sent back for further elaboration. All these indicators show that in the most recent period, a more proactive protection of the rights of national minorities has taken place, particularly in the formal and legal sense. However, it is necessary to put in more effort in order to make it possible for the members of national minorities to realise quickly and efficiently their rights also in practice. This has been the conclusion of the Second Opinion on Croatia (1 October 2004) of the Counselling Committee for the Framework Convention for the Protection of National Minorities of the Council of Europe. It assesses the important changes in legislation

as particularly significant (CAPNM, the National Programme for the Roma), as well as one segment of the practice (the establishment of the Counselling Body and the Councils of National Minorities) whereas the implementation of the Constitutional Act is in some areas assessed as "regrettably slow". These problem areas are the participation of national minorities in the state administration and judicial bodies, a sustainable return, deficiencies in the judicial system, problems in obtaining citizenship and education in the languages and scripts of national minorities.