

European Diversity and Autonomy Papers

EDAP 1/2004

Wind of Change: The Croatian government's Turn towards a Policy of Ethnic Reconciliation

Antonija Petričušić



Managing editors:

Emma Lantschner / Francesco Palermo / Gabriel N. Toggenburg

Editorial Board:

In alphabetical order:

Craufurd Smith, Rachel (University of Edinburgh, UK)
Dani, Marco (Università di Trento, I)
De Witte, Bruno (European University Institute, I)
Gamper, Anna (Universität Innsbruck, A)
Henrard, Kristin (University of Groningen, NL)
Kujovich, Gil (Vermont Law School, US)
Kymlicka, Will (Queens University, CAN)
Marko, Joseph (Universität Graz, A)
Nic Shuibhne, Niamh (University of Edinburgh, UK)
Ortino, Sergio (Università di Firenze, I)
Packer, John (Tufts University, US)
Poggeschi, Giovanni (Università di Lecce, I)
Sasse, Gwendolyn (London School of Economics, UK)
Tarr, William (Rudgers University, US)
Teachout, Peter (Vermont Law School, US)
Toniatti, Roberto (Università di Trento, I)
Woelk, Jens (Università di Trento, I)

Europäische Akademie Bozen
Drususallee, 1
39100 Bozen - Italien
Tel. +39 0471 055055
Fax +39 0471 055099
edap@eurac.edu
www.eurac.edu/edap

Accademia Europea Bolzano
Viale Druso, 1
39100 Bolzano - Italia
Tel. +39 0471 055055
Fax +39 0471 055099
edap@eurac.edu
www.eurac.edu/edap

Copyright Information:

Any sort of reproduction - including excerpts - is permitted only when indicating the exact EDAP source. Please quote EDAP as indicated in the following example: Gabriel N. Toggenburg, "The European Debate on Values and the case of cultural diversity", 1 European Diversity and Autonomy Papers- EDAP (2004), 10 at www.eurac.edu/edap

Abstract

After almost a decade of nationalist HDZ rule in Croatia, the change of government in 2000 brought pro-minority governance and concrete implementation of minority rights legislation. In 2003, when a reformed HDZ came to power, the new government declared that the unconditional return of all refugees, regardless of their ethnicity and the return of their property constitutes the priority of its mandate. This shift in the treatment of minorities, particularly the Serb minority which is the second largest ethnic community in the country, is closely linked to the fact of the country's key foreign policy priority of joining the European Union. Since the current government is striving to legitimize its mandate by supporting the country's entry into the European Union, the state is obliged to comply with all conditionality policies pursued by the Union, including respect for and protection of minorities.

This paper examines how the issue of minority protection was perceived and realized in Croatia in thirteen years of the country's independence by tracing amendments in Croatian legislation for minority protection. The paper emphasises that even though the potential accession to the European Union has motivated politicians to publically advocate the proper inclusion of minorities, the majority of Croatians remain reluctant to accept the need for minority protection. The domestic legislative framework has been brought in line with international minority protection standards, and implementation of minority rights has become more active. Nevertheless, the absence of broad acceptance of minorities constitutes major obstacle for the true realization of minority rights in Croatia.

Author

Antonija Petričušić holds a MA in Human Rights and Democratization from University of Sarajevo and University of Bologna, and a BA in Law from University of Zagreb. She currently works as a researcher at the European Academy of Bolzano. Among her key research interests are the accommodation of minorities and regional cooperation in the Western Balkans. She has published articles on the protection of national minorities in Croatia and Slovenia, as well as on European Union conditionality policy regarding regional cooperation and minority protection in South East Europe. For details see <http://www.eurac.edu/about/collaborators/APetricusic/index.htm>.

The author can be contacted at antonija.petricusic@eurac.edu

Key words

Accession process - Conditionality - Constitutional Law - Non-discrimination - European Union - Minority Rights - Minority Representation - Return - Repossession of Property

Table of contents

1. Introduction	5
2. Nation Building that Neglected Minorities	6
3. Change of Government, Change of Policy	9
4. Links between EU Integration Process and Minority Policy	11
5. Establishment of a New Legal Framework for Minority Protection...	13
6. Return and Integration as Part of EU Conditionality.....	16
7. Concluding Remarks	18

Wind of Change: The Croatian Government's Turn towards a Policy of Ethnic Reconciliation

Antonija Petričušić

1. Introduction

After a decade of nationalist rule in Croatia, the change of government in 2000 introduced a new political climate receptive to minorities with a better human and minority record, demonstrated commitment to regional co-operation as well as the country's willingness to cooperate with the Hague based International Criminal Tribunal for the former Yugoslavia (hereinafter: ICTY).¹ This marked a turning point in relations between the European Union (hereinafter: EU) and Croatia. General public support for European integration had existed since the very beginning of the country's independence in 1991. A cross-party consensus on the political goal of EU membership was formally declared in 2002, and continued after the change of Government in November 2003.

Minority ethnic communities made up almost 17% of population when Croatia proclaimed independence. The obvious need for a broad legislative framework for the protection and inclusion of minorities resulted in a set of laws guaranteeing their existence and preservation. Exploring legislation for the protection of national minorities in Croatia, the present paper demonstrates that the broad legislative framework was ineffectively implemented.

In order to demonstrate the above argument, the amendments to legal documents will be traced and the mechanisms used for minority protection in Croatia will be analyzed. Particular emphasis will be placed on explaining how the change has impacted the rights of national minority members as the share of minority population as a portion of the overall population has drastically fallen. The prerequisite for the implementation of minority rights depends upon the existence of political will on the part of the government, which does not make much of difference, however, if not accompanied by a positive attitude towards minorities on the part of the majority population. This paper

¹ The International Criminal Tribunal for the Former Yugoslavia was established in 1993 by United Nations Security Council resolution 827. It prosecutes violations of international humanitarian law committed in the territory of former Yugoslavia since 1991. For more information see <http://www.un.org/icty>. The United Kingdom and the Netherlands had suspended parliamentary ratification of Croatian Stabilization and Association Agreement with the EU due to concern about lack of country's co-operation with the ICTY.

argues that a significant difference can be noted between the official policy towards minorities in 1990 and the minority policy pursued after the social democrat-liberal coalition took power in 2000. This article furthermore argues that the prospect of EU membership could serve as a catalyst for the improvement of minority rights in Croatia, namely for the return of Serb minority members who left the country in a great number in 1995, and also for the Roma, whose rights are generally advocated by the EU in the accession process.

2. Nation Building that Neglected Minorities

Croatia was one of six republics which comprised the former Socialist Federal Republic of Yugoslavia (hereafter: SFRY), a multi-ethnic federation with multiple national identities.² The basis for Croatian independence derives from the 1974 Constitution of the SFRY, which listed Croatia as one of six constituent republics (the others being Bosnia-Herzegovina, Macedonia, Montenegro, Slovenia and Serbia).³ The first democratic elections held in 1990 replaced the communist establishment by a nationalist bloc led by the Croatian Democratic Union (hereafter: HDZ), who called for Croatian sovereignty in what would be, at most, a loose confederal arrangement within Yugoslavia. Croatia eventually declared independence on 25 June 1991. The Parliament's decision to abrogate of the state-legal ties with the SFRY was formally confirmed on 8 October 1991. However, the establishment of an electoral democracy was not accompanied by sufficient mechanisms to ensure the satisfactory protection of human rights for all the ethnic groups making up the population of the country.⁴ The Serb minority that used to have a status of a constitutive nation in SFRY was granted the status of a national minority in newly independent Croatia. The majority of public servants of Serb ethnic origin were forced to leave their posts in the early 1990s. A few members of the Serb minority found employment in the private sector, but the dismissal of state employees of Serb origin has not been properly addressed since that time. The under-representation is most obvious in the judiciary, police force, medical practice and national education. Delays, arbitrary decisions and a

² Tibor Varady, "Minorities, Majorities, Law and Ethnicity: Reflections of the Yugoslav Case", 19 *Human Rights Quarterly* (1997), at 9-54.

³ Dusko Sekulic explains the dissolution of the SFRY as the outcome of the expansionist policy of the Serbian elite, which advocated the inclusion of all ethnic Serbs in one state. Stressing the importance of geostrategy, he claims that this policy was made possible because of the geostrategically weaker position of Croatia. See Dusko Sekulic, "The Creation and Dissolution of the Multinational State: the case of Yugoslavia", 3 (2) *Nations and Nationalism* (1997), at 165-179.

⁴ Tibor Varady, "Collective Minority Rights and Problems in Their Legal Protection: The Example of Yugoslavia", 6 (3) *East European Politics and Societies* (1992).

lack of consistent procedure in citizenship granting were also regularly practiced towards certain minorities.⁵

An armed conflict resulting in the displacement of ethnic groups subsequently broke out, and one third of the country's territory was occupied by the local Serbs and Yugoslav People's Army.⁶ Inter-ethnic conflict occurred not only because of the absence of cross-cutting religious factors but also because of several other factors: historical distrust between ethnic groups, accompanied by unequal economic distribution, alongside a liberalization movement for political pluralism promoted by new ethno-nationalist political elites.⁷ Needless to say, the uprising of the Serb minority resulted in an anti-Serbian sentiment among the public. Hate speech and collective pejorative generalizations that depreciated certain minorities were regularly used against the non-Croat population, particularly Serbs and Muslims, against whom Croatia fought in the 1990s.⁸

The response of Croatian authorities to almost four years of occupation came in the spring and summer of 1995. The exodus of Serbs followed these military actions, and it is estimated that approximately 300,000 Serbs left Croatia in 1995. The lack of official efforts to stop this migration at that time, as well as the fact that tens of thousands of Serbian homes were looted and burnt by Croatian soldiers, put the burden of responsibility on the Croatian state. Croatia was accused of ethnic cleansing of its Serb population in the Krajina region. The Government's statement was that Serbs had left Croatia after being organized by their leaders and before Croatian troops arrived into the liberated territory.⁹ The Croatian Danube Region (Eastern Slavonia), also occupied by Serb rebels, was peacefully reintegrated in 1998. The legal basis for this was the internationally brokered Erdut Agreement of November 1995, which established the obligation of the Croatian government to guarantee all persons the right to return freely to their place of residence in the Croatian

⁵ Croatian officials tried to defend their denial of granting citizenship to some non-Croats at the beginning of the nineties, claiming that "each of the former SFRY republics should be allowed to decide whether or not to grant citizenship to former SFRY citizens living in the republic in question, and that this matter should be settled by bilateral agreements between the states of the former SFRY." See Human Rights Watch Report on the Civil and Political Rights in Croatia, providing an overview of events that occurred in 1992-1995, at 10. See also Report of the Public Ombudsman to the Croatian Parliament (24 April 2002).

⁶ See Marcus Tanner, *Croatia. A Nation Forged in War* (Yale University Press, New Haven, London, 1997).

⁷ See Don Ronen, *The Challenge of Ethnic Conflict, Democracy and Self-Determination in Central Europe* (London/Portland, Frank Cass, 1997). See also Anthony Oberschall, "The Manipulation of Ethnicity: from Ethnic Cooperation to Violence and War in Yugoslavia", 23 (6) *Ethnic and Racial Studies* (2000), at 982. See also Dusko Sekulic, "Civic and Ethnic Identity: The case of Croatia", 27 (3) *Ethnic and Racial Studies* (2004) at 455-483.

⁸ See Mariana Lenkova (ed.), "Hate Speech in the Balkans", *The International Helsinki Federation for Human Rights*, at <http://www.greekhelsinki.gr/pdf/>, at 12.

⁹ See Katarina Subašić, Croatia: New Math, *World Press Review* (2002), at <http://www.worldpress.org>.

Danube Region and to live there safely. In addition, the Agreement obliged the state to restore to these returning persons any property that had been taken from them unlawfully, or that they had been forced to abandon, and to provide a just compensation for property that could not be restored.¹⁰

In spite of the country's silent political isolation in 1990s, a broad popular consensus on the necessity of European integration existed throughout 1990s.¹¹ Formally, minority rights were set in a very extensive legislative package already at the beginning of 1990s. Nevertheless, a comprehensive human rights legislative framework was set up largely in response to pressure from the international community. Namely, the country's legislation and human rights practices were scrutinized by various international bodies (the Organization for Security and Cooperation in Europe's (hereinafter: OSCE) Mission to Croatia, the OSCE High Commissioner on National Minorities, the Council of Europe, the Venice Commission).¹² The issue of minority protection was first laid out in the Constitutional Law on Human Rights and Freedoms and the Rights of National and Ethnic Communities or Minorities in the Republic of Croatia (hereinafter: Constitutional Law).¹³ The acceptance of the minority law was a prerequisite for international recognition of Croatia as an independent state in January 1992. In accordance with the Constitutional Law, large minority groups, theoretically those that make up more than 8% of the population on the basis of the 1981 census were guaranteed proportional representation in the national parliament and promised considerable autonomy at the local level. Members of ethnic and national communities or minorities who made up less than 8% of the total Croatian population had the right to have at least five representatives in parliament. The Constitutional Law foresaw a territorial autonomy in the Serb-populated regions of Glina and Knin. The Serb minority, in this way, was offered legislative guarantee for establishment of two special autonomous districts ('kotar'), with a special

¹⁰ Complete text of the Erdut Agreement can be seen at http://www.usip.org/library/pa/croatia/croatia_erdut_11121995.html

¹¹ Ivo Sanader, "Croatia's Course of Action to Achieve EU Membership", C59 *ZEI Discussion Papers*, (Center for European Integration Studies, University of Bonn, 1999), at <http://www.zei.de/>.

¹² See for example a series of OSCE's Mission to Croatia status reports issued twice a year year, <http://www.osce.org/croatia/>. OSCE High Commissioner on National Minorities issued several recommendations with respect of minority rights, at <http://www.osce.org/hcnm/>. The majority of opinion issued by the Venice Commission relates to the legislation that prescribes minority rights, e.g. Opinion 216/2002 Law on Rights of Minorities of Croatia; Opinion 174/2001 Local Elections - Minorities; Opinion; 134/2000 Draft Constitutional Law on Rights of national Minorities; Opinion 129/2000 Amendments to the Constitutional Law of 1991 on Human Rights and the rights of minorities; Opinion 19/1996 Application of the Constitutional Law on Human Rights and Minority Rights, at <http://www.venice.coe.int/>. The Advisory Committee of the Framework Convention for the Protection of National Minorities completed the review process for Croatia's initial State Report in 2000, at <http://www.humanrights.coe.int/Minorities/>.

¹³ Constitutional Law on Human Rights and Freedoms and the Rights of Ethnic and National Communities or Minorities in the Republic of Croatia, Official Gazette 65/91, 70/91, 27/92, 34/92, 68 /95, 105/00.

self-administrating status.¹⁴ In late September 1995, following the liberating military operations, the Parliament “temporarily” suspended those provisions of the Constitutional Law related to the Serb minority, whilst its general provisions and those representational provisions related to the smaller minority communities remained in force. On 11 May 2000, the Parliament amended the Constitutional Law, re-introducing some suspended provisions related to the proportional representation of the Serb minority, but annulling the vast majority related to Serb minority self-government.¹⁵

3. Change of Government, Change of Policy

The parliamentary elections in January 2000, and the election of Stjepan Mesić as President of the Republic in February 2000, not only marked the end of the decade of international isolation, but also brought different policies towards the country’s minorities. In the first half of the year 2000, the Government took steps to improve cooperation with the International Criminal Tribunal for Former Yugoslavia and the international organizations that had missions in Croatia began to be downsized. For example, the Council of Europe decided to terminate its permanent monitoring of Croatia in September 2000, while the OSCE terminated its police monitoring group in the Eastern Slavonia in October 2000.

In 2000, the new government agreed that actual respect for minority rights serves as a test of the degree to which democratization has occurred. A left-centrist coalition under Prime Minister Ivica Račan declared, in its activity program, the aim to remove all the obstacles that prevent the full civil integration of members of national minorities into society. Very soon upon coming to power, the new government passed two important pieces of legislation that regulate rights of minorities to their own culture and language: the Law on the Use of Minority Languages and Scripts and the Law on Education Minority Languages.¹⁶ Those two laws were passed after six years in the parliamentary procedure, since the previous assembly was unsuccessful in gaining the necessary votes in order to adopt laws.

Although the Račan’s government declared that the country will accept the return of ethnic-Serb refugees who were driven out of their homes in 1995, a large influx of returning Serbs has not taken place. The reason for a poor record in the implementation of the proclaimed policy of ethnic reconciliation

¹⁴ See Nina Caspersen. “The Thorny Issue of Ethnic Autonomy in Croatia: Serb Leaders and Proposals for Autonomy”, 3 *Journal on Ethnolopotics and Minority Issues in Europe* (2003), at <http://www.ecmi.de/jemie/>.

¹⁵ See Mirjana Domini, “National Minorities in the Republic of Croatia”, 12 (19) *Central Europe Review* (2000), at <http://www.ce-review.org>.

¹⁶ Law on the Use of Language and Script of National Minorities in the Republic of Croatia and Law on Education in the Language and Script of National Minorities, Official Gazette 51/00.

probably derives from insufficient support for the government's policies at the local level. First, the left-centrist coalition government was not united at the lower levels of governance, and second in many municipalities and cities, governments were controlled by right-wing parties. The absence of political consensus significantly weakened the political determination to pursue policies of ethnic reconciliation, and constantly endangered the stability of the coalition.

The 2003 elections constituted a move from formal guarantees of representation to implementation of arrangements ensuring effective participation of minorities in the political life of the state. Not only did the number of parliamentary minority representatives increase from five to eight, but minority representatives played a crucial role in setting up the new country's government. Namely, winning only a relative majority, HDZ needed to gain support from minority representatives in order to obtain the new government's mandate. Therefore, the HDZ sealed agreements with representatives of national minorities and offered them several positions in the administration, thus demonstrating that interethnic tensions are vanishing at the highest level, and that the country is moving towards a democratic consolidation.

When the HDZ regained power in November 2003, many feared that a nationalistic oppression could return.¹⁷ However, the new Prime Minister Sanader and the foreign minister Žužul used any given opportunity to demonstrate that the new government would pursue policies of ethnic reconciliation. Membership in the European Union and NATO, regional cooperation, developing economic diplomacy, and changing Croatia's international image are the five stated priorities of the foreign policy by the current HDZ Government. In February 2004, Croatia submitted the Second state report on the implementation of the Council of Europe's Framework Convention. The report was prepared by Government bodies and national minority institutions and representatives. It focuses on the implementation of minority legislation, and summarizes Government-sponsored activities aimed at preserving minority culture, education, language and customs. The report stated that minority rights have been greatly improved, especially in the legislative sphere and in exercising the right to minority culture and language. Nevertheless, the report recognizes existing impediments that limit national minorities from fully exercising their rights, particularly in the areas of

¹⁷ See Romana Vlahutin, "The Croatian Exception", in Judy Batt (ed.) "The Western Balkans Moving on", , 70 *Chaillot Paper* (The European Union Institute for Security Studies, 2004), at <http://www.iss-eu.org/chaillot/chai70.pdf>, at 28-30.

employment and the reconstruction of devastated property in post-conflict areas.¹⁸

4. Links between EU Integration Process and Minority Policy

The Copenhagen European Council of June 1993 stated that those candidate countries of Central and Eastern Europe (hereinafter: CEE) which wish to become members of the Union must meet a number of conditions relating to the political and economic spheres. One of these conditions is respect for and protection of minorities.¹⁹ The Feira Council of June 2000 agreed that all Western Balkans countries were eligible for potential membership in the Union. In addition, the EU declared that the accession conditions foreshadowed for CEE countries would bind all the Western Balkans countries in their integration process. The Croatian government was thus aware that inadequate minority policy would prevent the country from integration. Furthermore, a clear signal that each of the Western Balkan countries would gain access individually was declared at the Zagreb summit in 2000, and reiterated at the European Council of June 2003 in Thessaloniki, Greece, endowing Croatia with optimism for its pursuit of European integration.

The nationalist politics pursued in the 1990s, accompanied by inadequate progress in democratization, respect for human and minority rights and rule of law, kept the EU from establishing relations with Croatia. The change of government in 2000 presented the opportunity for rapid progress in the relationship between Croatia and the European Union. Croatia signed a Stabilisation and Association Agreement (hereinafter: SAA) in October 2001, thus demonstrating progress in the Stabilization and Association process.²⁰ The Agreement serves as a powerful mechanism for needed legislative reforms in the fields of human and minority rights, since it obliges the country to bring the legislation relating to those issues into line with the *acquis communautaire*. Conditions fulfilled at this stage of the integration do not yet relate to legal standards, but rather to economics and politics.²¹ The vast majority of legislative amendments will therefore happen only during an

¹⁸ Second Report submitted by Croatia pursuant to article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities, ACFC/SR/II(2004)002 (April 2004), at <http://www.coe.int/>.

¹⁹ Snježana Vasiljević, "The legal aspects of protection of minorities in the process of stabilisation and association", in Katarina Ott (ed.), *2 Croatian Accession to the European Union, Institutional Challenges* (Institute of Public Finance, Friedrich Ebert Stiftung, Zagreb, 2004).

²⁰ The Stabilization and Association process is a current EU strategy for the Western Balkans, gathering besides Croatia, four other countries of the region (Albania, Bosnia and Herzegovina, Macedonia and Serbia and Montenegro). It is based on a credible prospect of membership once the relevant conditions have been met. For more information see Christian Pippan, "The Rocky Road to Europe: The EU's Stabilisation and Association Process for the Western Balkans and the Principle of Conditionality", 9 (2) *European Foreign Affairs Review* (Kluwer Law International, The Hague, 2004), pp. 219 - 245.

²¹ Rodin Siniša, "Croatian Accession to the European Union: the Transformation of the legal System", in Ott (ed.), *2 Croatian Accession to the European Union, Institutional Challenges*, at 224.

accession process in order to bring the country's legislation into line with the EU *acquis*.²² The issue of minority protection falls under the scope of the political criteria that are usually required to be fulfilled prior to the start of accession negotiations. Furthermore, respect for human rights has been introduced as an essential element of EU external agreements since 1995. Introducing human rights protection as a part of pre-accession conditionality, the EU has maintained the right to suspend all or part of an agreement if a partner country does not fulfil its human rights obligations.²³ In both the preamble and Article 2 of the Stabilisation and Association Agreement, the clear reference to respect for human rights, including the rights of persons belonging to national minorities, is made. This requirement could maintain and enhance human and particularly minority rights standards and their implementation in Croatia. Article 120 paragraph 2 of the SAA contains a suspension clause which foresees that each party to the Agreement could take appropriate measures if it considered that the other Party failed to fulfil an obligation under the agreement.²⁴

In December 2002, all parliamentary political parties adopted a resolution that defined Croatia's accession to the EU as a strategic national goal. Application for membership was submitted in February 2003. The current government, which took power in November 2003, listed membership in the European Union as one of its priorities. The European Commission issued an Opinion on Croatia's application for membership of the European Union in April 2004.²⁵ The Opinion recommended the initiation of accession negotiations with Croatia. Eventually, the European Council agreed that the country met the political set of Copenhagen Criteria, and the country was awarded a candidate status on 18 June 2004. Brussels' decision made it obvious that the country has moved away from destructive nationalism. Therefore, Croatia's application for membership serves as a positive example for the other countries of the region on how a defeat of nationalist politics enhances EU accession, possibly inspiring them to speed up necessary reforms.²⁶

The Commission's Opinion *iter alia* analyses the situation in respect to political conditions (democracy, rule of law, human rights, protection of

²² See The EU's relations with Croatia at <http://europa.eu.int/>.

²³ See Vaughne Miller, "The Human Rights Clause in the EU's External Agreements", 4 (33) *Research Paper of the House of Commons Library* (2004), at <http://www.parliament.uk/> See also Mielle Bulterman, *Human rights in the treaty relations of the European Community : real virtues or virtual reality?* (School of Human Rights Research series, Intersentia, Antwerpen, 2001).

²⁴ See Stabilisation and Association Agreement between the European Communities and its Member States and the Republic of Croatia, at <http://europa.eu.int/>.

²⁵ See the European Commission's Opinion on the application of Croatia for membership of the European Union, at <http://europa.eu.int/>, 37.

²⁶ Nicole Lindstrom, "European Integration and Ethnic Reconciliation in Croatia and Serbia", at <http://wwics.si.edu/>. See also Vlahutin, "The Croatian Exception".

minorities) including the fulfillment of the Stabilizations and Association Process conditionalities. The Opinion found no major problems regarding the assurance of rule of law and respect for fundamental rights. However, it emphasized that the country has to take measures to ensure that the rights of minorities, in particular the Serb minority, are fully respected. Consequently, the Opinion urges Croatia to speed up its implementation of the Constitutional Law on National Minorities and accelerate efforts to facilitate the return of Serb refugees from Serbia and Bosnia and Herzegovina.

The Opinion of the Commission has found that minorities and issues of their concern have been increasingly, albeit not yet adequately, covered over recent years, both in electronic media and in the press. In spite of a visible decline in hate speech in the media, national minorities are perceived and presented as separate entities and not as an integral part of society. Furthermore, the Commission urges implementation of legislative provisions that oblige public radio and TV stations to broadcast programs in minority languages at the national and local levels. The Commission finds no indication that there has been any court verdict establishing discrimination against minorities or criminal guilt for spreading racial hatred. However, it advocates proper minority representation in state administrative and judicial bodies. The Government, referring to practical difficulties of the judiciary, the constraints of the state budget and the independence of courts in selecting judges, has not developed a programme to remedy under-representation in the long term. The Law on State Administration, the Law on Courts, the Law on the State Judicial Council and the Law on the State Prosecutor's Office have to be brought in line with the Constitutional Law on Minorities. Similar to Regular Reports on the progress towards accession of Central and Eastern European candidate countries, the Commission expressed concern about the actual integration of the Roma minority into public life. The Commission hence argues that the Roma minority very often face discriminatory treatments not only when seeking employment, but also when addressing health and educational services. Unofficial estimates say that there might be up to 40,000 Roma living in Croatia.

5. Establishment of a New Legal Framework for Minority Protection

Assessing the implementation of the Framework Convention in Croatia, the Committee of Ministers of Council of Europe noticed in 2002 certain normative improvements, but asserted that there were “a number of inadequacies in the legal framework concerning the protection of national minorities.”²⁷ The

²⁷ The Council of Europe's Committee of Ministers Resolution ResCMN (2002)1 on the implementation of the Framework Convention for the Protection of National Minorities by Croatia, adopted on 6 February 2002 at the 782nd meeting of the Ministers' Deputies at <http://www.coe.int/cm>.

Constitutional Law on the Rights of National Minorities in the Republic of Croatia²⁸ was finally adopted on 13 December 2002, again coming into being in response to pressure from the international community.²⁹ It sets the domestic legal framework for minority rights in Croatia, and is based on the internationally established minority protection standards. The Law was passed as an organic law, and gained almost unanimous support from all preliminary representatives. An apparent advantage of the new Law is that it serves all minorities, unlike the previous one which primarily addressed the largest minority group, namely Serbs. The Law contains a number of provisions that guarantee the full respect of the principles of non-discrimination outlined in various international agreements; protection against any activities which could endanger the existence of any minority or community; the right to protect their identity, culture and religion; public and private use of national minority's language and script; and the right to education and equal participation. In addition, it guarantees the exercise of certain rights and freedoms,

depending on the numerical representation of the members of national minorities in the Republic of Croatia or in one of its areas. It authorizes, however, the units of local self-government to opt for the official use of two or more languages and scripts, taking into account the size of any national minority or community.

The 2001 Census indicated a drop in number of almost all national minorities represented in population.³⁰ Ethnic Croats represent approximately 90% of the total population in comparison to 78% ten years ago, while national minorities make up 7.47% of the total population. This drop is particularly sharp in a case of the Serb ethnic group, since its share of population has decreased dramatically from 13% to 4.5%.³¹ The Census listed only those citizens who had not been absent from the country for more than one year. The results of the 2001 Census have implications regarding political rights at the national and regional levels. Namely, the Constitutional Law guarantees a

²⁸ Constitutional Law on Human Rights of National Minorities in the Republic of Croatia, Official Gazette 155/2002.

²⁹ For detailed disposition of the Constitutional Law see Antonija Petričušić, "Croatian Constitutional Law on the Rights of National Minorities", 2 *European Yearbook of Minority Issues*, (Martinus Nijhoff Publishers, Leiden/Boston, 2004), at 607-629.

³⁰ See Subašić, "Croatia: New Math".

³¹ Demographers argue that the drop in all segments of population can not be observed simply as a result of the ethnic conflict that took place in 1990s. Not denying the fact that mass migration of ethnic Serbs took place, demographic trends have also changed significantly due to about 10,000 war-related casualties, remarkable refugee flow into Croatia from Bosnia-Herzegovina and other conflicted areas in Balkans, along with the significant number of people who voluntarily migrated to other countries due to the better economic situation they expected to find there. See Anđelko Akrap, Jakov Gelo and Marinko Grizelj, "Population Size of the Republic of Croatia and Its Counties According to Age and Gender from the 1991 Census to 1998", 43/44 (5-6) *Društvena istraživanja* (1999), at 677-919.

certain number of seats in the Parliament and in the bodies of local self-government to minorities. Therefore, it was necessary to include a provision in the Constitutional Law on Minorities that prescribed a possibility of data adjustment prior to elections. For example, prior to each election, the official census results on the number of members of national minorities at the local or regional levels shall be adapted to eventual changes as recorded in the last confirmed voter's list. In this way, representation of minorities in the Croatian parliament, executive bodies and local representative bodies will not be frozen at the level which would be dictated by the results of the 2001 Census, and possible returnees will be included in public life of the country.

The Constitutional Law, as a framework law, regulates only fundamental rights, while technical issues such as the exercise of political rights guaranteed to minorities are regulated by the amended electoral legislation. The Electoral Law provides for proportional representation and assures three seats for the Serb minority, one seat each for Italian and one for Hungarian minorities, while other minorities are divided into two groups of which each is entitled to elect one representative. Minority representatives are elected in a special constituency, while the rest of population votes in ten electoral constituencies.

At the state as well as local levels, minorities have the right to have representatives in elected bodies as well as judicial and administrative bodies of municipalities and cities. The last nation-wide local elections took place in May 2001, and nationalist parties made significant gains in some areas. Upon the elections, police intervention was required in some cases, as ethnic Croat nationalist demonstrators tried to keep elected Croatian Serbs from assuming office.³² According to the Constitutional Law on National Minorities, by-elections have been necessary in those counties and municipalities where not enough minority representatives were elected in the previous local elections. In spite of the March 2003 deadline set by Constitutional Law for the local by-elections, they were only held on 15 February 2004.

The specificity of the new Constitutional Law on Minorities is that it established the possibility of minority self-government in local self-government units. National minority councils and representatives serve as advisory bodies to local and regional governments that are obliged to consult those councils when passing a legislative act which might affect the rights of minorities. In order to ensure proper functioning of elected minority councils, the state is obliged to provide adequate funding. All Croatian citizens declared as members of sixteen national minority communities at the 2001 Census are entitled to elect minority councils and representatives at the local

³² See Human Rights Watch World Report 2002, at <http://www.hrw.org/>.

and regional levels. The provisions of the Law for the Local Elections were applied in the first elections for national minority councils, which took place in May 2003, and at additional elections held in February 2004. In both cases, turnout of minority member voters was low. The reason for such low minority participation was probably the fact that councils are a new institution, so minority members were improperly acquainted with their mandate. Furthermore, minority associations complained that they were given a short preparation period for the electoral campaigns. The Ministry of Justice is preparing a draft law on the election of councils of national minorities and individual minority representatives.

The Government was advised by the European Commission in the pre-accession period to continue improving the situation of the Roma through strengthened implementation of the relevant strategy, including the provision of necessary financial support at the national and local levels, anti-discrimination measures aimed at fostering employment opportunities, and increasing access to education and improving housing conditions. The Croatian Government adopted a National Program for the Roma in October 2003 addressing issues such as status, political representation at local level, employment, children's rights, education, health care, social welfare, housing and environmental protection. In April 2004 the Government established a Commission to monitor the implementation of the National Programme for the Roma. The Commission gathers representatives of the Government, NGOs and the Roma minority, and its aim is to develop a unified action plan by 15 December 2004.

6. Return and Integration as part of EU Conditionality

The issue of minorities in the case of Croatia is inevitably linked to the return and reintegration of the Serb minority that left the territory of the state following the two military actions of the Croatian army in 1995, finding shelter primarily in neighbouring Serbia and Bosnia and Herzegovina. The return of minority population and the repossession of their property are not commonly recognized as minority rights, but in Croatia's case they are intrinsically linked to the human rights of Serb minority and continue to present the most sensitive political issue in the country. Economic underdevelopment and high levels of unemployment in parts of Croatia traditionally inhabited by members of Serb minority prevent refugees from returning because in many cases they could not find employment upon return. Although the right to housing represents a fundamental human right, many Serb refugees from Croatia who would like to return are still not able to do so, because they once had occupancy rights to dwellings, and this right has since been abolished. In addition, their return is made more difficult by discrimination demonstrated towards Serbs in the dealings of local courts in previous war zones. Namely, those lower courts issued a large number of war

crime convictions for ethnic Serbs which still have not been overturned by the Supreme Court, in spite of a general Amnesty Law that was passed in 1996.

The Law on Reconstruction adopted in 1996 set the criteria for Government's funding for reconstruction.³³ Eligibility criteria, in fact, discriminated against Serb applicants. In June 2000, the Parliament amended the Law removing most of the deficiencies. Equal reconstruction standards have been guaranteed, in the sense that the reconstruction-based rights depend exclusively on the degree of damages and the number of family members who would return and live in the reconstructed house. The Government has launched the Program for Return and Accommodation of Displaced Persons, Refugees and Resettled Persons (hereafter: the Return Program) in June 1998.³⁴ The key principle under the Return Program was property repossession by pre-war owners, without discrimination based on the ethnic origin. However, the Return Program made repossession by owners dependent upon the condition of providing alternative accommodation for the temporary residents, which caused its slow implementation. Additionally, at the local level, authorities have continued to deny reconstruction assistance to individuals whose property was damaged or destroyed by so-called 'terrorist acts' (in reality, by the Croatian armed forces). The European Court of Human Rights in Strasbourg ruled against Croatia for having suspended the article in the Law on Obligations which prescribed the responsibility of the State to compensate damage caused by terrorist acts.³⁵ Subsequently, the state has undertaken a commitment to finance restoration of houses looted by Croatian soldiers in 1995.

The unconditional return of all refugees, regardless of their ethnicity, and the return of their property were placed at the top of current government's list of priorities.³⁶ Approximately 120,000 Serbian refugee returns were registered since the end of the war, and the vast majority of returnees are old people. Serb returnees still occasionally face problems in acquiring citizenship, work contracts and retirement payments. Ethnic Serbs who returned face discrimination in the administration of justice, employment, housing, and sometimes even in freedom of movement. Intimidation and verbal assaults of Serb returnees were reported in the central Dalmatia and Krajina regions. In the Danube region, most of the provisions of the Erdut

³³ Law on Reconstruction, Official Gazette 24/96, 54/96, 87/96, 57/00.

³⁴ Ida Elizabeth Koch, "Protection of Property Rights in the Republic of Croatia: The Law on the Temporary take-over and Administration of Specified Property", 4 *Helsinki Monitor* (1997), at 28-45.

³⁵ *Vojin and Ana Kutic vs. Republic of Croatia*, Ruling of the European Court on Human Rights, 1 March 2002, Application no. 48778/99, at <http://www.echr.coe.int/>.

³⁶ Croatia was one of signatory parties of the General Framework Agreement for Peace in Bosnia and Herzegovina of December 1995 which *inter alia* guaranteed the right of all refugees to return to their pre-war homes. The full text of the Agreement is available at <http://www.oscebih.org/essentials/gfap/eng/home.asp>.

Agreement have been implemented, with the important exception of proportional representation of Serbs in the judiciary. At the same time, ethnic Croat returnee associations and local authorities have accused some ethnic Serb leaders of encouraging ethnic hatred.

One of the first concrete steps in the minority protection sphere was the launch of a public awareness campaign aimed at encouraging refugees to return to their pre-war homes. This project is a joint initiative by the government, the OSCE, and other international organizations. This measure has a direct connection to the prospect of integration, since the refugee return efforts were listed under the key political criteria that Croatia must meet to gain eventual membership in the EU. However, the numbers speak against government's plan. Namely, a survey conducted for the purposes of the campaign disclosed that only 15 per cent of interviewed Serb refugees now living in Serbia and Bosnia wanted to return to Croatia.³⁷ The majority of them have already been granted citizenship in Serbia and Montenegro, and forty percent own an apartment or house in another country. Among the main reasons that they listed for not returning were concerns that their children would not have the same opportunities in Croatia. Many refugees fear that their living conditions would deteriorate in Croatia, and some fear discrimination, harassment and loss of ethnic identity, suspecting that the local community would not accept them. Some of them fear that local war crimes indictments may include the names of innocent people. Similarly, ethnic Croatian refugees from Bosnia who now occupy Serb dwellings demonstrated even greater reluctance to return to their prewar homes in Bosnia. A glimpse of hope offers a belief of an overwhelming majority of both Serbs and Croats, 80% of respondents, believe that coexistence is possible. However, the majority of Croats (63% of those living in war-affected areas and 47% of those living elsewhere) still do not think that the return of Serbs would be a good thing for the country. When they were asked for reasons of such an attitude, fear that returning would increase negative development or the reemergence of a conflict were most often listed as answers. The generally bad economic situation in war-affected areas was stated as another reason for hesitance in supporting return of the Serb minority.

7. Concluding Remarks

The implementation of international commitments for minority protection was complicated by the 1991-1995 ethnic conflict in Croatia. Relations between the Croatian majority and the Serb minority are still, almost ten years after the termination of the conflict, burdened by the legacy of the conflict. Ethnic tensions in the war-affected areas remain high, and ethnically motivated

³⁷ Survey conducted by agency 'Puls' commissioned by the OSCE and the Croatian government, published on 15 September 2004, at <http://www.osce.org/Croatia/>.

harassment and assaults have not yet vanished. However, normative improvements have indeed occurred in the last few years, being welcomed by international monitors as a demonstration of political maturity of the country. After the change of the government in 2000, three important laws were passed: first, two laws on the education in minority languages and on the use of minority language and script and second, the Constitutional Law on National Minorities that set the general framework for minority protection. The adoption of this legislation represents a realization of Croatia's obligations towards the international community, and constituted an important step in its way towards European integration.

The granting of candidate status to Croatia in June 2004 was a sign that the EU appreciates fulfillment of pre-accession conditionality requirements. Apart from a commitment to regional cooperation and cooperation with the Hague tribunal, minority protection falls under the scope of conditions to be fulfilled prior to the integration process. The initiated EU accession process would probably enhance the implementation of minority rights related to Serb minority returnees as well as Roma, since those are the two minorities the EU is particularly paying attention to, and requires active undertaking of the state in assuring a better accommodation of minorities. The most important aspect of the accession process is that it honors concrete acts and not mere political declarations. For that reason, all minorities stand to benefit from the European integration process as minority protection remains a field in which Croatia needs to make additional efforts in the accession period. The state is still obliged to assure proportional representation of minorities in local and regional self government units, as well as in the state administration and judicial bodies.

The process of refugee return, another relevant part of the political criteria for accession, requires not only proper and non-discriminatory legislation, but also financial backing by the state. The recently launched return campaign demonstrates that the state is willing to commit itself to the implementation of this requirement. However, the campaign may have arrived a bit too late, since the majority of refugees have managed to set up in neighbouring countries and seem unlikely to return to their pre-war homes. Perhaps the candidacy (and eventual member state status) of Croatia might serve as a stimulus for refugee return, because it is unlikely that the neighboring countries in which Serb refugees reside will be able to catch up Croatia's accession course. In this way, the integration process may contribute to the adjustment of Croatia's ethnic picture back to its condition of the beginning of 1990s.

Bibliography

Akrap Anđelko, Gelo Jakov and Grizelj Marinko, "Population Size of the Republic of Croatia and Its Counties According to Age and Gender from the 1991 Census to 1998", 43/44 (5-6) *Društvena istraživanja* (1999).

Bulterman Mielle, *Human rights in the treaty relations of the European Community: real virtues or virtual reality?* (School of Human Rights Research series, Intersentia, Antwerpen, 2001).

Caspersen Nina, "The Thorny Issue of Ethnic Autonomy in Croatia: Serb Leaders and Proposals for Autonomy", 3 *Journal on Ethnolopotics and Minority Issues in Europe* (2003), at http://www.ecmi.de/jemie/download/Focus3-2003_Caspersen.pdf.

Domini Mirjana, "National Minorities in the Republic of Croatia", 12 (19) *Central Europe Review* (2000), at <http://www.ce-review.org/00/19/domini19.html>.

Koch Ida Elizabeth, "Protection of Property Rights in the Republic of Croatia: The Law on the Temporary take-over and Administration of Specified Property", 4 *Helsinki Monitor* (1997).

Lenkova Mariana (ed.), "Hate Speech in the Balkans", *The International Helsinki Federation for Human Rights*, at <http://www.greekhelsinki.gr/pdf/hatespeech.pdf>

Lindstrom Nicole, "European Integration and Ethnic Reconciliation in Croatia and Serbia", at <http://wwics.si.edu/topics/pubs/MR295Lindstrom.doc>.

Miller Vaughne, "The Human Rights Clause in the EU's External Agreements", 4 (33) *Research Paper of the House of Commons Library*, at <http://www.parliament.uk/commons/lib/research/rp2004/rp04-033.pdf>.

Oberschall Anthony, "The Manipulation of Ethnicity: from Ethnic Cooperation to Violence and War in Yugoslavia", 23 (6) *Ethnic and Racial Studies* (2000).

Petričušić Antonija, "Croatian Constitutional Law on the Rights of National Minorities", 2 *European Yearbook of Minority Issues* (Martinus Nijhoff Publishers, Leiden/Boston, 2004).

Pippan Christian, "The Rocky Road to Europe: The EU's Stabilisation and Association Process for the Western Balkans and the Principle of

Conditionality", 9 (2) *European Foreign Affairs Review* (Kluwer Law International, The Hague, 2004).

Rodin Siniša, "Croatian Accession to the European Union: the Transformation of the legal System", in Katarina Ott (ed.), 2 *Croatian Accession to the European Union, Institutional Challenges* (Institute of Public Finance, Friedrich Ebert Stiftung, Zagreb, 2004).

Ronen Don, *The Challenge of Ethnic Conflict, Democracy and Self-Determination in Central Europe*, (Frank Cass, London/Portland, 1997).

Sanader Ivo, "Croatia's Course of Action to Achieve EU Membership", C59 *ZEI Discussion Papers*, (Center for European Integration Studies, University of Bonn, 1999), at http://www.zei.de/download/zei_dp/dp_c59_sanader.pdf.

Sekulic Dusko, "The Creation and Dissolution of the Multinational State: the case of Yugoslavia", 3 (2) *Nations and Nationalism* (1997).

Sekulic Dusko, "Civic and Ethnic Identity: The case of Croatia", 27 (3) *Ethnic and Racial Studies* (2004).

Subašić Katarina, "Croatia: New Math", 49 (8) *World Press Review* (2002), at <http://www.worldpress.org/>.

Tanner Marcus, *Croatia. A Nation Forged in War* (Yale University Press, New Haven, London, 1997).

Varady Tibor, "Collective Minority Rights and Problems in Their Legal Protection: The Example of Yugoslavia", 6 (3) *East European Politics and Societies* (1992).

Varady Tibor, "Minorities, Majorities, Law and Ethnicity: Reflections of the Yugoslav Case", 19 *Human Rights Quarterly* (1997).

Vasiljević Snježana, "The legal aspects of protection of minorities in the process of stabilisation and association", in Katarina Ott (ed.), 2 *Croatian Accession to the European Union, Institutional Challenges* (Institute of Public Finance, Friedrich Ebert Stiftung, Zagreb, 2004).

Vlahutin Romana, "The Croatian Exception", in Judy Batt (ed.) "The Western Balkans Moving on", 70 *Chaillot Paper*, (The European Union Institute for Security Studies, 2004), at <http://www.iss-eu.org/chaillot/cha70.pdf>.