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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
(VENICE COMMISSION)

**DRAFT CONSTITUTIONAL ACT  
ON THE RIGHTS OF NATIONAL MINORITIES  
IN THE REPUBLIC OF CROATIA  
AND INTRODUCTORY PROPOSAL**

**DRAFT****PROPOSAL OF THE CONSTITUTIONAL ACT ON THE RIGHTS OF  
NATIONAL MINORITIES IN THE REPUBLIC OF CROATIA  
WITH THE PROPOSAL OF THE ACT****I. CONSTITUTIONAL BASIS FOR THE ENACTMENT OF THE  
CONSTITUTIONAL ACT**

The constitutional basis for the enactment of this Constitutional Act is Article 15, Paragraph 2 of the Constitution of the Republic of Croatia.

**II. ASSESSMENT OF THE SITUATION AND BASIC ISSUES TO BE  
REGULATED BY THIS CONSTITUTIONAL ACT****- Assessment of the Situation**

The Constitutional Act on Human Rights and Freedoms and on the Rights of Ethnic and National Communities or Minorities in the Republic of Croatia ("Narodne novine" – *Official Gazette*, no. 65/91, 27/92, 34/92 – amended text, 68/95 and 51/2000) regulated the position of national minorities in the Republic of Croatia in accordance with the circumstances of the time of its enactment, i.e. at the time when the position of individual national minorities was insufficiently defined due to the fact that the Republic of Croatia was just being established as an independent state.

After the enactment of the Constitutional Act on the Temporary Non-Application of Certain Provisions of the Constitutional Act on Human Rights and Freedoms and on the Rights of Ethnic and National Communities or Minorities in the Republic of Croatia (*Ustavni zakon o privremenom neprimjenjivanju pojedinih odredbi Ustavnog zakona o ljudskim pravima i slobodama i o pravima etničkih i nacionalnih zajednica ili manjina u Republici Hrvatskoj*) ("Narodne novine" – *Official Gazette*, no. 68/95) the position of national minorities became non-transparent. As, according to the assessments made at that time, the national composition of the population had been essentially changed, the application of the provisions on the representation of national minorities in representative bodies, both in the Croatian Parliament and at the local levels, was suspended. Political representation of national minorities has thus been reduced to a minimum and the principle of proportional representation of minorities represented in the population by more than 8%, was totally abandoned. Moreover, at the time when that Constitutional Act on Temporary Non-Application of Certain Provisions of the Constitutional Act was enacted it was presumed that a census was to be held soon, and that thereafter a new regulation of the position of national minorities would take place. However, this did not happen.

The international obligations and commitments of the Republic of Croatia, as well as the need to eliminate the consequences of the Constitutional Act on Temporary Non-Application of Certain Provisions of the Constitutional Act required urgent amendments to that Act. This was done by the amendments of May 2000

("Narodne novine" 51/2000). When these amendments were enacted, the House of Representatives of the Croatian Parliament entrusted the Government of the Republic of Croatia with the task to draft a new comprehensive Constitutional Act on the Rights of National Minorities in the Republic of Croatia.

The constitutional amendments were enacted in the meantime. They contain certain significant novelties regarding national minorities. Accordingly, Article 15, Paragraph 2 of the Constitution now expressly regulates that basic issues relevant for the position of national minorities are to be regulated by a constitutional act. Further, Article 15, Paragraph 3 of the Constitution created the preconditions to ensure to the members of national minorities, in the law which regulates the elections, a possibility of having a special right to elect their representatives to the Croatian Parliament, in addition to their general right to vote,

It is also necessary to definitely abandon the former concept of the Constitutional Act since the Republic of Croatia is now in essentially different circumstances compared with the time when the Constitutional Act was enacted. The position of national minorities is defined to a significant degree nowadays, both in domestic legislation and in international documents that are binding on the Republic of Croatia, and also through the institutions to which the citizens of the Republic of Croatia now have access.

All these changes that occurred since the enactment of the Constitutional Act require its comprehensive review as well as identifying new solutions that would correspond to the achieved level of democratization of the society and open opportunities for a real affirmation of national minorities in Croatian society as well as for their participation which will contribute in all segments to the achievement of an open multicultural society.

#### **- Issues which are proposed to be regulated by the Constitutional Act**

This Constitutional Act regulates the following issues:

- the existing national minorities in the Republic of Croatia are not expressly listed in the Act, but they are defined in the manner, which has been harmonized both with the United Nations documents and with the European tendencies. This opens a possibility to expand their number by members of other peoples, who may, in the course of time, constitute themselves as a national minority;
- fundamental minority rights in the fields of education, culture, the use of language, access to the media are identified, which constitutes a basis for their further elaboration in special laws;
- proportional representation of those national minorities who make more than 4% of the population, as well as representation through a certain number of representatives for other national minorities is ensured;
- proportional representation is ensured for national minorities at the local level;

- 4.
- the so-called positive discrimination in the exercises of the right to vote is envisaged, i.e. the possibility to separate the representation of a national minority from political representation. This enables members of national minorities to elect, along with their minority representatives, also their political representatives, by voting for political parties;
  - associations of national minorities are given the opportunity to exercise their role of representatives of a national minority by nominating candidates for representatives of a national minority at all levels;
  - an opportunity is opened for national minorities to establish special forms of non-territorial functional association by forming minority self-governments as a form of cooperation with the bodies of local, regional and state authorities regarding the issues of special importance for an individual national minority.

### **III. ASSESSMENT OF THE RESOURCES NECESSARY FOR THE IMPLEMENTATION OF THE CONSTITUTIONAL ACT**

It can be assumed that the implementation of this Constitutional Act does not require the provision of additional resources in the State Budget, beyond the resources already allocated for these purposes.

## THE CROATIAN PARLIAMENT

- Respecting democratic values and the general protection of human rights and fundamental freedoms as well as the principles of protection of national minorities established in international documents adopted under the auspices of the United Nations, the Council of Europe, Organization for Security and Co-operation in Europe and the Central European Initiative, including multilateral and bilateral agreements to which the Republic of Croatia is a party;
- Guaranteeing to members of national minorities and their communities all rights laid down in the Constitution of the Republic of Croatia, in international obligations of the Republic of Croatia as well as the acquired rights they were realizing on a certain territory;
- Respecting the right of members of national minorities to the preservation of ethnic, cultural, linguistic and religious distinguishing features which they wish to preserve (and which they realize as individuals or as a community) for the purpose of the protection of their minority identity;
- Ensuring for the national minorities those political rights which have the purpose of preserving and promoting minority-distinguishing features;
- Fostering understanding and tolerance between citizens (*građani*) as well as the development of a multicultural society,

**Herewith enacts**

## CONSTITUTIONAL ACT ON THE RIGHTS OF NATIONAL MINORITIES IN THE REPUBLIC OF CROATIA

### I. BASIC PROVISIONS

#### Article 1

The Republic of Croatia shall ensure the equal position of national minorities and their members in the society and shall encourage their overall development, when necessary, by taking special measures aimed at achieving a real equality.

For the purposes of this Constitutional Act the term “national minority” shall mean a group of Croatian citizens (*državljeni*) which is smaller by its number than the rest of the population, and whose members possess ethnic, linguistic, cultural and/or religious characteristics different from the rest of the population, and who desire to preserve these characteristics.

#### Article 2

Everybody shall have the right to express and state freely his/her belonging to a national minority, and shall not be put into any position unequal to other citizens.

Nobody shall be forced to give a statement about his/her belonging to a national minority.

### **Article 3**

Members of national minorities are guaranteed the respect of the principle of non-discrimination in the exercise of human rights and fundamental freedoms.

The Republic of Croatia shall ensure the realisation of the rights of national minorities and their members which they enjoy individually or in community with other persons belonging to the same national minority, and especially the right to:

1. promotion of their own culture, and protection and preservation of their own cultural heritage and tradition;
2. use of minority language and script in official and public use;
3. education in minority language and script;
4. possession and use of their signs and symbols;
5. manifestation of religion and establishment of religious institutions;
6. access to the media and carrying out of media activities;
7. self-organisation and association for the purpose of realising common interests;
8. representation in representative bodies at state and local levels and participation in public affairs;
9. minority self-government;
10. protection from any activity which endangers or may endanger their survival, the realisation of their rights and interests.

### **Article 4**

The Republic of Croatia shall encourage the unimpeded transfrontier co-operation of national minorities with the members and institutions in other states with which they are connected by national belonging, for the purpose of advancement of their national, cultural and other development.

**II. SPECIAL PROVISIONS**

**1. Promotion of Culture and Preservation and Protection of Cultural Heritage and Tradition of a National Minority**

**Article 5**

Members of national minorities shall have the right to cultural autonomy.

Monuments and the entire cultural heritage of national minorities shall be a part of the cultural heritage of the Republic of Croatia. It shall be equally protected by law and receive equal financial support.

The Government of the Republic of Croatia as well as local and regional self-government units shall care for the protection of the cultural identity and tradition of a national minority.

**Article 6**

National minorities or members of national minorities may carry out publishing activity in the language and script of a national minority, in accordance with a special law, with the financial support from the Government of the Republic of Croatia and local and regional self-government units.

**2. The use of a minority language and script in the official use and in public life**

**Article 7**

The use of language and script used by the members of national minorities in public or private life shall be free.

The language and script of a national minority shall be in equal official use along with the Croatian language and Latin script in the local self-government units where members of the national minority make up a majority of the population, as well as on the territory in which it had been in official use before this Constitutional Law has taken force.

In other local self-government units, as well as in regional self-government units, the language and script of a national minority may be introduced into equal official use in accordance with a special law.

**3. Education in the minority language and script**

### **Article 8**

The upbringing and education of members of national minorities in their language and script shall be ensured in accordance with a special law.

Members of national minorities shall have the right to schooling in their language and script in territories in which they had enjoyed the same right before this Constitutional Act came into force. In accordance with a special law, it may be introduced in other territories as well.

#### **4. Possession and use of signs and symbols of a national minority**

### **Article 9**

The signs and symbols of national minorities shall be possessed and used freely.

When the signs and symbols of national minorities are officially used, the appropriate signs and symbols of the Republic of Croatia shall be put along with them. When the anthem or a solemn song of a national minority is performed, the anthem of the Republic of Croatia shall be performed before it.

The law that regulates the description of the coat of arms and the flag, as well as the text and the tune of the anthem of the Republic of Croatia shall regulate the use of the signs and symbols of national minorities.

Local and regional self-government units shall have to regulate the official use and the manner of use of the national flag and symbols of national minorities in their statute, in accordance with law.

#### **5. Manifestation of religion and establishment of religious institutions**

### **Article 10**

Members of national minorities may manifest their religion freely, as well as perform religious services and organise religious classes in their language.

Members of national minorities may establish the institutions to practice their religion freely.

The manner and forms of state support to religious institutions of national minorities shall be regulated in accordance with a special law.

#### **6. Access to the media and carrying out of media activities**



### **Article 11**

National minorities or members of a national minority shall enjoy the right of access to the media and the right to have their own media, in accordance with a special law.

The Republic of Croatia shall undertake the necessary measures so that the media in which it has shares publish/broadcast information and data related to the discrimination of a national minority or its member.

It shall be ensured that programmes in the language and script of a national minority are represented in the programming scheme of Croatian Radio-Television, in accordance with a special law.

### **Article 12**

The Government of the Republic of Croatia shall try to make possible, in the territories inhabited by the members of a national minority, the reception of radio and television broadcasts emitted by their parent states, by the means of international agreements.

## **6. Self-organisation and association for the purpose of realising common interests**

### **Article 13**

Members of national minorities are free to establish their associations for the purpose of protection and promotion of their ethnic, linguistic and/or religious characteristics, as well as preservation of their own culture, tradition, language and/or religion.

Associations of national minorities shall be established in accordance with the law.

Associations of national minorities shall have the right to nominate representatives of national minorities to the House of Representatives of the Croatian Parliament and to the representative bodies of local and regional self-government units, in accordance with special laws.

### **Article 14**

Associations of national minorities may associate in various forms of association at all levels of territorial organisation, for the purpose of harmonisation of their interests and promotion of the guaranteed rights.

An individual form of association founded by the associations of a national minority shall be founded by passing a basic act on association that shall establish the goals and the manner of the provision of resources for their realisation. It shall be deemed founded when at least two of its associations have passed the decision on its founding, in accordance with their statutes.

### **Article 15**

Different forms of association of minority associations may acquire, in accordance with the law, legal personality provided that this possibility is laid down in the decision on association and in the basic founding act.

### **Article 16**

Bodies of state administration shall co-operate primarily with the association or the form of association of minority associations that gathers the majority of members of a national minority.

## **8. Representation in representative bodies at state and local levels and participation in public affairs**

### **Article 17**

Members of a national minority shall have the right to participate in public affairs at all levels of governance and they shall have access to all professions and positions under equal conditions.

In the discharging of public affairs of importance to the preservation and promotion of the life and work of national minorities, the members of national minorities shall be given preference under conditions of equality.

### **Article 18**

Members of national minorities shall have, along with the general and equal right to vote for Members of the House of Representatives of the Croatian Parliament, the right to a certain number of Members of Parliament in accordance with a special law.

### **Article 19**

Members of national minorities who make up more than 4% of the population of the Republic of Croatia shall have the right to representation in the bodies of state authorities in proportion to their share in the total population.

The representation of the national minority from Paragraph 1 of this Article in other bodies of state authorities of the Republic of Croatia shall be ensured in the law on the organisation of state authorities.

### **Article 20**

Members of national minorities who make up less than 4% of the population of the Republic of Croatia shall have the right to elect at least six Members of the House of

Representatives of the Croatian Parliament, in accordance with the Elections of Members of the Croatian Parliament Act.

Members of Parliament from Paragraph 1 of this Article shall be representatives of all national minorities who have elected them and shall have to protect their interests.

The manner of election and recall of Members of Parliament from Paragraphs 1 and 2 of this Article shall be regulated by law and other regulations that regulate elections in the Republic of Croatia.

### **Article 21**

Members of national minorities shall, along with the general and equal right to vote, have the right to elect a certain number of members of representative and executive bodies of local and regional self-government units in proportion to the share they make up within the total population of the unit, in accordance with a special law and statute.

## **9. Minority self-government**

### **Article 22**

National minorities may establish a minority self-government in community, local and regional self-government units as well as at the state level, for the purpose of protection and promotion of their position in the society and preservation of the rights guaranteed by this Constitutional Act.

In the community and local self-government units in which members of a national minority make up the majority of the population, the Croats and other inhabitants have the same rights to establish their self-government that are guaranteed to the members of national minorities by this Constitutional Act.

The manner of work and the powers of minority self-government shall be regulated by law.

### **Article 23**

Elected representative bodies of the community or local self-government in the community or local self-government units in which more than a half of the members of their representative body is elected by one national minority shall be a community or a local minority self-government.

A community or a local minority self-government may be established provided that in the representative body of a community or a local self-government unit at least 20 per cent of members belonging to a certain national minority have been elected.

A minority representative shall be elected among members belonging to a national minority in the representative body of a community or local self-government unit where the number of members belonging to a minority is less than 20 per cent of the total number of members, or in case from Paragraph 2 of this Article, when a minority self-government is not established.

If there is only one representative belonging to a certain national minority elected in the representative body of a community or local self-government unit, he/she shall be at the same the minority representative.

#### **Article 24**

Local minority self-governments of an individual national minority may establish regional minority self-government on the territory of more than one local or regional self-government unit as well as a minority self-government at state level, in the case of more regional self-governments of a certain national minority.

#### **Article 25**

Representatives of several minorities may establish jointly, on community, local, regional or state level, a minority self-government or elect a common minority representative.

#### **Article 26**

Minority self-government shall have legal personality.

Minority self-government may own real estate, movables, institutions, companies and other organisations, and it may acquire gifts, estates and legacies.

Minority self-government determines its working programme.

The resources for the work of a community and local minority self-government shall be provided for in the budget of the local self-government unit.

The resources for the work of a regional minority self-government shall be provided for in the budget of a regional self-government unit. If a regional self-government has been established for the territory of several regional self-governments units, the resources shall be provided for in their budgets.

The resources necessary for the work of a minority self-government established at the state level shall be provided for in the State Budget.

Upon initiative of a local or regional minority self-government, the representative body of a local or regional self-government unit may determine which real estate, movables, shares in property or financial resources may be used by minority self-government, precisely mentioning the objects, shares or the sums of money to be used.

### Article 27

Minority self-government, in the framework of local and regional self-government, shall independently decide on:

- the organisation and way of work;
- the budget, final balance and the use of obtained means planning;
- the proposal concerning the use of national minority's signs and symbols;
- the local or regional holidays of a national minority that it represents;
- other activities in accordance with the law and the statute of a local and regional self-government unit.

### Article 28

When deciding on community, local or regional affairs relevant for a certain national minority, a minority self-government or a minority representative shall have the right to:

- request data and information from competent bodies;
- submit proposals for the regulation of certain issues;
- propose measures to improve the overall position of a national minority;
- propose adopting of decisions necessary for the preservation and improvement of the position of a national minority;
- receive a written answer to their proposals and requests within 30 days;
- propose that discussion on an issue important for a national minority be put on the agenda of a representative body;
- give consent regarding the personnel related decisions in relation to the institutions relevant for a national minority;
- give prior opinion regarding the deciding on the names of settlements, streets, squares and toponyms.

A representative body of a community, local or regional self-government unit shall have to put on the agenda for its next session an issue proposed by a minority self-government or a minority representative.

### Article 29

The central body of state administration competent for the local self-government affairs shall keep a register of minority self-government, in accordance with a special law.

## **10. Protection from any activity which endangers or may endanger the survival and the realisation of the rights and interests of a national minority**

### Article 30

The bodies of state authority shall protect *ex officio* the rights of national minorities in the issues from their competence and they shall have to undertake the measures necessary for the protection of the rights of national minorities, in accordance with law.

**Article 31**

National minorities or members of a national minority shall have the right of access to the bodies of the Croatian Parliament in the issues related to the protection and promotion of the rights of national minorities.

**III. THE IMPLEMENTATION OF THE CONSTITUTIONAL ACT**

**Article 32**

The working bodies of the Croatian Parliament competent for the national minorities' issues shall follow the work of the Government of the Republic of Croatia and other bodies in accordance with the Constitution and law, in the implementation of the rights of national minorities guaranteed in this Constitutional Act.

**Article 33**

The rights of national minorities guaranteed in this Constitutional Act and in special laws shall be implemented and their application shall be supervised by central bodies of the state administration within their scope of competence.

The Government of the Republic of Croatia shall co-ordinate the work of central bodies of state administration in the implementation of this Constitutional Act and special laws that regulate the issues of importance to national minorities.

**Article 34**

The Government of the Republic of Croatia shall establish a special standing advisory body for the purpose of consideration of individual issues that relate to the implementation of regulations on the protection of national minorities as well as other issues of interest for national minorities.

Members of the standing advisory body of the Government of the Republic of Croatia from Paragraph 1 of this Article shall be appointed by the Government of the Republic of Croatia upon the proposal of the associations of each individual national minority. If more than one association of the same national minority has been founded, the members of that advisory body shall be elected by the minority association that gathers the majority of members of that national minority.

In the process of drafting laws and other regulations that regulate the issues relevant for national minorities, the proponent shall have to obtain an opinion from the standing advisory body of the Government of the Republic of Croatia.

### **Article 35**

The Government of the Republic of Croatia shall establish a special expert body for national minority issues by a decree that shall regulate in more detail its name, scope of competence and its internal organisation.

The expert body from Paragraph 1 of this Article, shall have to encourage the discussion on issues relevant for national minorities; it shall collect necessary information, and co-operate with the standing advisory body of the Government of the Republic of Croatia and obtain opinions on individual issues relevant for national minorities.

## **IV. INTERNATIONAL CO-OPERATION**

### **Article 36**

The Republic of Croatia shall co-operate and consult, directly or through mixed committees, with the governments or institutions of interested states, as well as the international organisations with the aim of achieving the fullest possible protection of the rights of national minorities.

## **V. FINAL PROVISIONS**

### **Article 37**

The rights of national minorities acquired before the date this Constitutional Act takes effect may not be restricted or changed by this Constitutional Act.

### **Article 38**

The provisions on the proportional representation of members of national minorities in the House of Representatives of the Croatian Parliament shall be applied on the basis of the data from the census to be held in the year 2001.

### **Article 39**

On the day of promulgation of this Constitutional Act, the Constitutional Act on Human Rights, Freedoms and the Rights of Ethnic and National Communities or Minorities in the Republic of Croatia («Official Gazette», No. 65/91, 27/92 34/92 – amended version, 68/95 and 51/2000) shall cease to be valid.

### **Article 40**

This Constitutional Act shall enter into force on the day of its promulgation.



## Explanatory Note:

The Preamble of this Constitutional Act on the Right of National Minorities points to the fundamental constitutional values which serve as a basis for the regulation of the position of national minorities in this Constitutional Act. Its provisions are based on the basic international obligations of the Republic of Croatia as well.

The provisions contained in the Preamble define at the same time the fundamental democratic values as a goal to be reached by the provisions of this Constitutional Act.

### I. BASIC PROVISIONS

#### Ad Article 1

This Article defines the political standpoint of the Republic of Croatia regarding the protection of national minorities in accordance with the constitutional principle of prohibition of discrimination and the constitutionally defined position of national minorities.

Further, the provision of Article 1, Paragraph 2 provides a definition of a national minority in accordance with international documents, primarily with the UN documents, and with the proposal of the European Commission for Development of Democracy Through Law (the Venice Commission) in line with the European Convention for the Protection of National Minorities.

Having considered the international documents, it has been established that the rights guaranteed by this Constitutional Act relate only to citizens (*državljan*), while other groups, who are not citizens, are protected on the basis of other legislation. This standpoint is based both on the Preamble to the Constitution and on those constitutional provisions which protect human rights regardless of citizenship (*državljanstvo*). Further, this standpoint starts both from relevant international documents and from domestic legislation that regulates the position of persons who are not citizens (refugees).

#### Ad Article 2

These provisions regulate the position of national minorities and their members on principles of non-discrimination and free decision-making on their belonging to a national minority.

Individual pieces of legislation of the Republic of Croatia require that persons make a statement regarding their belonging to an individual national minority. In certain cases having or not having made such a statement does not result in any consequences for the individual concerned. It serves mostly as statistical data (registrations into Registers of Birth and Registers of Marriage, statements in criminal proceedings and the like). In other cases the statement regarding the belonging to a national minority results in the realization of certain rights, as, for example, the right to vote. There are also cases when it is not necessary to declare one's national belonging in order to

realize certain right reserved for national minorities (the right to equal official use of a minority language, the right to schooling in a minority language).

A statement once given on the national belonging is not binding on the person which has given it, and he/she may change it at any moment, as has already happened in practice, especially regarding the right to vote.

### **Ad Article 3**

This provision establishes the rights of members of national minorities as well as the collective rights of national minorities which are further elaborated in individual provisions of this Constitutional Act and in special laws which regulate individual fields.

### **Ad Article 4**

In accordance with international documents that regulate the position and rights of national minorities, this Act also proclaims the obligation of the state to enable and provide support for the cooperation of national minorities with members in other states as well as with their parent state and their institutions.

In addition to the obligations stemming from international documents, the Republic of Croatia carries out a policy aimed at the regulation of the position of national minorities through bilateral agreements. Accordingly, the issues of cooperation between the members of Italian and Hungarian national minorities are regulated by bilateral agreements with the Republic of Italy and Republic of Hungary. Efforts are being made to enter into other inter-state agreements.

## **II. SPECIAL PROVISIONS**

### **1. Promotion of culture and preservation and protection of cultural heritage and tradition of a national minority**

Members of national minorities are guaranteed the right to cultural autonomy as well as the protection of monuments and the cultural heritage as a part of the cultural heritage of the Republic of Croatia. It is therefore protected by law. The Republic of Croatia has signed the Convention Concerning the Protection of World Cultural and Natural Heritage. It has also signed bilateral agreements on educational and cultural co-operation with 89 countries, including for example, the Check Republic, Slovak Republic, Italy, Austria and Hungary.

The solution provided in this Article shows the commitment of the Republic of Croatia to be a multi-cultural society that enriches its cultural heritage through the participation of cultural values of its national minorities.

### **Ad Article 6**

Within the rights in the field of culture, and in accordance with the provisions of the Publishing Activity Act, the right to publishing in the language and script of a national

minority is guaranteed. Support for publishing in the languages of national minorities is envisaged as well, both by the state and by the local units, in accordance with their budgets.

## **2. Use of minority language and script in official and public use**

### **Ad Article 7**

The Act on the Use of Language and Script of National Minorities in the Republic of Croatia guarantees a free use of language and script in private and public life, as well as their equal official use. This Article accepts the same manner of the realization of this right as the one regulated in the above-mentioned special Act. Accordingly, the enactment of this Constitutional Act does not require in this part any amendments to the Act that is in force.

## **3. Education in minority language and script**

### **Ad Article 8**

Members of national minorities have the right to education and upbringing in their language and script. The Act on the Education and Upbringing in the Language and Script of National Minorities already regulates this subject matter, with a view of preserving their language, culture and other knowledge that characterizes their special features. Since this special Act has already regulated this matter on the broadest possible basis, the enactment of this Constitutional Act does not require its amendments.

## **4. Possession and use of signs and symbols of a national minority**

### **Ad Article 9**

In addition to the proclamation of the right of minorities to use their own national signs and symbols, a local self-government unit is authorized to regulate their official use, in accordance with a special law. This safeguards both the dignity of the state symbols and the symbols of a national minority.

This provision primarily regulates that private possession and use of signs and symbols of a national minority are absolutely free and are not subject to any limitations.

The local and regional self-government units must regulate all the cases of official use of signs and symbols of a national minority in their statutes, and in accordance with law. In this way, the problems and unclarity experienced so far in practice are removed.

We would like to point out that a national minority is absolutely free to determine its own signs and symbols, which stems from the provisions of the Associations Act as well.

**5. Manifestation of religion and establishment of religious institutions**

**Ad Article 10**

The obligation to ensure the freedom to manifest religion, in a minority language is both a civilisation achievement and the obligation laid down in international documents.

At the same time, members of national minorities are ensured the right to found various religious institutions (such as religious schools, etc.).

**6. Access to the medial and carrying out of media activities**

**Ad Article 11**

The right of access to the media and the right to establish the media are ensured to national minorities through their associations as a collective entity as well as to members of a national minority, in accordance with special laws, which regulate the manner of the founding of the media – the Public Information Act, the Croatian Radio and Television Act and the Telecommunications Act.

Special importance is attributed at this to the protection from discrimination, and it is regulated that the media have to publish information and data that relate to the discrimination of a national minority or of its member.

Considering the special importance of the Croatian Radio and Television, it was deemed necessary to regulate the minimum representation of programmes in the languages of national minorities as one of the preconditions for the protection and promotion of cultural autonomy of national minorities.

**Ad Article 12**

The obligation regulated in Article 15 is an elaboration of the obligation from the European Charter on Regional or Minority Languages.

**7. Self-organisation and association for the purpose of realising common interests**

**Ad Article 13**

These provisions regulate the basis for the founding and functioning of associations of national minorities, with respect to the special significance that they have for the preservation and affirmation of an individual national minority and resolution of its specific needs. The procedure for the founding, organisation, legal status and termination of all, including the national minority associations, is regulated in more detail in the Associations Act.

The provision of Paragraph 2 provides for the right of minority associations to nominate candidates to the representative bodies at all levels. This ensures to the minority associations, who are the representatives of specific interests of a national minority, certain political significance as well, in their capacity of legitimate representatives of a part of the population.

#### **Ad Article 14**

These provisions regulate the basis for the founding of umbrella associations of national minorities as an important form of their functioning in the society and establishment of relations with the state authorities, in accordance with the Associations Act.

It has been established that the co-ordination of the work of several associations of the same national minority is the primary interest of a national minority. This provision creates the possibility for their formation in accordance with the needs and interests of a national minority.

#### **Ad Article 15**

This provision enables the minority associations, independently from the provisions of the Associations Act, to decide freely on the character of their associations. In this manner their specific features can come to full expression, since these associations may acquire legal personality with all the rights and obligations which stem therefrom. This gives them the opportunity to manage property and to protect their rights before the Constitutional Court of the Republic of Croatia.

#### **Ad Article 16**

This provision protects the interests of the majority of members of an individual national minority, without prejudice to the right to establish associations and to the co-operation with all the associations of any individual national minority. This provision primarily obliges the state bodies to principal co-operation with those associations that express the interests and the needs of the predominant part of members of an individual national minority.

### **8. Representation in representative bodies at state and local levels and participation in public affairs**

#### **Ad Article 17**

Public affairs shall mean the affairs whose continuous carrying out under previously known conditions constitutes a precondition for the life and work of citizens and the community as a whole. It is important to point to the fact that these are not affairs that are organized for making profit as a primary goal, but with a view of satisfying the needs of the society and of the citizens.

A part of public affairs is of predominately state interest (administration of justice, public administration), and the state keeps it for itself. A part of them is carried out within local self-government (administrative affairs within local self-government), while a part is left to other entities (communal affairs, health care, education, public transportation, telecommunications and the like).

Paragraph 1 of this Article regulates the participation of members of national minorities in public affairs defined so as to include administration of justice and administrative affairs at all levels (state and local levels).

Paragraph 2 of this Article guarantees members of national minorities the participation in public affairs. This participation is based not only on the principle of non-discrimination, but also on the application of positive discrimination, in case of public affairs relevant for the preservation and promotion of the position of national minorities and the realisation of their rights.

#### **Ad Article 18**

This provision introduces a constitutional possibility for the so-called positive discrimination into the electoral system. This means that in addition to the right to choose their political representatives, members of national minorities have the right to elect their special representatives who represent individual national minorities and their interests in the House of Representatives of the Croatian Parliament. This right will be regulated in the Act on the Election of Representatives to the Croatian National Parliament.

The representation of a national minority, as one of the democratic social values and achievements of the Croatian society, is separated in this manner for the more narrow political orientation and is put into position to primarily protect and promote the rights and interests of national minorities.

#### **Ad Article 19**

The proposed solution ensures a proportional representation not only of the Serbian minority, but also of every other minority that meets the prescribed conditions. This solution would be non-discriminatory in relation to different minorities and would ensure equal position under equal conditions to all.

#### **Ad Article 20**

The proposed provisions elaborate and render operational the principles laid down in previous Articles, in the manner which will enable their detailed regulation by electoral legislation and other legislation which regulates the composition and functioning of the state authorities.

The proposed solutions are a continuation of the normative practice which was established by the present Constitutional Act on Human Rights and Freedoms and on the Rights of Ethnic and National Communities or Minorities in the Republic of

Croatia (N.N., 65/91, 27/92, 34/92 – amended text, 68/95 and 51/2000). These solutions acknowledge the objective situation, and, accordingly, recognise the scope of the acquired rights to national minorities, as well as the rights acquired in international documents.

#### **Ad Article 21**

As regulated in Article 11, the principle of positive discrimination in the realization of the right to vote is applied at the state and local levels. Accordingly, members of national minorities, along with electing their political representatives, have the right to elect their special minority representatives to the representative bodies of the units of local and regional self-government.

Unlike the manner of determination of the number of representatives of a national minority in the House of Representatives of the Croatian Parliament with respect to the percentage of the representation in the population, the present solution on the proportional representation has been kept at the local level, since positive results have been experienced so far.

### **9. Minority self-government**

#### **Ad Article 22**

National minorities can establish minority self-government in the local and regional self-government units, as well as at the state level, for the purpose of protection and development of their national identity as a specific form of functional association.

A direct co-operation with the bodies of local and regional self-government as well as with the state bodies is made possible in this way, as well as their consultative role in the regulation of the issues relevant for a national minority.

It shall be necessary to further elaborate the role and the powers of the minority self-government in the Minority Self-government Act.

We specially point to the solution from Paragraph 2 which ensures and protects equal rights of members of the Croatian people and members of other minorities who live in the units in which members of one national minority make up the majority of the population.

#### **Ad Article 23**

The provision of this Article ensures that elected representatives of individual national minorities make up minority self-government. This ensures their legitimacy for the co-operation with representative bodies.

When the national composition of a community or a local self-government is such that the representatives of a national minority make up the majority of representatives,

such representative body has the role of a minority self-government. In other cases a minority self-government is made up of elected representatives.

#### **Article 24**

A minority self-government, as a form of non-territorial operation, can found regional minority self-government comprising several local units. It can also operate at the state level with a view to harmonise their needs and interests.

It should be ensured in this manner that the position of an individual national minority in local units on the entire territory of one or several regions or at the state level is equalised.

#### **Ad Article 25**

Since certain issues are of common interest for several national minorities who live on the same territory, this provision enables their cooperation and way of operation that they evaluate as the most rational one. This is especially significant in the situations when several minorities which are not numerous enough to qualify for an independent minority self-government live on the territory of an individual unit, and their needs and interests mostly coincide.

#### **Ad Article 26**

In order for a minority self-government to be able to exercise its function, it is necessary that it can acquire legal personality as well as the resources for its work. This is provided for in this Article. By becoming a legal person, a minority self-government, as well as the minority associations, acquire the right to protect their rights before the Constitutional Court of the Republic of Croatia.

In addition to that, and subject to a decentralisation of state affairs, certain affairs of exclusive significance for a national minority will be carried out at the local level. In this view it was necessary to envisage the possibility to ensure the resources for the carrying out of these affairs to the minority self-government (e.g. maintenance of schools, libraries, other cultural institutions etc.)

#### **Ad Article 27**

This provision establishes the minimum content of the work of a minority self-government, and grants authority to the units of local and regional self-government to regulate these issues in their statutes in detail.

#### **Ad Article 28**

The provisions of this Article regulate the powers of a minority self-government and the manner of the cooperation with the bodies of community, local or regional self-government. The proposed manner does not envisage the right of veto, but elaborates



the consultative role of a minority self-government as well as the obligation of the representative bodies to discuss their proposals and opinions.

It was deemed that the specific minority interests are protected to a sufficient degree in this manner and that their role in the community is ensured.

#### **Ad Article 29**

As a minority self-government has legal personality and may acquire property, on the basis of the provisions of this Constitutional Act, the moment of its founding must be recorded. Therefore, a special register is to be established, and a minority self-government may start to exercise all the rights regarding legal transactions, as of that moment. The Register is to be kept by the Ministry of Justice, Administration and Local Self-government as the central body of state administration that is competent for the local self-government affairs.

#### **10. Protection from any activity which endangers or may endanger the survival and realisation of rights and interests of a national minority**

#### **Ad Article 30**

This provision establishes the protection of national minorities as issues of concern, *ex officio*, of all bodies of state authorities. Such a provision means that these bodies must, upon their own initiative, undertake measures necessary for the protection of minority rights, and that a request of an injured party is not necessary for such a protection.

The proposed solution means that the protection of minority rights shall be a matter of concern especially in judicial proceedings and in all forms of supervision.

#### **Ad Article 31**

This provision enables both associations and individuals to directly approach parliamentary bodies in matters related to the protection and promotion of rights of national minorities, depending on the issues concerned. In this manner the parliamentary bodies have a direct insight in the implementation of this Constitutional Act. The overall procedure of the promotion of minority rights is facilitated as well.

### **III. THE IMPLEMENTATION OF THE CONSTITUTIONAL ACT**

#### **Ad Article 32**

These are the issues regulated in the Rules of Proceedings of the Croatian Parliament. These Rules envisage working bodies competent for the issues of national minorities. They are, for example, the Committee on Human Rights and Rights of National Minorities of the House of Representatives of the Croatian Parliament. Still, we deem it necessary to determine the status and powers of the working bodies of the Croatian Parliament which are empowered to follow the situation regarding the realisation of rights of national minorities also in this Constitutional Act. This puts them also into

position to directly co-operate with the executive authorities, which provides for a more efficient implementation of this Constitutional Act.

#### **Ad Article 33**

In accordance with the Act on the System of State Administration, the central bodies of state administration are ministries and state administrative organisations. Their organisation and competencies are regulated in the Act on the Organisation and Competencies of Ministries and State Administrative Organisations. The Act on the Organisation and Competencies of Ministries and State Administrative Organisations places the affairs related to the protection of minority rights within the competence of the Ministry of Justice, Administration and Local Self-government, as well as other ministries.

This provision defines the powers of the Government of the Republic of Croatia and the central bodies of state administration in the direct implementation of this Constitutional Act.

#### **Ad Article 34**

This provision regulates that the Government of the Republic of Croatia will establish a special advisory body. It will be composed of representatives of national minorities with a view to consider individual issues which relate to the application of legislation on the protection of national minorities as well as other issues of interest for national minorities.

This kind of a body exists today as well. It is the Council of National Minorities, which was founded by the decision of the Government of the Republic of Croatia, upon the initiative of the Venice Commission. However, the purpose of its founding and its powers were not regulated by law. Such an advisory body at the level of the executive power will represent an efficient way to promote the protection of national minorities.

#### **Ad Article 35**

This provision obliges the Government of the Republic of Croatia to establish a special expert body for the issues of national minorities and it lays down the tasks of that body. In this manner, the existence of the present Office for National Minorities is established as a legal obligation, which ensures the carrying out of affairs of interest for national minorities.

Such an expert body, the Office for National Minorities of the Government of the Republic of Croatia exists today as well. However, the proposed provision transparently defines its position in the overall system of the protection of national minorities.

## **IV. INTERNATIONAL CO-OPERATION**

**Ad Article 36**

By this provision the Republic of Croatia undertakes an obligation to co-operate and consult, directly or through mixed committees, with the governments and institutions of interested states, as well as international organisations, with a view to safeguard the fullest possible realisation of the rights of national minorities.

**V. FINAL PROVISIONS****Ad Article 37**

Concerning the nature of this act, i.e. that it is a Constitutional Act, the proposed provision protects the rights acquired until its entering into force (either on the basis of international documents, or on the basis of domestic legislation).

**Ad Article 38**

The 2001 census is taken as the basis, as the data on the number of members of a national minority are necessary for the application of the provision on proportional representation.

**Ad Article 39**

Since this Constitutional Act regulates the issue of the position of national minorities in a comprehensive manner, the Constitutional Act on Human Rights and Freedoms and on the Rights of Ethnic and National Communities or Minorities in the Republic of Croatia ("Narodne novine, no. 65/91, 27/92, 34/92- amended text, 68/95 and 51/2000) ceases to be in force as of the date of the entering into force of this Act.

**Ad Article 40**

As this piece of legislation is defined to be a Constitutional Act on the basis of Article 15, Paragraph 2 of the Constitution of the Republic of Croatia, it enters into force on the date of its promulgation.