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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**COMMENTS
ON THE DRAFT CONSTITUTIONAL LAW
ON THE RIGHTS OF NATIONAL MINORITIES
IN CROATIA**

by

Mr Franz MATSCHER (Member, Austria)

1. For several times in the last years the Venice Commission had to deal with the constitutional reform concerning the rights of minorities in Croatia. Various drafts had been presented to the Venice Commission who gave substantial legal opinions [in particular CDL (1996), 26; CDL-INF (2000), 10; CDL-INF (2001), 14]. Partly, the opinions had been accepted and they have influenced further drafts.
2. Recently a new draft, dated 17th July 2002, has been submitted to Parliament (that draft seems to have undergone some amendments in the course of the following days). To that draft Pieter van Dijk submitted some comments. These comments are said to be related to the draft dated 17th July 2002, but the references to various articles seem to refer to another draft with a different numeration but referring to the same subject.
3. In principle, I share van Dijk's comments. But I disagree with him, when he says that the restriction of the notion of minorities to be protected by the law to Croatian citizens (Art 2 and 3) should be deleted or amended. It's true that there are tendencies in the international minority law to refrain from this restriction, but in my opinion, and in spite of a relevant remark in the Venice Commissions opinion CDL-INF (2001) 14 N. 4, one cannot say that international law would command the solution proposed by van Dijk. For instance, the Draft Convention elaborated by the Venice Commission (Art 2) and the Recommendation of the Parliamentary Assembly 1201 (1993) mention expressly the citizen requirement, whereas the Framework Convention is ambiguous in this regard. Of course, all persons, independently of their status as members of a minority, have to enjoy all general human rights, in particular the protection against discrimination, but there are specific minority rights – and not only these of a political character – which may legitimately be reserved to citizen. Furthermore, I do not oversee that international treaty law, for instance the EC-law, may call for different solutions.
4. The Venice Commission [CDL-INF (2001), 14 N. 3] as well as van Dijk's opinion have welcomed the abolition of the list of minorities contained in earlier drafts. Now, a Parliamentary Committee proposes again the inclusion of such a list.
5. Minorities protection may entail provisions which depart from the general rules or the general principles applicable to elections, as set forth in the Guidelines on Elections [CDL-AD (2003) 13]. That is the case for the prospected double vote system, concerning persons which belong to minorities. Such a system must not be in conflict with the said principles which also mention that possibility.
6. Furthermore, special provisions aiming to protect minorities may entail the necessity that the members of a minority who wish to enjoy these special protections must reveal their belonging to a particular minority (for instance at the moment of voting or in the frame of a census). Of course, the confidentiality of the information provided must be protected. There are many possibilities to secure that protection (see for instance the regulations in force in South Tyrol).
7. The last (?) amendments proposed by the Parliaments Committee, partly constitute improvements, partly they raise new questions which have to be resolved.
8. Finally I would like to state that I share entirely van Dijk's conclusions.