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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**FINAL PROPOSAL
OF THE CONSTITUTIONAL LAW
ON THE RIGHTS OF NATIONAL MINORITIES
IN CROATIA**

**Prepared by
the Government of the Republic of Croatia**

And

PROPOSED AMENDMENTS TO ITS ARTICLE 17

**Submitted by
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(President of the Parliamentary Committee for Constitution,
Standing Orders and Political System)
and
the Representatives of National Minorities respectively**

GOVERNMENT OF THE REPUBLIC OF CROATIA
FINAL PROPOSAL OF THE CONSTITUTIONAL LAW
ON THE RIGHTS OF NATIONAL MINORITIES

Zagreb, 19 November 2002

1. BASIC PROVISIONS

Article 1

The rights and freedoms of persons who belong to national minorities (hereinafter: members of a national minority), as basic human rights and freedoms, shall be an inseparable part of the democratic system of the Republic of Croatia and shall enjoy necessary support and protection, including positive measures to the benefit of national minorities, with the objective of contribution to the promotion of development of the Republic of Croatia by way of ethnic and multicultural diversity and spirit of understanding, mutual respect and tolerance.

Article 2

(1) Every citizen [gradjanin] of the Republic of Croatia shall have: the right to express freely that he is a member of a national minority in the Republic of Croatia; the right to exercise, alone or together with other members of that national minority or with members of other national minorities, the rights and freedoms stipulated by this Constitutional Law and other minority rights and freedoms stipulated by special laws.

(2) Members of national minorities shall exercise the rights and freedoms stipulated by the Constitution of the Republic of Croatia, as well as the rights and freedoms stipulated by this Constitutional Law and special laws, in the equal manner as other citizens [gradjani] of the Republic of Croatia.

(3) National minorities and their members shall exercise the rights and freedoms stipulated by this Constitutional Law and the rights and freedoms of members of national minorities stipulated by special laws, in the manner and under the conditions stipulated by this Constitutional Law and special laws.

(4) Any discrimination based on affiliation to a national minority shall be forbidden. Members of national minorities shall be guaranteed equality before the law and equal legal protection.

(5) The undertaking of measures which change the proportion among the population in the areas inhabited by persons who belong to national minorities and which are directed at hindering the exercise or the restriction of rights and freedoms stipulated by this Constitutional Law and special laws, shall be forbidden.

(6) This Constitutional Law or a special law shall provide for the exercise of certain rights and freedoms depending on the numerical representation of members of national

minorities in the Republic of Croatia or in one of its areas, on their acquired rights and on the international agreement.

Article 3

(1) A national minority in the sense of this Law shall be a group of Croatian citizens [gradjani] which is smaller in terms of numbers than the rest of the population, whose members have been traditionally settled in the territory of the Republic of Croatia, and who have ethnic, linguistic, cultural and/or religious characteristics which are different than those of the rest of the population, and who are guided by the wish for the preservation of those characteristics.

Article 4

(1) The Republic of Croatia may conclude international agreements with other countries whereby it shall regulate the issues of the rights and freedoms of members of national minorities in the Republic of Croatia.

(2) On the occasion of concluding international agreements as per Paragraph 1 of this Article, the Republic of Croatia shall advocate the standpoint that they should create and promote conditions necessary for the preservation and development of culture of members of national minorities, and preservation of significant components of their identity, that is, their religion, language, tradition and cultural heritage.

Article 5

The Republic of Croatia shall ensure the exercise of special rights and freedoms of members of national minorities which they enjoy individually or together with other persons belonging to the same national minority, and together with members of other national minorities when it is stipulated by this Constitutional Law or a special law, in particular:

1. the use of their language and script privately, in public use and in official use;
2. education in the language and script which they use;
3. the use of their signs and symbols;
4. cultural autonomy by way of preservation, development and expression of one's own culture and the preservation and protection of one's cultural assets and tradition;
5. the right to profess one's religion and to establish religious communities together with other members of that religion;
6. access to the media and the performance of activities of public information (receiving and forwarding information) in the language and script which they use;
7. self-organising and association for the purpose of exercising mutual interests;
8. representation in the representative bodies at the state and local level and in administrative and judicial bodies;
9. to the minority self-government;
10. protection from any activity which endangers or may endanger their existence, the exercise of rights and freedoms.

Article 6

The provisions of this Constitutional Law and provisions of special laws regulating the rights and freedoms of members of national minorities shall be interpreted and applied for the purpose of respecting the members of national minorities and other citizens [gradjani] of the Republic of Croatia, the development of understanding, solidarity, tolerance and dialogue among them.

II. RIGHTS AND FREEDOMS

Article 7

(1) Members of national minorities shall have the right to use their surname and name in a language which they use, and to its official recognition for them and their children through the entry into registers of births, marriages and deaths and other official documents, in compliance with the regulations of the Republic of Croatia.

(2) Members of national minorities shall have the right to have the form for the personal identification card printed and filled out also in the language and script which they use.

Article 8

Members of national minorities shall have the right to freely use their language and script, privately and publicly, including the right to display signs, inscriptions and other information in the language and script which they use, in compliance with the law.

Article 9

(1) Members of national minorities shall have the right to education in the language and script which they use.

(2) The education of members of a national minority shall be performed in pre-school institutions, primary and secondary schools and other school institutions (hereinafter: school institution), with the education in the language and script which they use, under the conditions and in the manner stipulated by a special law on the education in the language and script of national minorities.

(3) School institutions with the education in the language and script of a national minority may be established and education may be conducted for a smaller number of pupils than the number which is stipulated for school institutions with education in the Croatian language and script.

(4) The curriculum in the language and script of a national minority shall, except for the general part, obligatorily contain a part, the content of which is related to a specific quality of a national minority (mother tongue, literature, history, geography and cultural opus of a national minority).

(5) The right and obligation of pupils educated in the language and script of national minorities shall be to learn the Croatian language and Latin script according to the determined curriculum, apart from their own language and script.

(6) Educational work in a school institution with the education in the language and script of a national minority shall be conducted by teachers from among the ranks of a national minority who have excellent command of the language of the national minority.

(7) The institutions of higher education shall organise the conduct of the programme of education of school counsellors and teachers for the performance of tasks of education in the language and script used by national minorities in the part containing specific qualities of a national minority (mother tongue, literature, history, geography and cultural creativity of a national minority).

(8) Members of national minorities may establish pre-school institutions, primary and secondary schools and institutions of higher education for the purpose of conducting the education of members of national minorities in the manner and under the conditions stipulated by laws.

Article 10

(1) The equal official use of the language and script used by members of a national minority shall be exercised in the area of a local self-government unit, when members of a particular national minority comprise at least one third of the population of such a unit.

(2) The equal official use of the language and script used by members of a national minority shall also be exercised when it is anticipated in the international agreements of which the Republic of Croatia is a party and when it is stipulated by the statute of a local self-government unit or by the statute of a regional self-government unit in compliance with the provisions of a special law on the use of the language and script of national minorities in the Republic of Croatia.

(3) Other conditions and the manner of official use of the language and script used by members of a national minority in the representative and executive bodies and in the procedure before administrative bodies of local self-government units and regional self-government units, in the procedure before the state administration bodies of first instance, in the procedure before judicial bodies of first instance, in the procedures conducted by the State Prosecutor's Office and notaries public, and by legal persons with public powers, shall be regulated by a special law on the use of language and script of national minorities.

Article 11

The law which regulates the use of language and script of national minorities, and/or the statutes of local self-government units shall stipulate the measures providing for the preservation of traditional names and signs and giving the names of persons and significant events for the history and culture of a national minority in the Republic of Croatia to settlements, streets and squares in the areas traditionally, or to a considerable number, populated by members of national minorities.

Article 12

(1) The use of signs and symbols of national minorities and the celebration of national minorities' holidays shall be free.

(2) National minorities may display appropriate signs and symbols of national minorities along with the official use of signs and symbols of the Republic of Croatia. When the national anthem and/or a solemn song of a national minority is being performed, the national anthem of the Republic of Croatia shall be obligatorily performed beforehand.

(3) Local and regional self-government units shall be obliged to stipulate by the statute the official use and the manner of use of the flag and symbols of national minorities.

Article 13

(1) For the purpose of preservation, development, promotion and expression of their own national and cultural identity, members of national minorities may establish associations, endowments and foundations, as well as institutions for the performance of public information activities cultural, publishing, museum, library and scientific activities, activities of.

(2) The Republic of Croatia, local self-government units and regional self-government units, shall provide assistance in the establishment and activity of the new and the existing institutions performing the tasks of protection and preservation of cultural assets of significance for national minorities; of the institutions performing activities of education of members of national minorities, the publishing activity and the activity of public information in the languages and script of national minorities.

(3) Associations, endowments, foundations and institutions as per Paragraph 1 of this Article may state in their title that national minorities are their founders.

Article 14

(1) Members of national minorities, their associations and minority self-governments, shall freely maintain contacts with a nation with which they share the same ethnic, linguistic, cultural and/or religious characteristics and with legal persons with the seat in the area of the state of that nation which perform the tasks of education, science, culture, publishing and humanitarian activities.

(2) The associations of members of national minorities and minority self-government may receive from the state bodies of the nation with which they share the characteristics as per Paragraph 1 of this Article and from legal persons of that state, without paying the custom duties, newspapers, magazines, books, movies, videotapes, recordings, in a limited number of copies, which they use for their needs and which they can distribute to members of a national minority without paying a compensation.

(3) The associations of members of national minorities may organise guest performances by professional and amateur cultural and art groups for the members of national minorities and organise other cultural and art performances and exhibitions which contribute to the enrichment of the culture and identity of a national minority. In such cases,

foreign persons participating in the conduct of performances and exhibitions shall not need the work permit.

(4) Members of national minorities may freely express their religious affiliation and profess their religion and, in compliance with that, belong to a religious community.

Article 15

(1) The laws and implementing regulations, which regulate the activities of public information, production and broadcast of radio and television programmes, education, museum and library activity and the protection and preservation of cultural assets, shall create the conditions for the acquaintance of all citizens of the Republic of Croatia, especially of children and youth, through the content of educational work and obligatory, as well as optional educational subjects, with history, culture and religion of national minorities.

(2) With the objective of exercising the provisions of Paragraph 1 of this Article, the measures shall be undertaken which will alleviate the access to the media for members of national minorities.

Article 16

(1) Radio and television stations at the national, regional and local level shall have the task of promoting understanding for the members of a national minority, to produce and/or broadcast programmes intended for the information of members of national minorities in the languages of national minorities, the production and broadcast of programmes which stimulate and improve the preservation, development and expression of cultural, religious and other identity of national minorities, the preservation and protection of their cultural assets and tradition and the production and broadcast of programmes by which members of a national minority in that area get acquainted with the work and tasks of a minority self-government. Legal persons performing the activity of public information (the press, radio and television) shall enable the associations of members of national minorities and institutions of national minorities to participate in the creation of the programme intended for national minorities.

(2) With the aim of exercising the rights of members of national minorities to the information through the press, radio and television in the script and language of a national minority, members of national minorities, their minority self-governments and their associations may perform the activity of public information (publish newspapers, produce and broadcast radio and television programme and perform the activity of news agencies), in compliance with the law.

Article 17

(1) Members of national minorities shall have the right to representation in the Croatian Parliament.

(2) The manner of exercising the rights of members of national minorities to representation in the Croatian Parliament shall be regulated by a law regulating the election of representatives to the Croatian Parliament.

(3) Apart from the universal suffrage, a law regulating the election of representatives to the Croatian Parliament may provide members of national minorities with a special right to elect their representatives.

Article 18

(1) The Republic of Croatia shall guarantee members of national minorities the right to representation in the representative bodies of local self-government units and in the representative bodies of regional self-government units.

(2) If at least one member of a national minority, which participates in the population of the local self-government unit with more than 5 % and less than 15 %, is not elected in the representative body of the self-government unit on the basis of universal suffrage, the number of members of the representative body of the self-government unit shall be increased by one member, and the member of a national minority, who was not elected first according to the proportional success of each slate in the elections, shall be considered elected, unless otherwise stipulated by the law regulating the election of members of the representative body of a local self-government unit.

(3) If, based on universal suffrage, a national minority which accounts for at least 15% in the population of a local self-government unit, is not represented in the representative body of the local self-government unit by the number of members of the national minority which is proportional to its share in the population of that local self-government unit, the number of members of the representative body of the unit shall be increased up to the number which is necessary to exercise the representation, and those members of a certain minority, who were not elected, according to the order of proportional success of each slate in the elections, shall be considered elected, unless otherwise stipulated by the law regulating the election of members of the representative body of a local self-government unit.

(4) If, based on universal suffrage, a national minority which accounts for more than 5 % in the population of a regional self-government unit, is not represented in the representative body of the unit by the number of members proportional to its share in the population of that regional self-government unit, the number of members of the representative body of the unit shall be increased up to the number which is necessary to exercise the representation, and those members of a certain minority, who were not elected, according to the order of proportional success of each slate in the elections, shall be considered elected, unless otherwise stipulated by the law regulating the election of members of the representative body of a regional self-government unit.

(5) If the representation of members of national minorities in the representative body of a self-government unit is not reached even with the application of the provisions as per Paragraphs 2, 3 and 4 of this Article, in compliance with these provisions, by-elections shall be called in the self-government unit.

(6) The nomination and election of members of the representative body of a local and regional self-government unit pursuant to the provisions of Paragraphs 2, 3, 4 and 5 of this Article, shall be regulated by the law regulating the election of members of representative bodies of local and regional self-government units.

(7) The official census results shall be relevant to the determination of the number of members of a national minority for the implementation of the provisions of this Article. Prior to each election, the official census results on the number of members of national minorities in a local or regional self-government unit shall be conformed to possible changes registered in the last confirmed voter's list of that unit.

Article 19

Local self-government units and regional self-government units, in which members of national minorities do not constitute the majority of population, may determine by their statutes that members of a national minority or national minorities, or a larger number of members of a national minority or national minorities, are elected in the representative body of a local self-government unit or regional self-government unit than it ensues from their share in the total population of the unit.

Article 20

(1) In a self-government unit in which, pursuant to the provisions of this Constitutional Law, proportional representation of the members of its representative body needs to be ensured from among the ranks of members of national minorities, the representation of the representatives of a national minority shall be ensured in its executive body.

(2) The members of national minorities shall be ensured representation in the state administration and judicial bodies in compliance with the provisions of a special law, taking into account the share of members of national minorities in the total population at the level at which the state administration or judicial body was established and the acquired rights.

(3) Members of national minorities shall be ensured representation in the administrative bodies of self-government units in compliance with the provisions of a special law regulating local and regional self-government and in compliance with the acquired rights.

III MINORITY SELF-GOVERNMENT IN SELF-GOVERNMENT UNITS

Article 21

Members of national minorities shall elect, in the manner and under the conditions stipulated by this Constitutional Law, minority self-governments, that is, minority representatives in self-government units in order to improve, preserve and protect the position of national minorities in the society.

Article 22

(1) National minorities may elect minority self-government in self-government units in the area of which members of an individual national minority participate with at least 1.5 % in the total population of the self-government unit or local self-government units in the area of which more than 200 members of an individual national minority are living, and in the area of regional self-government units in which more than 500 members of a national minority are living.

(2) Ten representatives, members of a national minority, shall be elected into minority self-government of a municipality, 15 members into minority self-government of a town and 25 members into minority self-government of a county.

(3) In cases when at least one of the conditions as per Paragraph 1 of this Article for the election of minority self-government has not been fulfilled, and there are at least 100 members of a national minority living in the area of minority self-government, a minority representative shall be elected for the area of such self-government unit.

(4) The candidates for the representatives of minority self-government, that is, the candidates for minority representatives, may be proposed by the associations of national minorities or by at least 20 members of a national minority from the area of a municipality, that is, 30 members from the area of a town and 50 members from the area of a county.

(5) The members of minority self-governments and minority representatives shall be elected directly, by secret ballot, for a four-year term, and the provisions of the Law, which regulate the election of the members of representative bodies of local self-government units, shall be appropriately applied to the election procedure and other issues related to their election.

(6) The census, corrected (increased or decreased) by that number of voters who are registered in or deleted from the voter's list, compiled for the election of members of representative bodies of local self-government units, shall be relevant to the determination of the number of members of a national minority for the conduct of the provisions of this Article.

Article 23

(1) Minority self-government shall be a non-profit legal person. It shall acquire the capacity of a legal person by the entry into the minority self-government register, which is kept by the Ministry competent for general administration affairs.

(2) The title of minority self-government shall be in the Croatian language and Latin script, as well as in the language and script used by the national minority which elected minority self-government.

(3) The title of minority self-government shall contain the sign of the national minority and the sign of the area for which it was elected.

Article 24

(1) The bodies of minority self-government shall be the Council and the President of the Council.

(2) The Council of Minority Self-government shall comprise members of a national minority, elected pursuant to the provision of Article 22 of this Constitutional Law.

(3) The members of the Council of Minority Self-government shall elect the President of the Council by secret ballot. The Council of Minority Self-government shall also elect a

person who shall replace the President of the Council in case of his absence or him being prevented to perform his duty.

Article 25

(1) The Council of Minority Self-government shall pass the working programme, financial plan and annual financial statement, as well as the statute which regulates the issues of significance for the work of minority self-government.

(2) The President of the Council of Minority Self-government shall represent and act on behalf of minority self-government, convene the sessions of the Council and have the rights and obligations set forth by the Statute of Minority Self-government.

(3) The Council of Minority Self-government shall pass the Statute of Minority Self-government, working programme, financial plan and the annual financial statement by the majority of votes of its members.

(4) The statute, financial plan and the annual financial statement of minority self-government shall be published in the official gazette of the self-government unit for the area for which minority self-government was established.

Article 26

(1) Self-government units shall provide the funds for the work of minority self-government bodies, including the funds for the performance of administration tasks for their needs, and they may also provide the funds for the conduct of specific activities set forth in the working programme of minority self-government.

(2) The funds for the exercise of specific programmes of minority self-government may also be provided from the state budget of the Republic of Croatia.

Article 27

(1) The funds, which minority self-government gains from its property, from donations, gifts, inheritance or some other basis, may be used exclusively for the activities and tasks of importance for the national minority which were determined in the working programme of minority self-government.

(2) The funds, which minority self-government gains from the state budget of the Republic of Croatia or the budget of a local self-government unit, may be used exclusively for the purposes determined in the budget and law, that is, by a decision which regulates the execution of the budget, or for the purposes determined by the Council for National Minorities, in the case of funds from the state budget of the Republic of Croatia.

(3) When minority self-government purchases goods or services or performs works using the funds as per Paragraph 2 of this Article, it may only use them under the conditions and in the manner stipulated by the Law on Public Purchase.

Article 28

(1) The members of minority self-government and of its bodies shall perform their duties, as a rule, voluntarily and with the care of a good host.

(2) The members of minority self-government and members of its bodies may only receive a compensation for the costs they had while performing the tasks for minority self-government from minority self-government funds, as well as a reward, on a monthly basis or some other period of time, if approved, and to the amount approved, by the minister competent for general administration.

Article 29

Minority self-governments in a self-government unit shall have the right to:

- propose to the bodies of a self-government unit the measures for the improvement of the position of a national minority in the state or in an area thereof, including the submission of proposals of general acts which regulate the issues of significance for a national minority to the bodies which adopt them;
- propose candidates for duties in state administrative bodies and bodies of self-government units;
- be informed about each issue which the working bodies of the representative body of a self-government unit will discuss, and which pertains to the position of a national minority;
- provide opinions and proposals with regard to the programmes of radio and television stations at the local and regional level intended for national minorities or which deal with minority issues.

Article 30

(1) The authorities of a self-government unit shall be obliged, in the preparation of proposals of general acts, to request from a minority self-government established for its area an opinion and proposals with regard to the provisions which regulate the rights and freedoms of national minorities.

(2) Should minority self-government deem that a general act of a self-government unit or some of its provisions, is contrary to the Constitution, this Constitutional Law or special laws regulating the rights and freedoms of national minorities, it shall be obliged to immediately inform about it the ministry competent for general administration. It shall also inform on that the authorities of the self-government unit and the Council for National Minorities.

(3) If the Ministry competent for general administration evaluates that the general act as per Paragraph 2 of this Article or some of its provisions is contrary to the Constitution, this Constitutional Law or special laws which regulate rights and freedoms of national minorities, it shall terminate its implementation within eight days.

(4) The decision on the termination of implementation shall be forwarded, without a delay to the municipal mayor, city mayor, that is, to the county perfect and to the president of the representative body which passed the general act.

(5) The Ministry competent for general administration shall forward to the Government of the Republic of Croatia the decision on the termination of implementation of the general act with the proposal for the initiation of the procedure for the assessment of conformity with the Constitution and law before the Constitutional Court of the Republic of Croatia and it shall inform a self-government unit on that.

(6) The termination of the implementation of the general act shall cease if the Government of the Republic of Croatia does not initiate a procedure as per Paragraph 5 of this Article within 30 days.

Article 31

(1) Two or more minority self-governments of local self-government units or regional self-government units may establish the co-ordination of minority self-governments for the purpose of conformation and promotion of mutual interests.

(2) Minority self-governments shall conform the positions on the issues from their scope of activities through the co-ordination of minority self-governments.

(3) Minority self-governments may authorise the co-ordination of minority self-governments to undertake the measures as per Article 29 of this Constitutional Law, on their behalf.

(4) It shall be considered that minority self-governments of regional self-government units have established a co-ordination of minority self-governments for the area of the Republic of Croatia when more than half of minority self-governments of regional self-government units joined the agreement on the establishment of this co-ordination.

(5) The co-ordination of minority self-governments, which was established by the minority self-governments of regional self-government units for the areas of the Republic of Croatia, may pass decisions on signs and symbols of national minorities and holidays of national minorities.

Article 32

(1) A minority representative shall perform his tasks under the title which has to be in the Croatian language and Latin script and in the language and script used by the national minority which elected him and which contains the mark of the area for which he was elected.

(2) A minority representative shall open an account for funds which are used for the exercise of minority rights in the area of a local self-government unit for which he was elected, the financial plan for the use of those funds and the annual financial statement for those funds. The financial plan and the annual financial statement for the funds used for the exercise of minority rights shall be published in the official gazette of the area of the self – government unit for which the minority representative has been elected.

(3) The provisions of Articles 26, 27, 28, 29, 30 and 31 of this Constitutional Law shall be adequately applied to a minority representative and his competencies and duties.

IV THE COUNCIL FOR NATIONAL MINORITIES

Article 33

(1) The Council for National Minorities shall be established in order to discuss, propose, regulate and resolve issues related to the exercise and protection of rights and freedoms of national minorities. With that goal, the Council shall co-operate with the competent state bodies and bodies of self-government units, minority self-governments, associations of national minorities and legal persons performing the activities, through which minority rights and freedoms are exercised.

(2) The Council for National Minorities shall have the right to:

- propose to the bodies of state authorities to discuss certain issues of significance for a national minority, particularly the implementation of this Constitutional Law and special laws regulating minority rights and freedoms;
- propose to the bodies of state authorities measures to improve the position of a national minority in the state or in an area thereof;
- provide opinions and proposals about the programmes of public radio stations and public television intended for national minorities and about the manner in which minority issues are being treated in the programmes of public radio stations and public television and other media;
- propose the undertaking of economic, social and other measures in the areas that are traditionally or in a significant number inhabited by the members of national minorities in order to preserve their existence in those areas.

(3) The Council for National Minorities shall allocate the funds provided from the state budget for the needs of national minorities. The beneficiaries of the funds shall submit annual reports to the Council on the expenditure of the funds which were allocated to them from the state budget, of which the Council shall inform the Government of the Republic of Croatia and the Croatian Parliament. The Council shall co-operate with the competent bodies of the Council of Europe in the issues of interest for national minorities in the Republic of Croatia.

(4) If the Council for National Minorities fails to pass a decision on the allocation of funds as per Paragraph 3 of this Article within 90 days from the adoption of the state budget, the Government of the Republic of Croatia shall pass a decision on it.

Article 34

(1) The Government of the Republic of Croatia shall appoint members of the Council for National Minorities for a four-year term, as follows:

- seven members, members of national minorities, from among the ranks of persons proposed by minority self-governments,
- five members, members of national minorities, from among the ranks of distinguished cultural, scientific, expert, religious employees from among the ranks of persons proposed by minority associations and other minority organisations, religious communities, legal persons and citizens, members of national minorities.

(2) The members of the Council for National Minorities shall also be representatives of national minorities in the Croatian Parliament.

(3) The Council for National Minorities shall have a President and a Deputy President. The President of the Council and the Deputy President of the Council shall be appointed by the Government of the Republic of Croatia from among the ranks of the members of the Council, which are appointed pursuant to the provision of Paragraph 1 of this Article.

(4) On the occasion of the appointment of members of the Council for National Minorities, the Government of the Republic of Croatia shall take into account the share of members of particular national minorities in the total population of the Republic of Croatia, as well as the fact that the composition of the Council shall reflect their identity and specific quality, historical values, ethnic, cultural and every other diversity.

(5) The President of the Council for National Minorities shall perform his/her duty professionally and he/she shall be the Head of the Expert Office of the Council.

(6) The Government of the Republic of Croatia shall establish the Expert Office of the Council for the performance of expert and administrative tasks for the Council for National Minorities and it shall determine the approximate number of its senior and lower- grade civil servants.

(7) The Council for National Minorities shall adopt a Rulebook on the Internal Order of the Expert Office of the Council at the proposal of the President of the Council.

(8) The working programme of the Council for National Minorities, the financial plan and the annual financial statement of the funds of the Council for National Minorities, and the acts, whereby the Council for National Minorities allocates the funds provided in the state budget for the needs of national minorities, shall be published in the "Official Gazette".

V. SUPERVISION

Article 35

(1) The exercise of the rights and freedoms of national minorities guaranteed by the Constitution shall be supervised by state administration bodies in the issues from their competence pursuant to this Constitutional Law and special laws.

(2) The Government of the Republic of Croatia shall co-ordinate the work of state administration bodies in the implementation of this Constitutional Law and special laws regulating the issues of significance for national minorities.

Article 36

(1) Minority self-government and a minority representative, in a self-government unit may request from the competent state administration body to conduct supervision over the implementation of this Constitutional Law and special laws regulating the rights and freedoms of national minorities on the part of the bodies of self-government units in which they are established and to undertake measures providing for the legal operation of those

bodies, on which it shall inform the Council for National Minorities which shall be obliged to inform minority self-government and a minority representative, about its opinion.

(2) The Council for National Minorities may request from the Government of the Republic of Croatia to conduct supervision over the implementation of this Constitutional Law and special laws regulating the rights and freedoms of national minorities on the part of state administration bodies and to undertake measures providing for the legal operation of those bodies.

(3) Minority self-governments and a minority representative, as well as the Council for National Minorities shall have the right, in compliance with the provisions of the Constitutional Law on the Constitutional Court of the Republic of Croatia, to file a constitutional complaint before the Constitutional Court of the Republic of Croatia if they deem, by their own assessment or upon an initiative of members of a national minority, that the rights and freedoms of members of national minorities, stipulated by this Constitutional Law and special laws, have been violated.

VI. INTERIM AND FINAL PROVISIONS

Article 37

(1) The provisions of Articles 17 of this Constitutional Law shall be applied from the day of coming into effect of the law which shall, in compliance with these provisions, regulate the election of representatives to the Croatian Parliament.

(2) The representative bodies of local and regional self-government units, which term of office still runs, and in which the right to representation of minority representatives has not been exercised, in compliance with the provisions of Article 18 of this Constitutional Law, shall be filled in with an appropriate number of members of minority representatives in a manner and within deadlines pursuant to the law which regulates the election of members of representative bodies of local and regional self-government units.

Article 38

Nothing contained in this Law shall be interpreted as if it includes any kind of right to perform any activity or conduct acts contrary to the fundamental principles of the international law, and in particular the sovereignty, unity, territorial integrity and independence of the Republic of Croatia.

Article 39

This Constitutional Law shall neither change nor abolish the rights of national minorities acquired on the basis of international agreements in which the Republic of Croatia is a contracting party.

Article 40

(1) The Government of the Republic of Croatia shall appoint the members of the Council for National Minorities as per the provision of Article 34, Paragraph 1 of this Law,

and the President of the Council for National Minorities and his Deputy within 90 days from the day of coming into effect of this Constitutional Law, at the latest.

(2) If minority self-governments have not been established before the expiration of the deadline as per Paragraph 1 of this Article, or if minority self-governments do not propose candidates for the members of the Council for National Minorities to the Government of the Republic of Croatia, the Council for National Minorities shall be comprised of the members elected pursuant to the provisions of Article 34, Paragraph 1, Sub-paragraph 2 and of the members determined pursuant to the provisions of Article 34, Paragraph 2 of this Constitutional Law.

(3) Until the establishment of the Expert Office of the Council for National Minorities, the expert and administrative tasks for the Council for National Minorities shall be performed by the Office for National Minorities of the Government of the Republic of Croatia.

Article 41

(1) The provisions of Article 4, Paragraph 1, Item 1 of the Law on the Use of Language and Script of National Minorities ("Official Gazette", No. 51/2000) shall cease to be valid on the day of coming into effect of this Constitutional Law.

(2) On the day of coming into effect of this Constitutional Law, the provisions of Article 9 of the Law on the Election of Members of Representative Bodies of Local and Regional Self-government Units ("Official Gazette" No. 33/2001) shall cease to be applied in the part stipulating the election of members of representative bodies of local and regional self-government units from among the ranks of members of national minorities, and the provisions of Article 61 of the Law on the Election of Members of Representative Bodies of Local and Regional Self-government Units shall cease to be valid.

Article 42

The Constitutional Law on Human Rights and 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 text, 51/2000 and 105/2000- amended text) shall cease to be valid on the day of coming into effect of this Constitutional Law.

Article 43

This Constitutional Law shall come into effect on the day of its publication in the "Official Gazette".

E X P L A N A T I O N

I. REASONS FOR THE ADOPTION OF THE LAW

The Constitution of the Republic of Croatia stipulates in the provision of Article 15: "(1) Members of all national minorities shall be guaranteed equality in the Republic of Croatia. (2) The equality and protection of the rights of national minorities shall be regulated

by the Constitutional Law, which shall be adopted pursuant to the procedure of passing organic laws. (3) Besides the universal suffrage, the Law may ensure a special right to members of national minorities to elect their representatives into the Croatian Parliament. (4) Members of all national minorities shall be guaranteed the freedom to express their national affiliation, freedom to use their language and script and cultural autonomy.” The Republic of Croatia is a party in several international agreements which regulate the protection of national minorities and the rights and freedoms of members of national minorities. Those are the Framework Convention for the Protection of National Minorities (the Law on Ratification of the Framework Convention was published in the “Official Gazette – International Agreements”, No. 14/97), then the Convention for the Protection of Human Rights and Basic Freedoms and the Protocols to this Convention (the Law on Ratification of the Convention and of the Protocols to the Convention was published in the “Official Gazette – International Agreements”, No. 18/97), then the European Charter on Regional or Minority Languages (the Law on Ratification of the European Charter was published in the “Official Gazette – International Agreements”, No. 18/97). The rights of national minorities are also determined by the Instrument for the Protection of Minority Rights of the Central European Initiative (this Instrument, which is not an international agreement, was signed on 30 April 1996 by the Foreign Ministers of Austria, Bosnia and Herzegovina, Hungary, Italy, Macedonia, Poland and Croatia and it is open for signature to other members of the Central European Initiative).

The protection of national minorities and of the rights and freedoms of members of national minorities in the Republic of Croatia are regulated by the Constitutional Law on Human Rights and Freedoms and on the Rights of Ethnic and National Communities or Minorities in the Republic of Croatia (Official Gazette, No. 35/91, 27/92, 34/92 – consolidated text, 50/2000 and 105/2000 – consolidated text), whereby the temporary non-application of certain provisions of this Constitutional Law was subsequently determined by the Constitutional Law on the Temporary Non-application of Certain Provisions of the Constitutional Law on Human Rights and Freedoms and on the Rights of Ethnic and National Communities or Minorities in the Republic of Croatia (Official Gazette, No. 68/95). Certain rights and freedoms of members of national minorities are also regulated by the provisions of several special laws, such as the Law on Education in the Language and Script of National Minorities (Official Gazette, No. 51/2000), the Law on the Use of Language and Script of National Minorities in the Republic of Croatia (Official Gazette, No. 51/2000), the Law on the Election of Representatives into the Croatian State Parliament (Official Gazette, No. 116/99), the Law on the Election of the Members of Representative Bodies of Local and Regional Self-government Units (Official Gazette, No. 3/2001), the Law on the State Administration System (Official Gazette, No. 75/93, 48/99, 15/2000 and 59/2001). The Republic of Croatia also concluded two bilateral international agreements, whereby it regulated some issues of the protection and exercise of rights and freedoms of the members of Italian and Hungarian national minorities in the Republic of Croatia (those are the Agreement between the Republic of Croatia and the Republic of Hungary on the Protection of the Hungarian Minority in the Republic of Croatia and of the Croatian Minority in the Republic of Hungary – “Official Gazette – International Agreements”, No. 8/95 and the Agreement between the Republic of Croatia and the Republic of Italy on the Rights of Minorities – “Official Gazette – International Agreements”, No. 18/97). Indeed, the protection of national minorities and the exercise of certain rights and freedoms of members of national minorities in the Republic of Croatia are also provided for by the fact that the Republic of Croatia allocates significant funds in the state budget, whereby it assists or ensures the work of associations of national minorities and the performance of activities in

the area of public information, education, science, culture, publishing, which are of interest for national minorities.

The circumstance that the Constitutional Law on Human Rights and Freedoms and on the Rights of Ethnic and National Communities or Minorities in the Republic of Croatia was adopted before the Republic of Croatia became a contractual party of the above-mentioned international agreements, that, by the conclusion of the Framework Convention for the Protection of National Minorities the Republic of Croatia undertook the obligation to regulate the protection of national minorities and the exercise of certain rights and freedoms of members of national minorities, which are not regulated by the laws of the Republic of Croatia or which are not regulated in compliance with the provisions of the Framework Convention; the need to regulate, by the Constitutional Law, the principles on which the regulation of the protection of national minorities and the rights and freedoms of members of national minorities is based, which have already been regulated by special laws or will be regulated by special laws; and the need to regulate, by the Constitutional Law, the issues of the improvement, preservation and protection of the position of national minorities through the institution of minority self-government in local self-government units and in regional self-government units, and the need for the adoption of the Constitutional Law in formal and legal and in substantial sense, in compliance with the amendments to the Constitution adopted after the coming into effect of the valid Constitutional Law, represent a reason for the adoption of this Constitutional Law.

By the adoption of this Constitutional Law, the protection of national minorities and the rights and freedoms of members of national minorities will be regulated in compliance with the Constitution of the Republic of Croatia and international agreements, of which the Republic of Croatia is a part. In that, the provisions of the Constitutional Law do not start only from the need to regulate the rights and freedoms of members of national minorities and their protection, but also from the need to maintain ethnic and multicultural diversity, and development of the spirit of understanding, mutual respect and tolerance, with the aim of contributing to the promotion of development of the Republic of Croatia.

II. ISSUES BEING RESOLVED BY THE CONSTITUTIONAL LAW

In compliance with the Constitution of the Republic of Croatia, the provision of the Framework Convention for the Protection of National Minorities and other international agreements of which the Republic of Croatia is a participant, this Constitutional Law regulates the following issues in particular:

- when a group of Croatian citizens constitutes a national minority
- freedom of expression of national affiliation by determining that every member of a national minority has the right to choose freely whether he will be treated as such;
- members of national minorities are guaranteed equality before the law and equal legal protection;
- any discrimination based on the affiliation with a national minority is forbidden;
- the right of members of national minorities to free use of their language and script, privately and publicly;

- the right to equal official use of the language and script used by members of national minorities, in the manner and under the conditions stipulated by this Constitutional Law and a special law;
- the right of members of national minorities to education in the language and script which they use;
- the right to a cultural autonomy;
- the right to use signs and symbols of national minorities;
- the right to expression of their religion and establishment of religious communities together with other members of that religion;
- the right to free maintenance of connections with the nation to which members of a national minority belong, and with the institutions and legal persons of the parent country;
- the right of access of national minorities to the media and performance of public information activities in the language and script which they use;
- the right of members of national minorities to representation in the Croatian Parliament, representation in the representative bodies of local self-government units and regional self-government units and representation in state administration bodies and judicial bodies, as well as bodies of local and regional self-government units, in the manner and under the conditions stipulated by this Constitutional Law and special laws.

The election of minority self-governments, or minority representatives in local self-government units and regional self-government units is regulated, their rights and issues connected to their work and relation towards the bodies of state authorities and bodies of local self-government units or regional self-government units.

The Council for National Minorities is established, its activities, composition and other issues in connection with its work are determined with the aim of examination, proposing, regulation and resolution of issues regarding the exercise and protection of rights and freedoms of national minorities.

III. EXPLANATION OF THE PROVISIONS OF THE PROPOSED LAW

1. Article 1

This provision defines the fundamental political and normative standpoint in relation to the protection of national minorities and the rights and freedoms of members of national minorities.

2. Article 2

The Constitution of the Republic of Croatia ("Official Gazette", No. 41/2001 – consolidated text and 55/2001), stipulates in Article 15 that: "equality shall be guaranteed to the members of all national minorities" (Paragraph 1); "the equality and protection of rights of national minorities shall be regulated by the Constitutional Law which shall be adopted according to the procedure for adoption of organic laws" (Paragraph 2); "members of all national minorities shall be guaranteed expression of national affiliation, free use of their language and script and a cultural autonomy." The Constitution of the Republic of Croatia, in Article 82, Paragraph 1, stipulates that: "Laws (organic laws) regulating the rights of national

minorities, shall be passed by the Croatian Parliament, by a two-thirds majority vote of all representatives.”

The provision of Article 15, Paragraph 2 of the Constitution of the Republic of Croatia was applied in the manner that a constitutional law, starting with the Constitutional Law on Human Rights and Freedoms and the Rights of Ethnic and National Communities or Minorities in the Republic of Croatia ("Official Gazette", No. 65/91), was regulating some of the rights and freedoms of members of national minorities (individually or together with other members), while some rights and freedoms were regulated by special (organic) laws. Such an approach was also accepted in this Constitutional Law.

The provision of Paragraph 1 of this Article elaborates the provision of Article 15, Paragraph 4 of the Constitution of the Republic of Croatia, pursuant to which the members of all national minorities are guaranteed the freedom of expression of national affiliation and the appropriate provisions of Article 9 of the Framework Convention for the Protection of National Minorities (hereinafter: the Framework Convention).

The provisions of Paragraphs 2 and 3 of this Article stipulate that members of national minorities have and exercise all those rights and freedoms granted by the Constitution of the Republic of Croatia to all citizens [gradjani] of the Republic of Croatia, and special rights and freedoms stipulated by this Constitutional Law and special laws (e.g. the Law on the Official Use of the Language and Script of Members of National Minorities in the Republic of Croatia, the Law on Education in the Language and Script of National Minorities, laws regulating the election of representatives who are members of national minorities to the Croatian Parliament and of members of representative bodies of local and regional self-government units etc.), which they exercise in the manner and under the conditions stipulated by this Constitutional Law and other laws.

The provision of Paragraph 3 stipulates the principles of protection of members of national minorities, in compliance with the Constitution of the Republic of Croatia and the provisions of the Framework Convention.

The provision of Paragraph 4 of this Article forbids the undertaking of certain measures which change the ratio among the population in the areas populated by persons belonging to national minorities and it is based on the provision of Article 16 of the Framework Convention.

The provision of Paragraph 5 of this Article accepts the understanding on the part of the Constitutional Court of the Republic of Croatia from the Decision and Ruling of 12 April 2000 ("Official Gazette", No. 36/2001) that the legal establishment of a difference in the exercise of rights between members of national minorities depending on their share in the population of the Republic of Croatia is not inconsistent with constitutional provisions. In the part in which the exercise of certain rights and freedoms is linked to “acquired rights”, this provision covers those rights which were accepted by the Republic of Croatia in the letter of the Government of the Republic of Croatia to the United Nations Security Council of 13 January 1977 [1997], “for the completion of peaceful reintegration of the region under transitional administration, the Republic of Croatia” (this letter guarantees to the Serb ethnic community in the region under transitional administration that they will have the position of deputy county prefect in Osijek-Baranja and Vukovar-Sirmium Counties; the proportional representation of Serbs is guaranteed, including the highest positions in the local health

services, police and justice system and the number of local policemen, members of the Serb and other non-Croat communities, is determined; the appointment of representatives of the Serb ethnic community to high positions in the Ministry of Development and Reconstruction, as well as in the Office for Expellees and Refugees, at the level which is not lower than assistant minister in the ministries of interior, justice, education and culture; the right to appropriate representation at the level of experts in the working bodies of the Croatian Parliament, etc.). In the part in which the exercise of certain rights and freedoms depends on international agreements, the rights from the Agreement between the Republic of Croatia and the Republic of Hungary on the Protection of the Hungarian Minority in the Republic of Croatia and of the Croatian Minority in the Republic of Hungary “Official Gazette – International Agreements”, No. 8/95 and the Agreement between the Republic of Croatia and the Italian Republic on the Rights of Minorities – “Official Gazette – International Agreements”, No. 18/97, are encompassed.

3. Article 3

The Constitution of the Republic of Croatia ("Official Gazette", No. 56/90), in the Historical Foundations, established the Republic of Croatia “as the national state of the Croatian nation and the state of members of other nations and minorities who are its citizens: Serbs, Moslems, Slovenes, Czechs, Slovaks, Italians, Hungarians and others,....”

The Constitutional Law on Amendments to the Constitution of the Republic of Croatia ("Official Gazette", No. 135/97), in the Historical Foundations, established the Republic of Croatia “as the national state of the Croatian nation and the state of members of autochthonous national minorities: Serbs, Czechs, Slovaks, Italians, Hungarians, Jews, Germans, Austrians, Ukrainians, Ruthenians and others, who are its citizens,”

The Constitutional Law on Amendments to the Constitutional Law on Human Rights and Freedoms and the Rights of Ethnic and National Communities or Minorities ("Official Gazette", No. 51/2000), denotes the following as national minorities: Albanians, Austrians, Bosniaks, Bulgarians, Montenegrins, Czechs, Hungarians, Macedonians, Germans, Poles, Romas, Rumanians, Russians, Ruthenians, Slovaks, Slovenes, Serbs, Italians, Turks, Ukrainians, Vlachs, Jews and other ethnic and national communities and follows their universal development.”

This Constitutional Law does not determine the national minorities in the Republic of Croatia. The provision of Article 3 defines the notion of national minority in accordance with international documents and, for a major part, it is based on the provision of Article 1, Paragraph 2 of the CEI Instrument for the Protection of Minority Rights. The Constitutional Law grants the position of members of national minorities only to those citizens of the Republic of Croatia who declare themselves as such. Not even the Croatian citizens who have not declared themselves as members of one of the national minorities in the Republic of Croatia have rights provided by this Constitutional Law or other constitutional laws (only) to Croatian citizens who are members of a national minority. They have rights equal to these, but not on the basis of this Constitutional Law and special laws on the rights of national minorities, but pursuant to the Constitution of the Republic of Croatia and other laws. They do not have the special rights, such as the right to elect their representatives to self-government units, representatives to the Croatian Parliament and similar. Thus, not even the persons who are citizens of other states, and who are staying in the territory of the Republic of Croatia, can be members of a national minority in the Republic of Croatia. The citizens of

the Republic of Italy or the Republic of Austria who live and work in the Republic of Croatia are not members of the Italian or Austrian national minority in the Republic of Croatia and they do not have the rights granted to members of ~~these~~ national minorities under this Constitutional Law and special laws. They have all those fundamental human rights and freedoms which are stipulated in the Constitution of the Republic of Croatia and other regulations of the Republic of Croatia for foreigners staying in the Republic of Croatia.

4. Article 4

The provision of Article 18 of the Framework Convention stipulates that parties to the Framework Convention (the Republic of Croatia is a party to the Framework Convention) shall endeavour to conclude, where necessary, bilateral and multilateral agreements with other states, in particular neighbouring states, in order to ensure the protection of persons belonging to the national minorities concerned.

The Republic of Croatia already has two international agreements as per this Article. Those are the Agreement between the Republic of Croatia and the Republic of Hungary on the Protection of the Hungarian Minority in the Republic of Croatia and of the Croatian Minority in the Republic of Hungary and the Agreement between the Republic of Croatia and the Republic of Italy on Minority Rights.

5. Article 5

This provision determines the rights and freedoms of members of national minorities, especially those which the Republic of Croatia has accepted to recognise by signing the Framework Convention on the Rights of National Minorities, some of which rights and freedoms are stipulated in more detail by this Constitutional Law, and some are elaborated by special laws.

6. Article 6

This provision is regulated in compliance with the provisions of Article 2 and Article 6 of the Framework Convention and stipulates the obligation of the bodies of state executive authorities, the bodies of local self-government units and regional self-government units and others who apply this Constitutional Law and the provisions of special laws regulating the rights and freedoms of members of national minorities.

7. Article 7

This provision is based on the provision of Article 11 of the Law on the Ratification of the Framework Convention for the Protection of National Minorities ("Official Gazette", No. 14/97) – (hereinafter: the Framework Convention) and provides for the implementation of the provision of Article 8, Paragraphs 2 and 3 of the Law on the Personal Identification Card ("Official Gazette", No. 11/2002), according to which: (2) When so determined by a special law or international agreements, the form of the personal identification card for a person – a national minority member, is also printed in the language of the national minority. (3) The form as per Paragraph 2 of this Article is filled out in the Croatian language and Latin script and in the language and script of members of national minorities.

8. Articles 8, 9, 10 and 41, Paragraph 1

One of the possible ways to determine belonging to national minorities is a special language and/or a special script different from the language and script used by the rest of the population, so one of the basic rights of members of national minorities is also the right to free use of their language and script privately and publicly, to use their language and script in official use under the conditions and in the manner stipulated by this Constitutional Law and a special law, and to have the education of members of national minorities performed in the language and script they use in the manner and under the conditions stipulated by this Constitutional Law and special laws. In that, the principles are stipulated, particularly in the provision of Article 9, according to which the right of members of national minorities to education in their language and script has to be regulated by a special law.

A special law as per Paragraph 2, Article 9, is the Law on Education in the Language and Script of National Minorities ("Official Gazette", No. 51/2000), and the need of recognition that every person who belongs to a national minority has the right to learn in his minority language and script, not interfering with the learning of the official language and script, is stipulated by the provision of Article 14 of the Framework Convention.

A special law as per Article 10, Paragraph 2, is the Law on the Use of Language and Script of National Minorities in the Republic of Croatia ("Official Gazette", No. 51/2000), and the endeavour to provide for the use of the language used by national minorities in the communication with the bodies of authorities is expressed in the provision of Article 10, Paragraphs 2 and 3 of the Framework Convention. Since equal official use of the language and script used by national minorities under the provision of Paragraph 1 of this Article is exercised in the area of a municipality or town, where the members of a particular national minority constitute at least one third of the population of such a self-government unit, the provision of Article 41 of the Constitutional Law stipulates the cessation of validity of the provision of Article 4, Paragraph 1, Item 1 of the Law on the Use of Language and Script of National Minorities in the Republic of Croatia ("Official Gazette", No. 51/2000) whereby the exercise of this right was tied with the need for the members of a particular national minority to constitute the majority of the population in the area of a municipality or town.

9. Article 11

The Law on the Use of Language and Script of National Minorities in the Republic of Croatia ("Official Gazette", No. 51/2000) stipulates in the provision of Article 9 the marking of the name of places and geographic localities, names of streets and squares, as well as written traffic signs and other written indications in traffic, also in the language and script of a national minority in a municipality or town in which the language and script of a national minority is in equal official use (those are the cases from Article 4 of that Law). This provision is also based on Article 13 of the Instrument of the Central European Initiative for the Protection of Rights of National Minorities from 1996.

10. Article 12

The valid Constitutional Law already stipulates, in the provision of Article 9, the freedom of use of signs and symbols of national minorities. The provision of Article 12 **of this Constitutional Law**, stipulating the free use of signs and symbols of national minorities and marking of the holidays of national minorities, is closely linked to Article 31, Paragraph

2, according to which provision the co-ordination of minority self-governments established for the area of the Republic of Croatia passes decisions on the signs and symbols of national minorities and the holidays of national minorities.

11. Article 13

Under the regulations of the Republic of Croatia, members of national minorities have the right to establish trading companies, institutions, associations, funds and foundations, religious communities, political parties and other legal persons, in the manner and under the conditions stipulated by laws, equally to the rights of other Croatian citizens. This provision, because of the significance for national minorities, also particularly stipulates the right to the establishment of those legal persons which perform activities of special significance for national minorities and constitute the foundation of the so-called cultural autonomy of national minorities.

12. Article 14

This provision enables members of national minorities to have contacts with persons from other states with whom they share the ethnic, cultural, language or religious identity, and provides for the exercise of the rights of members of national minorities to a cultural autonomy and to education in their language and script. It regulates certain rights of members of national minorities and their associations in the manner in which those rights are recognised to the members of the Hungarian national minority and their associations by the Law on Ratification of the Agreement between the Republic of Croatia and the Republic of Hungary on the Protection of the Hungarian Minority in the Republic of Croatia and of the Croatian Minority in the Republic of Hungary.

13. Article 15

The implementation of the provision of Article 15 needs to provide for the mutual familiarity and understanding between the members of the Croatian nation and the members of national minorities in the Republic of Croatia, development of understanding and tolerance, neighbourliness and friendly relations.

14. Article 16

The maintenance and development of the culture of national minorities, and the preservation of essential components of identity of national minorities (religion, language, tradition and cultural heritage) is not possible without the right of members of national minorities to information through the press, radio and television, in the language and script (when the press is concerned) used by national minorities. The provision of Paragraph 1 of Article 16, extends the obligation as per Article 53 of the Law on the Croatian Television – “Official Gazette”, No. 17/2001 (“Regional radio stations and regional TV studios are public media of the HRT with a special task to promote regional programmes and programmes in the languages of national minorities in that area”) also to other radio and television stations. With the same aim, the provision of Paragraph 2 stipulates the right of members of national minorities and their institutions to perform public information activities, in compliance with the provision of the Law on Public Information (“Official Gazette”, No. 83/96, 143/98 and 92/2001) and the Law on Telecommunications (“Official Gazette”, No. 76/99, 128/99, 78/2001 and 109/2001).

15. Article 17

Pursuant to the provision of Article 45, Paragraph 5 of the Constitution of the Republic of Croatia, all Croatian citizens, therefore including members of national minorities, have universal and equal suffrage after they have turned 18 years of age, in compliance with the law, which is exercised at immediate elections by secret ballot. The application of this provision, therefore, of the principle of equality of all citizens [gradjana] of the Republic of Croatia in the election of representatives to the Croatian Parliament, does not ensure the representation of national minorities in the Croatian Parliament. Therefore, it is necessary to stipulate the manner of exercise of this right by the law which will regulate the election of representatives to the Croatian Parliament, therefore the legal determination of the number of members of national minorities in the representative body of the state. Apart from universal suffrage, the provision of Paragraph 3 of this Article reiterates the constitutional possibility, stipulated in the provision of Article 15, Paragraph 3 of the Constitution of the Republic of Croatia, to provide members of national minorities with a special right to elect their representatives to the Croatian Parliament through that law, wherein the number of representatives elected on the basis of this principle of positive discrimination will be determined by that law.

16. Article 18

The Law on Local and Regional Self-government ("Official Gazette", No. 33/2001), in the provision of Article 28, stipulates an approximate number of the members of representative bodies of self-government units (municipalities from 7 to 13 members, and a maximum of 13 to 19 members, counties from 31 to 51 members). The valid Law on the Election of Members of Representative Bodies of Local and Regional Self-government Units ("Official Gazette", No. 33/2001), stipulates in the provision of Article 9, Paragraph 1 that the number of members of a representative body from the ranks of members of national minorities will be determined by the statutes of self-government units, in accordance with their proportional share in the total population of a self-government unit.

The provision of Article 18 of this Constitutional Law guarantees the representation of members of national minorities in the representative bodies of local self-government units and in the representative bodies of regional self-government units, wherein the number of members of representative bodies from the ranks of a national minority depends on the share of the members of national minorities in the population of the self-government unit. The members of the representative body of a self-government unit are elected on the basis of universal suffrage, and if the representation, stipulated in the provisions of Paragraphs 2 and 3, of representatives of national minorities in the representative body of a local self-government unit or the representation, stipulated in the provision of Paragraph 4, of members of national minorities in the representative body of a regional self-government unit is not achieved in that manner, [it] stipulates the manner of determining the member of a national minority, or members of national minorities, who will be elected as a member of the representative body, and a possibility is open (depending on the electoral system) for that election to be regulated by the law regulating the election of members of the representative body of self-government units.

The provision of Paragraph 7 stipulates the manner of determining the number of members of a national minority for the purpose of implementing this provision, so that the

election of members of the representative body of a local self-government unit from the ranks of members of national minorities could take into account the migrations of population after the census.

17. Article 19

The provision of Article 19 authorizes the self-government units in which members of national minorities do not constitute the majority of the population, to regulate by their statutes that members from the ranks of members of a national minority are elected in their representative body even in a number exceeding the number based on the share of members of national minorities in the unit's population.

18. Article 20

The Constitutional Law on Human Rights and Freedoms and the Rights of Ethnic and National Communities or Minorities in the Republic of Croatia ("Official Gazette", No. 105/2000), in the provision of Article 17, Paragraph 5 stipulates that members of ethnic and national communities or minorities as per Paragraph 1 of this Article (whose share in the population of the Republic of Croatia is more than 8%) have, apart from the right to representation in the Croatian State Parliament and the Government of the Republic of Croatia, as well as the bodies of supreme judicial authority, proportionally to their share in the total population, also the right to representation in "other bodies of State authority of the Republic of Croatia", which is ensured by the Law on the System of State Authority. The Law on the System of State Authority ("Official Gazette", No. 75/93, 48/99, 15/2000 and 59/2001), while not stipulating the limitation as per Article 17, Paragraph 1 of the Constitutional Law, stipulates in the provision of Article 8 that members of national minorities are ensured representation in ministries and state administration organizations, taking into consideration their total share in the population of the Republic of Croatia (Paragraph 1), and the Government of the Republic of Croatia oversees the implementation of representation of members of national minorities in state administration bodies.

The Constitutional Court of the Republic of Croatia, in its Decision and Ruling No. U-I-732/1998, of 12 April 2001 ("Official Gazette", No. 36/2001) expressed the determination that the provision of the right of members of national minorities to representation in state administration bodies through the law cannot be assessed as inconsistent with the accepted and guaranteed principle of positive discrimination as per Article 15, Paragraph 3 of the Constitution of the Republic of Croatia, while it is also based on the principles contained in the Framework Convention for the Protection of National Minorities (Article 4, Paragraphs 2 and 3 and Article 15).

19. Chapter III. Minority Self-government in Self-government Units (Articles 21-32)

In order to improve, preserve and protect the position of national minorities and implement and protect the rights and freedoms of members of national minorities, determined by this Constitutional Law and special laws, the Constitutional Law stipulates the establishment of minority self-government in local self-government units and in regional self-government units (hereinafter: self-government units), and in the cases when the conditions for the establishment of minority self-government stipulated by this Constitutional Law (Article 22) are not fulfilled in a particular self-government unit, the election of a minority representative is stipulated.

Minority self-government is a non-profit legal person (Article 23), and its bodies are the Council for Minority Self-government, comprised of the elected representatives of a national minority, and the President of the Council (Article 24). The funds for the work of a minority self-government are provided from the budget of a self-government unit (Article 26) and from the sources stipulated in the provision of Article 27. The rights granted to minority self-government and minority representatives, for the purpose of improvement, preservation and protection of the position of a national minority and the members of a national minority, are stipulated in the provision of Article 29, while the provision of Article 30 stipulates the obligations of the bodies of a self-government unit and of the state administration bodies in the protection of national minorities and of the rights and freedoms of their members.

Pursuant to the provision of Article 31, minority self-governments established for the areas of regional self-government units may establish co-ordinations of minority self-governments, through which they co-ordinate positions on the issues from their scope of activities and which they may authorize to undertake, on their behalf, measures which minority self-governments are authorized to undertake. It stipulates when a co-ordination for the territory of the Republic of Croatia is considered established pursuant to the Agreement on the Establishment of a Co-ordination of Minority Self-governments.

The provision of Article 32 regulates the issues in relation to the work of a minority representative and stipulates adequate application of the marked provisions of this Constitutional Law to a minority representative.

20. Chapter IV. Council for National Minorities (Articles 33 and 34)

This Constitutional Law establishes the Council for National Minorities which will perform specific tasks with regard to the protection of national minorities and the exercise of the rights and freedoms of members of national minorities at the state level (Article 33), while the provision of Article 34 determines the composition of the Council for National Minorities (12 members, appointed by the Government of the Republic of Croatia, and the representatives of national minorities in the Croatian Parliament are members of the Council *ex officio*, and the manner of performance of professional and administrative tasks for the needs of the Council for National Minorities. On the occasion of appointment of the members of the Council for National Minorities, the Government of the Republic of Croatia must take into consideration not only the share of members of individual national minorities in the population of the Republic of Croatia, but also the need for the Council to comprise members of as large as possible number of national minorities, in order to provide for the protection, also through the work of the Council, of those minority groups which cannot achieve that due to the small number of the members of a national minority.

21. Chapter V. Supervision (Articles 35 and 36)

Regulates the supervision over the implementation of this Constitutional Law and special laws regulating the rights and freedoms of members of national minorities (Article 35) and the competence of a minority self-government, or a minority representative, to request the implementation of supervision from the competent bodies of state administration as well as the competence of the Council for National Minorities to request the implementation of supervision from the Government of the Republic of Croatia.

Stipulates the competence of minority self-governments and of the Council for National Minorities to submit constitutional complaints, in compliance with the provisions of the Constitutional Law on the Constitutional Court of the Republic of Croatia, should they deem that the rights and freedoms of members of national minorities stipulated by this Constitutional Law and special laws have been violated.

22. Article 37

The provision regulating the principles of election of representatives to the Croatian Parliament from the ranks of members of national minorities (Article 17) shall be applied from the day of coming into effect of the laws which will regulate the election of representatives to the Croatian Parliament, in compliance with this provision.

The provision of Paragraph 2 stipulates the election of members of the representative bodies of self-government units whose term of office is running, from the ranks of members of national minorities, in compliance with the provision of Article 18.

23. Article 38

This provision assumed the provision of Article 26 of the Constitutional Law on Human Rights and Freedoms and the Rights of Ethnic and National Minorities in the Republic of Croatia (Official Gazette, No. 105/2000), in a somewhat changed stipulation. Namely, the provision of Article 26 of the Constitutional Law assumed the provision of Article 21 of the Framework Convention for the Protection of National Minorities, and the utterance of this provision of the Framework Convention is not completely suitable to the appropriate provision of the Constitutional Law.

24. Article 39

Since this Constitutional Law is adopted after the Republic of Croatia had concluded several international agreements which regulate the rights of national minorities, the provision of Article 39 explicitly stipulates, so that there would be no doubt in the implementation of these international agreements, that this Constitutional Law does not revoke the rights of national minorities acquired on the basis of (former) international agreements.

25. Article 40

The Government of the Republic of Croatia is obliged to appoint the members of the Council for National Minorities and the President of the Council, which it appoints pursuant to the provision of Article 34, Paragraphs 1 and 2 of the Constitutional Law. A possibility is open for the Council for National Minorities to commence with its work even if its members from the ranks of persons proposed by minority self-governments have not been elected for the reason of failure to elect minority self-governments. Until the Expert Office of the Council for National Minorities has been established, the expert and administrative tasks for the Council shall be performed by the Office for National Minorities of the Government of the Republic of Croatia.

26. Article 41, Paragraph 2

Since the provision of Article 18 stipulates the election of members of the representative bodies of self-government units from the ranks of members of national minorities, the provision of Paragraph 2, Article 41, stipulates the cessation of application of the provision of Article 9 of the Law on the Election of Members of Representative Bodies of Local and Regional Self-government Units (“Official Gazette”, No. 33/2001) to the election of members of representative bodies of self-government units from the ranks of members of national minorities, and the cessation of validity of the provision of Article 61 of that Law. The cessation of validity of the provision of Article 9 of the Law on the Election of Representative Bodies of Local and Regional Self-government Units is not stipulated, because this provision is also applied to the election of members of the Croatian people to the representative bodies of those self-government units in which members of national minorities constitute the majority of the population.

27. Article 42

The Constitutional Law on Human Rights and 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 – consolidated text, 51/2000 and 105/2000 – consolidated text) shall cease to be valid on the day of coming into force of this Constitutional Law.

28. Article 43

The day of publication of this Constitutional Law in the “Official Gazette” is stipulated as the day of its coming into effect. This stipulation is based on the fact that this Constitutional Law is being passed as an organic law.

IV. FUNDS NECESSARY FOR THE IMPLEMENTATION OF THE CONSTITUTIONAL LAW AND THE MANNER OF PROVISION OF THOSE MEANS

The funds for the exercise of certain minority rights and freedoms are provided in the state budget of the Republic of Croatia and in the budgets of some local and regional self-government units, and, in particular cases, also in compliance with special laws (education in the language and script used by national minorities, the official use of language and script used by national minorities).

The adoption of this Law will require the provision of funds in the state budget for the work of the Council for National Minorities, in the foreseen amount of 1,000,000.00 HRK for 2003, as well as the provision of funds in the budgets of local and regional self-government units for the election and work of minority self-governments and minority representatives.

V. DIFFERENCES BETWEEN THE SOLUTIONS OF THE FINAL PROPOSAL OF THE CONSTITUTIONAL LAW AND THE SOLUTIONS FROM THE PROPOSAL OF THE CONSTITUTIONAL LAW, AS WELL AS THE REASONS WHY THOSE DIFFERENCES OCCURRED

The majority of differences between the normative solutions contained in the Proposal of the Constitutional Law and the normative solutions contained in this Final Proposal of the Constitutional Law relates to the more comprehensive or more precise, in terms of the content and in the nomo-technical sense, regulation of certain issues (e.g. Article 2, Paragraph 2, Article 5, Items 4 and 5, Article 12, Paragraph 2, Article 13 /the altered stipulation of this provision resulted in the erasure of the provision of the earlier Article 14/, Article 14, Paragraph 4, Articles 18, 23, 29, Subparagraph 2, Articles 30, 32, 35, 41), starting, as a rule, from the proposals given in the first reading by the Committee for the Constitution, Standing Orders and Political System, the Committee for Legislation and the Committee for Local and Regional Self-government, then by the Committee for Human Rights and the Rights of National Minorities, and also by clubs of representatives and by individual representatives during the discussion on the Proposal of the Constitutional Law.

Other more important differences are:

- the stipulation of principles on which the normative regulation of exercise of the rights of members of national minorities to education in their language and the script they use and equal official use of the language and script used by national minorities has to be based, on which [principles] the existing normative regulation of these issues is based, as well;
- the provision of Article 17 stipulates that members of national minorities have the right to representation in the Croatian Parliament, while the manner of exercising that right will be regulated by the law regulating the election of representatives to the Croatian Parliament, and reiterates the constitutional possibility to recognize a special right for members of national minorities to elect their representatives (the so-called positive discrimination), apart from universal suffrage which they have and exercise equally as other Croatian citizens;
- the provision of Article 18 (which, in Paragraph 1, guarantees the representation of members of national minorities in the representative bodies of self-government units), no longer ensures the representation of members of national minorities in the representative bodies of self-government units (which is stipulated depending on the share of members of national minorities in the total population of the Republic of Croatia) through the holding of by-elections (as was the case according to the Proposal of the Constitutional Law in the appropriate provision, the provision of Article 19), but determines the election of members of national minorities according to the proportional success at the conducted elections, and it also opens the possibility of different regulation of this issue by the law which will stipulate the election of members of representative bodies of self-government units;
- the stipulation that the election of members of representative bodies of ~~local~~ self-government units whose term of office is running, will be held, pursuant to the provision of Article 18, in the manner and within the deadlines which are in compliance with the law regulating the election of members of representative bodies of local and regional self-government units.

VI. PROPOSALS AND OPINIONS WHICH WERE PROVIDED WITH REGARD TO THE PROPOSAL OF THE CONSTITUTIONAL LAW, AND WHICH WERE NOT ACCEPTED BY THE PROPONENT AND THE REASONS FOR THEIR NON-ACCEPTANCE

The following important remarks and proposals were given in the discussion on the Proposal of the Constitutional Law on the Rights of National Minorities during the first reading, which were not accepted in the drafting of the Final Proposal of the Constitutional Law:

1. The proposal that the rights and freedoms of national minorities and their protection are regulated by “an ordinary law”, because it is not in conformity with the provision of Article 15, Paragraph 2 of the Constitution of the Republic of Croatia.
2. The proposal that it is “not necessary, or politically functional to provide the normative definition of a national minority.” Since the Constitution of the Republic of Croatia and the proposal of the Committee for the Constitution, Standing Orders and Political System, the Committee for Legislation and the Committee for Local and Regional Self-government, which was accepted by the proponent in the provision of Article 3, Paragraph 2 of the Constitutional Law, along with the listing of national minorities, stipulate that other groups of Croatian citizens may also be determined as national minorities, it is necessary to stipulate under which conditions a group of Croatian citizens could be determined (through the amendments of the Constitutional Law) as a national minority.
3. The proposal of the Committee for the Constitution, Standing Orders and Political System, the Committee for Legislation and the Committee for Local and Regional Self-government, to determine (in Article 3, by adding Paragraph 2) national minorities in the Republic of Croatia, for the reasons given in the explanation of this provision.
4. The proposal of the Committee for the Constitution, Standing Orders and Political System, the Committee for Legislation and the Committee for Local and Regional Self-government on the normative formulation of the provision of Article 17, which regulates the right of members of national minorities to representation in the Croatian Parliament; instead, this issue was regulated in the previously presented manner.
5. The understanding that the provision of Article 19 (in the Proposal of the Constitutional Law it was the provision of Article 20) that the “benefit of representation in state administration bodies, judicial bodies, executive bodies and administration bodies of towns, municipalities and counties... is contrary to Article 44 of the Constitution of the Republic of Croatia which expressly stipulates that every citizen of the Republic of Croatia, independently of his national origin, has the right, under equal conditions, to participate in the performance of public tasks and be admitted to public services.” was not accepted. Namely, in the provision of Article 16, the Constitution of the Republic of Croatia provides for the possibility to limit the freedoms and rights (therefore, the right from Article 44 of the Constitution, as well) by law in order to protect the freedoms and rights of other people, and the legal system, public morality and health. The provision of Article 19 provides for and protects the right of members of national minorities to accessibility to certain positions and jobs. We point out that, the Constitutional Court of the Republic of Croatia, while assessing the constitutionality of Article 17 of the Constitutional Law on Human Rights and Freedoms and the Rights of Ethnic and National Communities or Minorities of the Republic of Croatia, did not repeal by its Judgment and Decision (“Official Gazette”, No. 36/2001) the provision of Article 17, Paragraph 5, regulating the representation of members of national minorities in the bodies of state authorities of the Republic of Croatia, determining that the provision of legal rights to members of national minorities to their representation, both in the Croatian Parliament and in other bodies of state authorities (this framework certainly includes

ministries and other state administration bodies), cannot be assessed as unconstitutional. The valid Law on the State Administration System (“Official Gazette”, No. 75/93, 92/96, 48/99, 15/2000, 127/2000 and 59/2001) in the provision of Article 8, stipulates the right which is also regulated by the provision of Article 19 of the Constitutional Law. We note that the Framework Convention for the Protection of National Minorities stipulates the obligation of its contracting parties to create the conditions for efficient participation of persons who belong to national minorities in public affairs, as well, especially those which concern themselves.

6. The proposal to adequately stipulate, in accordance with the right to representation of members of national minorities in representative bodies of self-government units pursuant to the provision of Article 18, (also) for Croats in self-government units, in which they participate with less than 50% in the total population, was not accepted. The Constitutional Law as per Article 15, Paragraph 2 of the Constitution of the Republic of Croatia may regulate only the freedoms and rights of members of national minorities, their protection, and Croats are not a national minority in the sense of the Constitution of the Republic of Croatia, this Constitutional Law or any other special law, anywhere in the Republic of Croatia, and, therefore, not even in the areas of local self-government units in which they constitute a minority in relation to the rest of the population. The regulation of representation of members of the Croatian people in those local self-government units in which they constitute a minority of the population may be regulated by a special law. That is *de lege lata* Law on the Election of Members of Representative Bodies of Local and Regional Self-government Units (“Official Gazette”, No. 33/2001), wherein the proponent of the Constitutional Law assesses that the existing provision of Article 9, Paragraph 2 will have to be regulated more fully and precisely than it was the case so far.

7. The remark that the provision of [Article 19](#) does not regulate the issue which was regulated by the provision of Article 19, Paragraph 7 of the Proposal of the Constitutional Law was not granted, but in accordance with the remark, this provision was corrected. The previous provision was corrected in order to address the justified objection to the possibility of increasing the number of members of the representative body, through the unit’s statute, based on the will of such a representative body, in favor of members of a national minority or national minorities and to the detriment of members of the Croatian nation in the self-government units in which members of national minorities constitute the majority of the population and it can be expected, therefore, that they will also constitute the majority of members of the representative body.

8. The proposal of the Committee for Constitution, Standing Orders and Political System, the Committee for Legislation and the Committee for Local and Regional Self-government to erase the wording “particularly through the programmes of public institutions which perform activities of production and broadcasting of a radio and/or television programme, especially children and youth through the content of educational work and required and optional subjects of education” in the provision of Article 15 (in the Proposal of the Constitutional Law that was the provision of Article 16). It is assessed that particularly programmes of public institutions which perform the activity of production and broadcasting of radio and/or television programme intended for children and youth, and educational activities and introduction of optional subjects of education can mostly contribute to the basic commitment of the Constitutional Law expressed in the provision of its Article 1.

AMENDMENT

**Submitted by Mr Mato ARLOVIC,
President of the Parliamentary Committee for Constitution,
Standing Orders and Political Systems**

Article 17 is amended and reads:

“Members of all national minorities shall have the right to representation in the Croatian Parliament.

Members of national minorities, which participate in the electorate of the Republic of Croatia with more than 1.5% of voters shall have the right to the number of representatives which is equal to the number obtained by dividing the number of voters, members of national minorities, who voted, by the average number of voters who voted based on universal and equal suffrage for one representative.

Members of all national minorities, which participate with less than 1.5% of voters in the entire electorate of the Republic of Croatia, shall have the right to elect a minimum of four representatives, members of all national minorities, on the basis of equal voting right for one representative.

The number of representatives referred to in Paragraphs 2 and 3 of this Article may be increased in accordance with the rights and obligations established in ratified international agreements, but in such a manner that the total number of representatives of all national minorities in relation to the total number of representatives in the Croatian Parliament must correspond to the relation between the total number of voters, members of all national minorities, and the total number of voters in the Republic of Croatia.

The law stipulating the election of representatives to the Croatian Parliament shall stipulate the election of representatives of members of all national minorities, in compliance with the Constitution of the Republic of Croatia and this Constitutional Law.”

Unofficial translation

AMENDMENT

Submitted by the Representatives of National Minorities

Article 17 is amended and reads:

“1) All members of national minorities shall be guaranteed the right to representation in the Croatian Parliament.

2) The members of national minorities shall have the right to elect at least five (5) representatives from the special electoral units, in accordance with the law on the elections of representatives in the Croatian Parliament. Such elections may not restrict the acquired rights of national minorities.

3) National minority, which participate with more than 1,5% of voters in the entire electorate of the Republic of Croatia shall be guaranteed at least one representative belonging to this national minority, or the number of representatives equal to the number obtained by dividing the number of voters, members of that national minority, who voted, by the average number of voters who voted on the basis of universal and equal suffrage for one representative.

4) National minorities, which participate with less than 1,5% of voters in the entire electorate of the Republic of Croatia shall have the right to elect at least four (4) representatives, members of national minorities.”

Explanation:

Article 17 of the final proposal of the Constitutional Law on the rights of national minorities is very general, and does not guarantee an adequate representation of national minorities in the Croatian parliament.

Paragraph 1 is not sufficiently precise, and does not ensure that members of national minorities themselves shall elect their representatives in the Parliament.

Paragraph 2 transfers the task to resolve questions related to representation of national minorities in the Croatian Parliament - from the number of representatives, to the procedure of election - to the future law on the election of representatives in the Parliament.

Paragraph 3 is the repetition of Article 15.3 of the Constitution.

The proposed amendment aims to ensure the implementation of the Constitutional provision, and to guarantee to national minorities the acquired rights related to representation in the Croatian Parliament.