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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**COMMENTS ON THE RESPONSE OF
THE GOVERNMENT OF THE REPUBLIC OF CROATIA
TO THE VENICE COMMISSION'S OPINION
ON THE DRAFT CONSTITUTIONAL LAW ON
THE RIGHTS OF NATIONAL MINORITIES (CDL (2002) 150).**

By

**Mr P. Van Dijk
(Member, The Netherlands)**

1. The response by the Croatian Government to the observation made by the Venice Commission concerning the relation between the present Constitutional Law and existing and future special laws regulating rights and freedoms of minorities, is still not fully clear and satisfactory. On the one hand, it is indicated that the Constitutional Law, notwithstanding its name, will not have the status of a constitutional law, which certain (other) laws implementing the Constitution do have. Consequently, the Constitutional Court will not have jurisdiction to review the conformity of special laws concerning minority rights with the Constitutional Law on the Rights of National Minorities. The present Constitutional Law will have the status of an "organic" law. What the hierarchical relationship between an organic law and "ordinary" laws is, and how this relationship may be effectuated by the Croatian courts, is still a matter of further clarification.

However, it is an important improvement that the Constitutional Law will expressly state the principles concerning minority rights which have been implemented by special laws or will be implemented by future such laws.

2. The use of the term "acquired rights" in (former) paragraph 5 of Article 2 of the draft has been further clarified in the response by the Croatian Government. However, the impression remains that the meaning given to the term "acquired rights" in Article 2 is a *pars pro toto*. As appears also from Article 39, there are other relevant "acquired rights" for minorities in Croatia, in particular the rights laid down in international agreements to which Croatia is a party. The use of the same term with different meanings in one and the same law should be avoided.

The response by the Croatian Government does not address the observation made by the Venice Commission, that (former) paragraph 5 of Article 2 of the draft seems to imply that the Constitutional Law may qualify the exercise of the rights to which members of national minorities are entitled under international agreements. For this there would be room only to the extent that the agreement concerned allows for such qualification, since Croatia cannot unilaterally bring about any changes in the scope of its international obligations.

3. In connection with the definition of minorities in Article 3 of the draft, the Croatian Government in its response recognizes the objections made by the Venice Commission, and shows its willingness to at least partly meet them. It would, indeed, mean a substantial improvement if Article 3 would state expressly that the definition given there, is meant to be a definition for the purpose of the Constitutional Law on the Rights of National Minorities only, and is not meant as a general definition for Croatian law, in particular as concerns the restriction to citizens.

In addition, it should be expressly stated, not only in the Explanation but in Article 3 itself, that the definition given there cannot in any way derogate from the rights which national minorities enjoy under the Constitution and other domestic legislation, and under international law, where the restriction to citizens is not a common feature.

4. The Venice Commission would welcome a more detailed regulation, or at least a further clarification, of the concept of "members [of national minorities who] have been traditionally settled in the territory of the Republic of Croatia" in Article 3, in view of the important legal implications of the scope of this concept.

5. The principle that a voting system should start from the one-man-one-vote rule is recognized by the Croatian Government in its response. However, what the consequences of this recognition will be for the ultimate voting system laid down in the Constitutional Law on the Rights of National Minorities is not clearly indicated, nor is a convincing reason given for the distinction made between the Serb minority on the one hand, and the other minorities.

Moreover, while stating that if a special voting right is to be granted to members of a national minority, the latter will unavoidably have to identify themselves as such, the Croatian Government does not address the issue of how confidentiality of such identification will be protected for those in need of such protection.

6. As concerns the powers and rights allocated to minority self-government, the Croatian Government indicates in its response that the observations made by the Venice Commission on the limited scope of these powers and rights will be partly met in the amended draft, while an explanation is provided for some of the remaining limitations.

7. The question raised by the Venice Commission concerning the relationship between the existing Council of National Minorities and the Office for National Minorities, on the one hand, and the proposed Council for National Minorities and its Expert Service, on the other hand, has been answered by the Croatian Government, which also indicates that the suggestion to expressly lay down the right of the Council to be consulted about proposed legislation concerning national minorities will be followed.

8. The Venice Commission welcomes the intention of the Croatian Government to re-introduce in the draft the promotion of national and cultural identity of a national minority as one of the purposes of minority associations.