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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

COMMENTS

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

by

Mr Franz MATSCHER
(Member, Austria)

1. For several times in the last years the Venice Commission and its Rapporteurs had to deal with various drafts concerning the rights of minorities in Croatia.

It to be supposed that the law as adopted in the Croatian Parliament on December 13th, 2002 constitutes the final and definitive version.

When commenting the successive drafts the Rapporteurs raised a series of questions which, in their opinion needed a clarification.

The purpose of the present comments is to see to which extent the questions raised by the Rapporteurs have found a satisfactory response in the final text of the law.

2. As to the notion of minorities: As I have explained in my former comments (CDL (2002) 113) I have no objection against the limitation of the special minority rules to Croatia citizens (Art 3 – 5). Of course, the general Human Rights as enshrined e.g. in the European Convention may be enjoyed by every person, regardless of their citizenship and their belonging to a minority (this seems to be the meaning of Art 2).

3. The non-inclusion in the law of an official list of the minorities, as suggested by the Venice Commission, is welcomed.

4. The Venice Commission pointed out that the element in the definition of national minorities: “whose members have been traditionally settled.....” (new Article 5) would need a clarification. In my opinion this could be done in an Explanatory Report to the constitutional law, but it would be difficult to find an appropriate and comprehensive formula for the law itself. Besides, the problem in question is not a particular one for Croatia.

5. The double use of the notion of “acquired rights” (with partly different bearing) has been avoided. No objection against the use of this notion in Articles 19 and 141.

6. I do not think that the question of the formal status of the present “constitutional law” within the frame of the constitution of Croatia has found a satisfactory clarification.

7. Leaving aside the above mentioned points, I find that the constitutional law as adopted on December 13th, 2002 seems to be a fair basis for the settlement of the minority problems existing in Croatia. But I would like to stress that much will depend on the ordinary legislation to be elaborated in order to implement the rules of the Constitutional Law. This concerns i.a. the rather sophisticated electoral system at the state, at the regional and the local level (Article 19 ss), the representation of members of national minorities in the state administration and in the judicial bodies.