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The Role of Human and Minority Rights in the Process of Reconstruction and Reconciliation for State and Nation-Building: Croatia
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MIRICO: Human and Minority Rights in the Life Cycle of Ethnic Conflicts
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1. Introduction

Croatia, as defined in the Preamble of its Constitution, is

[The national state of the Croatian nation and the state of the members of autochthonous national minorities: Serbs, Czechs, Slovaks, Italians, Hungarians, Jews, Germans, Austrians, Ukrainians and Ruthenians and the others who are citizens, and who are guaranteed equality with citizens of Croatian nationality and the realization of national rights in accordance with the democratic norms of the United Nations Organization and the countries of the free world.]

Even though the proclamation of nation-state is not necessarily linked with (the emergence of) ethno-nationalism, the nation-state that was proclaimed in 1991 led to aggravated dissatisfaction on the part the Serbs, who formerly constituted the second titular nation in Croatia made up 12.5% of the population in 1991. The Preamble of the aforementioned Constitution points towards the ethno-nationalist attitude of the legislator. In this context, ethno-nationalism could be understood as “the political principle postulating that every ethnic group which considers itself a nation has a legitimate claim to sovereignty”.

Croatia was clearly one of former communist countries that, triggered by the end of the Cold War, failed to resist unleashing the various effects of nationalism that resulted from decades under the corrupt communist regime and the chaos of the failed economy. Therefore, it is not surprising, from this historical distance, to understand how easily politicians (and former political dissidents who regained power) and other actors who contributed to ethno-mobilisation (such as army leaders, major religious figures, prominent intellectuals) manipulated the medium of the mass-media to stir up nationalism, which eventually contributed to the outbreak of inter-ethnic conflicts and wars.

At that time, aggressive policies of nation building were justified by the fact that in the first part of 1990s, over one-third of the territory was occupied by Serb rebels. Ruptures in inter-ethnic relations from the previous decade, particularly between the majority population and the Serbs came out as a consequence of the 1991-95 war in Croatia. The following paragraph will attempt to offer an overview of the conflict phases, assuming the life-cycle of a conflict encompasses pre-conflict, conflict and post-conflicts phases. Given this premise, the conflict that took place on the territory of Croatia at the beginning of 1990s can be divided chronologically into the following periods:

The first pre-conflict phase (i.e. the beginning segment in which “the differences between the conflicting parties become clearly defined and people begin to take sides openly” and “the language of ‘us and them’ starts being widely used”) began at the end of 1980s with the escalation of nationalistic discourse in

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* The first and the second part of the report were prepared by Antonija Petrićušić, the third and the forth one by Marko Knezić.


2 The part of the Constitutional Preamble reads: “Considering the presented historical facts and universally accepted principles of the modern world, as well as the inalienable and indivisible, non-transferable and non-exhaustible right of the Croatian nation to self-determination and state sovereignty, including its fully maintained right to secession and association, as basic provisions for peace and stability of the international order...”.


4 Compare Ivan Krastev and Alina Mungiu-Pippidi (Ed.), op.cit.
Serbia. More precisely, one can easily argue that the turning point in the escalation of the violent conflict was the so-called “Bloody Easter”. On 31 March 1991 the first human casualties were counted on both sides during a conflict between the Croatian police forces and armed Serb insurgents in the Plitvice National Park. Preexisting tensions between the two biggest ethnic communities in the country, the Croats and the Serbs, escalated shortly after Croatia declared independence on 25 June 1991. On 19 December 1991, the Assembly of the Serbian Autonomous Region of Krajina, together with Serbs from other parts of Croatia, officially declared independence from Croatia and formed a new entity, the Republika Srpska Krajina (Republic of Serbian Krajina, RSK). It comprised the municipalities or parts of Benkovac, Donji Lapac, Drniš, Gračac, Knin, Korenica, Obrovac, Šibenik, Sinj, and Zadar. The RSK had its own military force, administration and legislative body. Its army, the Srpska Vojska Krajine (the Serbian Army of Krajina, SVK) was openly backed by the federal army, the Yugoslav People’s Army (JNA).

The conflict phase includes a period of early growth (in which the two sides express open hostility), a period of deadlock (in which the two sides are openly at war while each believes itself to be fighting for a just cause) and finally a period of looking for a way out (in which both sides decide that ending the conflict is problem they must both solve and very often a third party can be introduced to mediate and negotiate). An internationally brokered case fire was launched in February 1992, in accordance with the Vance Plan, when the United Nations Security Council established a United Nations Protection Force (hereinafter referred to as UNPROFOR) under its authority that was to be deployed in the United Nations Protected Areas (so called UNPAs) in Croatia. The UNPAs were areas in which the Serbs constituted the majority or a substantial minority of the population and in which inter-communal tensions had already led to armed conflict. Nevertheless, neither conflicting side respected the case fire. The Croatian army, attempting to regain territory, launched several military operations against the RSK in 1992, 1993 and 1995. These operations were launched in the Miljevacki Plateau in June 1992, in the area of the Maslenica bridge in northern Dalmatia in January 1993, and in the Medak Pocket in September 1993. Operation Flash was launched in Western Slavonia in May 1995 and Operation Storm in August 1995. The Operation Sotrm offensive resulted in the displacement of an estimated 150,000-200,000 Krajina Serbs, who fled or were forced to flee, during and in the aftermath of the offensive. It resulted in the surrender of the Republic of Serbian Krajina. However, Eastern Slavonia, Baranja and Western Sirmium, which were also part of the RSK were administered by the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES) until 1998. UNTAES was deployed in order to allow for the peaceful reintegration of that territory of Croatia, while avoiding a massive exodus of the Serb inhabitants.

Finally, the post-conflict phase encompassing dispute settlement, conflict resolution and cooperation between the formerly conflicting sides comes into being once the hostilities have stopped. Issues of refugee return, house repossession and

5 For more information on the ethnic-mobilization, its actors and consequences see the MIRICO country report on ethnic mobilization in Croatia.

6 More on the process for conflict resolution and various attempts to broker peace fires and draft peace agreements see MIRICO country report on Conflict Settlement Agreements in Croatia.

reconstruction, restoration of a market economy in a conflict area, the re-establishment of the educational system, elections for the (local) government and demobilization usually prove crucial in achieving a successful post-conflict phase. No less important is a degree of (inter-ethnic) reconciliation, a process that requires both conflicting parties to face the recent past objectively. Conflict transformation should therefore be understood as a long, sometimes even never-ending or permanent process. The present report will deal with the last phase of conflict in Croatia. By describing the historic context of the human rights and minority situation in (post-)conflict society, and analyzing the parallel processes of state- and nation-building as well as the role of state institutions in the reconstruction and reconciliation process, and by investigating the role of political parties, media, civil society and the educational system in the post-conflict setting in Croatia, this report aims to assess how institutional mechanisms and various actors, both domestic and international, have contributed to democratic consolidation, regional stability and inter-ethnic co-existence and co-operation in the processes of state- and nation-building. By analyzing actors and institutional mechanisms in the reconstruction and reconciliation phase, the report covers such topics as the minority education, minority members’ access to the labour market and the realization of the right to political representation and participation. These issues are considered to be the most important areas that contribute to ending the vicious circle of minority exclusion. Finally, the report addresses the questions of refugee return and the restitution of the refugees’ property, as these issues have burdened Croatia both politically and economically up to the present day.

The basic hypothesis of this report is that for conflict transformation to be successful and viable, it must be sustained by non-discriminatory governmental policies and accompanied by international community monitoring efforts, in addition to being acceptable to both conflicting sides. The methodology used in preparing the paper encompassed research on the academic literature dealing with state and nation-building, conflict transformation and peace building, the importance of economic reconstruction to conflict resolution, as well as research on the legislative and institutional framework that was put in place in Croatia to allow for the realization of minority rights.

In conducting the research, several relevant domestic actors who have a say in issues related to reconstruction and reconciliation, hailing from both state institutions and the civil sector, were interviewed. The research also included the inspection of relevant international actors’ monitoring mechanisms (predominantly the reports of the OSCE; CERD; ECRI, as those expert bodies addressed the problem of insufficient governmental policies regarding the return of the minority population, discriminatory treatment in the repossession and reconstruction of property or in the realization of some other human and minority rights in the areas of return). Finally, since the performance of the state institutions was to be assessed along the lines of the Copenhagen criteria – democracy, rule of law, protection of human and minority rights, as well as economic re-construction and the re-establishment of a multi-cultural society – the European Commission’s progress reports served as a crucial evaluator of the state’s ability to meet these criteria.
2. Concepts and Definitions Relevant for Human and Minority Rights Considering State- and Nation-Building and Reconstruction and Reconciliation

2.1. 19th Century Ideas: Yugoslavism and Croatian Separatism

Croatian nation-building[^8] is a relatively recent process that has been developing since the nineteenth century.[^9] Nationalist movements that emerged at that time were a typical example of so-called nineteenth-century nationalism[^10] that attempted to create a political organization dominated by one ethnic group.[^11] Smaller nations of Central Europe that were incorporated in big empires of that time had started to express an intention to revive national heritage, reasserting their existence as nations by reviving historical traditions of the nation, introducing national languages as official, and claiming more autonomy from the central government and better education and enlightenment for the common people.

Similarly to Slovenes, Serbs, Czechs, Slovaks, Ukrainians and Romanians, the Croatian nation was dispersed among different empires. The territory of Croatia had not been organized in a state since medieval times, in the form of the independent mediaeval state of Croatia in the ninth century and the Kingdom of Croats in the tenth century. Historically, parts of Croatian lands were ruled by the Habsburgs, the Hungarians, the Ottoman Empire or the Venetian Republic. Habsburg centralization and Germanization and subsequently Hungarian nationalism and Magyarization resulted in the reduction of Croatian


[^11]: In contrast to this kind of nationalism, the twentieth century nationalism, like the one in Nazi Germany, is expansionistic and shauvinistic, created by an expanded sense of ethnic identity. Similar to this phenomenon is so-called „racial Nationalism“ which Hannah Arendt described and which can be subscribed to Central and Eastern Europen nationalism in 1990s. See Hannah Arendt, *Elemente und Ursprünge Totaler Herrschaft* (The Origin of Totalitarianism) (Frankfurt am Main, 1955).
autonomy. The Croatian nobility and intelligentsia, under Ban Josip Jelačić, hoping for national unification and greater autonomy within the empire, sided sometimes with the Austrian dynasty and sometimes with the Hungarians.

At that time, nation-building in Croatia was closely linked to the Croatian National Revival (Hrvatski narodni preporod) or Illyrian Movement — a movement for national renewal and unity of all South Slavs within the Habsburg Monarchy that began in the early 1830s. The idea of pan-Slavic unification had roots as far back as the fifteenth and sixteenth centuries, when it was promoted in the literary writings of poets Šižgorić and Probojević.12 A nationalistic campaign in the nineteenth century was orchestrated by the intellectuals and clergymen, and led by the linguistic reformer Ljudevit Gaj. The Illyrianists strove to defend Croatian interests by calling for the unification of all South Slavs, to be facilitated through the adoption of a single literary language. Believing in the unifying force of linguistic proximity, Gaj hoped it would contribute to the rapid development of nationhood among the Croats. However, he:

[H]as not understood in time that nationhood requires besides prerequisites such a feeling of belonging, apprehension of own background, common history and national myth, building of the national conscience ideology (that subsequently integrates social classes, and merges different faiths and positions), democratization of politics, striving towards the common future along with highly developed political, economic, cultural and institutional goals and bounds.13

Though the Illyrianists failed to win over the other South Slavs, they did succeed in integrating the linguistically and administratively divided Croats within one national movement.

The necessity of relying on the other South Slavs in opposing the Habsburgs and the Hungarians kept alive an idea of the Illyrianism, which was later revived in the 1860s under the name Yugoslavism. The movement had its leading figure in Bishop Josip Juraj Štrossmajer who advocated South Slav unity within a federated Habsburg state as the basis for an independent Balkan state. Subsequently, the Yugoslavist position supported the idea of joining the Kingdom of Serbs, Croats and Slovenes in 1918.

The emergence of nationalist ideas in nineteenth century also encouraged the development of the political organizations that advocated the idea of Croatian ‘state rights’ and aspired to create an independent Great Croatia. The most prominent was the Party of Right, led by Ante Starčević. He and Eugen Kvaternik “condemned Illyrism as a tragic error, rejected the Yugoslav framework for Croatia and attempted to proclaim all South Slavs Croats.”14 This idea was reawakened between 1941-1945 when a collaborationist puppet-state was put in place, and renewed again in the early 1990s, when the dissolution of Yugoslavia began. The Independent State of Croatia “mirrored the contemporary Italian-German model and had the cult of the nation, the state and the leaders at its centre.”15 The use of traditional Croatian symbols and vocabulary was widely deployed in the Independent State of Croatia. Similarly attempts to achieve “‘purity of the Croatian language’, which was to be cleansed of all ‘Serbisms’ in 1941, that were

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13 Ibid., 99.
14 Ivo Glodstein, Croatia. A History (McGill-Queen’s University Press, Quebec and Ontario, 2001), 75.
15 Ibid., 135.
introduced in 1991 drastically resembled those applied by the Ustaša regime and caused discomfort and fear on the side of Serbs.\(^{16}\)

### 2.2. 1990s: Affirmation of the Nation

The ethno-nationalism that emerged in the territory of former Yugoslav states resembled so called racial nationalism (der völkische Nationalismus) in contrast to the Western European (Westeuropäischer Prägung) one that resulted in nation-states emergence after the French Revolution in the nineteenth century.\(^{17}\)

The wording of the Constitution’s Preamble “reaffirmed […] millenary statehood” of Croatia, as well as “[t]he millenary identity of the Croatia nation and the continuity of its statehood”.\(^{18}\) The very same Preamble establishes “the Republic of Croatia […] as the national state of the Croatian nation and the state of the members of autochthonous national minorities”.\(^{19}\) The then Croatian President Franjo Tuđman, who was a historian by vocation, advocated the idea that the Croatian nation belongs to the ranks of the oldest European nations.\(^{20}\) The political establishment, generously supported by former dissident intelligentsia, promoted historical narratives that glorified the Croatian nation and its historical role and achievements.

In order to affirm the Croatian nation and reinforce its unity, President Tuđman introduced the idea of national reconciliation or pan-Croatian reconciliation (nacionalno pomirenje, svehrvatska pomirba), which promoted overcoming the historical split between parts of the Croatian nation that had been ideologically fractioned in the Second World War between communists, pro-fascists and supporters of the Kingdom of Yugoslavia.

At the level of symbols, the newly proclaimed state required notions of self-identification. The flag was redesigned, which caused some controversy since the coat of arms resembled that of the Independent State of Croatia. This caused worries among Croatian Serbs, who feared revanchism resembling that seen during the pro-fascist regime. Of note was the attempt of one part of media to “rehabilitate the NDH (Independent State of Croatia), or at least improve its historical image. Among the Serbs this generated even greater apprehension and animosity.”\(^{21}\) Some authors refer to this period as a time of “Croatian national euphoria”.\(^{22}\) Indeed, there were numerous examples of government employees of Serb origin who were forced to resign, were dismissed, or were forced into retirement. Monuments erected in the time of communism, which often glorified WW2 heroes and anti-fascism, were by rule demolished or removed. At the same time, monuments that glorified Croatain history that had been removed by the communist regime were solemnly re-erected. The standard Croatian language became purified — a policy that was particularly pursued in the state controlled public broadcast and print media. The only orthography that was taught in schools was the Latin script, as Cyrillic was banned in 1992. In addition, discriminatory provisions in the 1991 Law on citizenship denied members of the population of Serb origin who were no longer residing in Croatia the ability to apply for and receive

\(^{16}\) Ibid., see also Reana Senjaković, *Lica društva, likovi države* (Institut za etnologiju i folkloristiku [Biblioteka Nova etnografija], Zagreb, 2002).

\(^{17}\) Hannah Arendt, *op.cit.*

\(^{18}\) Croatian Constitution, Official Gazette 41/01, 55/01.

\(^{19}\) Ibid.


\(^{21}\) Ivo Goldstein, *op.cit.*, 215.

\(^{22}\) Ibid.
citizenship. Subsequently, that deprived them of the right to vote. As a consequence of the international community’s pressure, these discriminatory measures have now been rectified.23

2.3. Reconstruction and Reconciliation - a Long-Lasting and Costly Process

State integration and disintegration lead to economic consequences. The economic costs associated with the dissolution of the SFRY were immense, and the process contributed to the impoverishment of almost all the states that emerged out of the Federation (Slovenia is probably the only example in which disintegration did not affect the economic growth, even though the series of ethnic conflicts that followed the dissolution certainly affected the market expulsion of the enterprises from this country). In other words, the ethnic conflict had implications on the political economy of all of the countries.24

This was true for Croatia, in which even certain amount of ethnic fractionalization25 can be traced in the labour market, particularly with respect to the Serb minority, and more specifically, in the period following the conflict escalation (first part of 1990s) and in the areas of the minority return (after 1995). In the return areas, poor governmental institutions contribute to the reinforcement of such a trend, as has been demonstrated in academic literature concerning Croatia in the paragraphs that follow.26 Even though the Advisory Committee made a proposal back in 2004 to prepare an analysis of the position of persons belonging to national minorities in the labour market, the government has yet to perform this task.27 The employment provisions in the Constitutional Law on the Rights of National Minorities that assure proportional representation of minorities in state

26 William Easterly argues that ethnic diversity has a more adverse effect on economic policy and growth when a government's institutions are poor. In contrast to poor institutions, he argues, high-quality institutions are reflected in such factors as rule of law, bureaucratic quality, freedom from government expropriation, and freedom from government repudiation of contracts-mitigate the adverse economic effects of ethnic fractionalization. In countries where the institutions are good enough ethnic diversity does not lessen growth or worsen economic policies. See William Easterly, “Can Institutions Resolve Ethnic Conflict?”, Economic Development and Cultural Change, at SSRN: <http://ssrn.com/abstract=248579>, 4.
administration need to be properly implemented. Under pressure from the international community, particularly due to the accession process, some changes have been made. For example, in 2007 “a recruitment plan for minorities in the State administration has been prepared, albeit at a certain level of generality and only for the year 2007.”

The return of the minority population and the repossession of property are not commonly recognized as minority rights issues, but in the case of Croatia they have continued to constitute the most sensitive political question since 1995. Not surprisingly, being a costly issue, they require not only adequate and comprehensive legislative framework but also political will to be realized. Even though the right to return should be an unconditional right guaranteed to all refugees regardless of the time of return and of their ethnic origin, public officials’ discriminatory legislation and practices towards Serb returnees in the 1990s were removed only after the change of the government in 2000, and have then been very often hesitantly implemented by local offices of public administration.

The UN High Commissioner for Refugees estimated that more than 250,000 refugees from Croatia fled to other regions of Yugoslavia, of which around 30,000 went to Bosnia-Herzegovina. According to Government’s estimations, the number was slightly lower, as the Croatian authorities claim there were approximately 230,000 refugees from Croatia of Serb ethnic background, 200,000 of whom are in the Federal Republic of Yugoslavia (FRY) while approximately 30,000 are in Bosnia and Herzegovina (BiH). It was also estimated that more than 220,000 Croats were expelled from the areas occupied by Serbs. While the majority of Croats have returned to their prewar houses, this is still not the case for the Serbs. Unconditional return, a term introduced by international human rights organizations in Croatia, denotes the right of all former habitual residents to return to their pre-war homes regardless of their citizenship status. In the first four years after the end of ethnic conflict, only about 32,500 ethnic Serbs returned to Croatia from Bosnia and Herzegovina and the Federal Republic of Yugoslavia.

Following military actions ‘Storm’ and ‘Flash’ in 1995, the Law on the Temporary Take-over and Administration of Specified Property was passed. The law enabled the authorities to place abandoned private property under temporary public administration and, in cases in which the property was abandoned and not used personally by its owners, to give its possession to categories of people specifically recognized by law. Some found a justification for the adoption of such a measure “in the light of the enormous lack of housing facilities and the huge number of refugees and IDPs without suitable accommodation, which was one of the consequences of the war.”

The Law on Reconstruction adopted in 1996 set the criteria and guidelines for the provision of Government funding for reconstruction, including priorities and eligibility criteria that effectively discriminated against Serb applicants. In June

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29 Dragovoljna repatrijacija i održiva reintegracija hrvatskih izbjeglica (Voluntary Reparation and Sustainable reintegration of Croatian Refugees. Program of the Croatian Government), at <http://www.vlada.hr/stability-pact-hrv.html>
30 Croatian Office for Displaced Persons and Refugees (ODPR) Data.
31 Law on the Temporary Take-over and Administration of Specified Property, Official Gazette 63/95, 73/95.
2000, the Parliament amended the Law to remove most of these deficiencies.\(^{34}\) After the discriminatory provisions were removed, equal reconstruction standards were guaranteed so that reconstruction-based rights depended exclusively on the degree of damage and the number of family members who would return and will live in the reconstructed homes upon their completion. However, the authorities have continued to deny reconstruction assistance to an individual whose property was damaged or destroyed by so-called ‘terrorist acts’ or by the Croatian armed forces, with the intention of harmfully affecting primarily Serb property owners. The European Court for Human Rights in Strasbourg ruled against Croatia for having suspended an article in the Law on Obligations\(^{35}\) that outlined the state’s responsibility to compensate damage caused by terrorist acts\(^{36}\), which had implications on the reconstruction of houses destroyed by non-military acts. In the light of this decision, the Ministry of Public Works, Reconstruction and Construction (MPWRC) started to accept applications for reconstruction of houses destroyed by so-called ‘terrorist acts’. Indeed in March 2001, the MPWRC began to bring together legal regulations so progressively all objects damaged or destroyed in terrorist actions would be included in the program of reconstruction. Although the deadlines had been set for the realization of the right to special state assistance for the repair of houses, the final deadline for applying for reconstruction assistance has been extended several times in order to facilitate the submission of requests to all owners, co-owners and protected tenants.

The Government launched the first Program for Return and Accommodation of Displaced Persons, Refugees and Resettled Persons (hereafter: the Return Program) in June 1998.\(^{37}\) The Return Program established procedures for property repossession and guaranteed, regardless of the means of return, equal treatment for all returnees. Croatia was the only country in the region that prepared a Government Reconstruction Program (embodied in the Law on Reconstruction) in addition to the Government Return Plan.

Nevertheless, the Serb returnees were initially discriminated against since ethnic Croats were granted the overwhelming majority of these Government-reconstructed properties, while most of the destroyed Serb housing remained to be repaired or reconstructed. The government was severely criticized by the international community in the second part of the 1990s for blocking the repossession of returning refugees’ property, particularly that of ethnic Serbs, and for failing to provide equal access to reconstruction assistance to returning Croats and ethnic Serbs.\(^{38}\) The state officials were bluntly accused of applying double standards on the basis of ethnicity at all levels of governance. Even though the Return Program was supposed to provide returnees with necessary resources to survive and reintegrate back into society, this was often not the case as the 1996 Law on the Return of Refugees and Internally Displaced Persons contained discriminatory provisions that denied ethnic Serbs their rights as Croat citizens in regard to the repossession of their property, reconstruction assistance and financial help. Minority members willing to return have also been facing problems in acquiring citizenship, work contracts and retirement payments.

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\(^{34}\) Law on Reconstruction, Official Gazette 57/00

\(^{35}\) Law on Obligations, Official Gazette 53/91, 73/91, 3/94. Amendments of 1996 abolished a possibility that was allowing citizens to seek reimbursement for real estate deliberately destroyed by members of the Croatian army and police.

\(^{36}\) ECtHR Case of Vojin and Ana Kutić vs. Croatia, application No. 48778/99.

\(^{37}\) It is estimated that between 1991-1998 about 195,000 residences were destroyed and more than 110,000 have been reconstructed, approximately 105,000 by the Croatian Government and another 4,500 by the international community.

The key principle under the Return Program is property repossession by pre-war owners. It is estimated that:

[U]p to twenty thousand Serb houses were occupied by Croat refugees from Bosnia and Herzegovina and Serbia and Montenegro, Croats displaced from other parts of Croatia during the war, and Croats who had housing elsewhere in Croatia but were given abandoned Serb property for temporary use. Almost all of the properties have now been formally repossessed by their Serb owners.39

Nevertheless, the Return Program makes repossession by owners dependent on the provision of alternative accommodation (AA) for the temporary users. Once an owner has applied for the return of his occupied property, the legal users of that property are to be offered AA in a state-owned house or flat. In this way both international property standards as well as the Croatian Constitution that guarantees right to property were violated. Owners of occupied property firstly submitted claims for repossession of property to the municipal-level Housing Commissions (APN), but within the Action Plan for Property Repossession (Action Plan), the Government took over the responsibility from the Housing Commissions, and also set clear deadlines for the repossession of housing property. Implementation of the Government’s Action Plan to return assets by the end of 2002 has been worked out in detail in order to complete the process of returning all occupied property. The Action Plan was drafted by the MPWRC, which is supposed to be the executive body for its implementation. Even though the Action Plan contained the promise that the property would be returned by the end 2002, those deadlines have already been extended to the middle of 2003.

According to Human Rights Watch (HRW) “reconstruction assistance to returning Serbs began only at the end of 2002 […] and “ [b]etween January 2004 and January 2006, the government reconstructed 4,139 houses, most of them owned by ethnic Serbs.”40 As data from February 2006 indicated:

[M]ore than three thousand applications for reconstruction were still awaiting first-instance decisions by the local offices of the Ministry of Maritime Affairs, Traffic, Tourism, and Development, although the deadline for the submission of the applications had expired on September 30, 2004.

The EC Progress Reports have continuously underlined the necessity of resolving the returnees' housing problem and other related problems they still face in a satisfactory manner. For example, the 2005 Progress Report pointed towards:

[R]eal obstacles to the sustainable return of Serb refugees, such as enduring, hostility in certain localities, and remaining housing concerns, including those involving former tenancy rights holders. Serbs, including those who remained in Croatia during the war, face major difficulties regarding access to employment, especially in the war affected areas. There appear to be many cases, particularly in the education area where adequately qualified Serbs were refused jobs even where no non-Serbs had applied.41

Even the latest Progress Report warns that “[t]here are [...] still obstacles to the sustainable return of Serb refugees, such as enduring hostility in certain localities, and remaining housing concerns, mainly those involving former tenancy rights holders as well as problems with validation of pension rights.”

The problem that remains yet to be resolved concerns the so-called “tenants” of Serb ethnic origin who were deprived their tenancy rights due to the change of legislation. They have lost their occupancy rights to socially owned apartments (stanarsko pravo) because they abandoned them, and in the meantime the legislation that terminated the tenancy rights in abandoned property was passed at the beginning of 1990s. As a result, up to 30,000 Serb families who fled their apartments lost the right to enjoy their lodgings. Again under pressure from the international community, the government adopted a set of measures in June 2003 to enable former tenancy rights holders in cities to rent or purchase government-built apartments at below-market rates. However, only a dozen of the former tenancy rights holders benefited from this 2-year-long program. The absence of results only exacerbated skepticism among refugees that the program would eventually deliver benefits. The bleak prospects for receiving an adequate substitute for lost tenancy rights made many place their hopes in the European Court of Human Rights (ECtHR). Many refugees became discouraged in their attempts after the ECtHR ruled in July 2004 that the rights of an applicant, who had argued that Croatia had breached her right to respect for her home as provided in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and her right to peaceful enjoyment of her possessions (Article 1 of Protocol No.1 to the ECHR), had not been violated because the Court ruled the application was incompatible ratione temporis.

2.4. Ghosts in the Closet: Controversies on the Interpretation of the Recent Past

History teaching in 1900s was adjusted to the new political elite “in order to legitimize their politics. In such a context, history teaching, and in accordance with that sense history textbooks have become weapon of politics and the means of indoctrination.” History teaching remains a controversy that has only recently been tackled, through an initiative to offer a plurality of textbooks beginning in the school year 2007/08. This offered different interpretations of recent history, i.e. the 1990s conflict with the Serb minority. At least one of the textbooks did not assume the stereotypical picture of the Serbs as an enemy and addressed the issue of war crimes towards the Serbs committed by Croatian soldiers.

Following the establishment of the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES), the Government was bound to undertake the reintegration process, including a comprehensive and far-reaching reconciliation programme to re-establish mutual trust, facilitate two-way returns and work towards a normalization of the situation. The government therefore prepared a programme of national reconciliation that was primarily to be implemented in the territory of the Eastern Slavonia, Baranja

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43 ECtHR Case of Blečić v. Croatia, application No. 59532/00.
and Western Sirmium, i.e. areas governed by UNTAES. According to the Government, the programme was “intended to create a climate of tolerance, establish trust between all citizens, and promote the realization of the equality of citizens with respect to State administration.” Nevertheless, the government was accused that it “has made no attempt to lead and support a national programme of reconciliation and confidence-building.”

There was even foreign lobbying to achieve mutual reconciliatory agreements in the region between the state signatories to the Dayton Agreement. For example, on the eve of the tenth anniversary of the Srebrenica massacre, the British Foreign Minister Jack Straw, on behalf of the UK government, put forward the idea that three countries of the region (Bosnia-Herzegovina, Croatia and Serbia and Montenegro) sign a joint declaration of reconciliation that would condemn the crimes of the past and show a resolve for peace and a European future of the region. The agreement was rejected by Croatia and BiH.

During their tenures, President Stjepan Mesić and Prime Minister Ivo Sanader have been continuously conducting symbolic gestures that should contribute to the inter-ethnic reconciliation. In addition, the Serb representatives in the Parliament have been participating in the two last Governments as coalition partners. The current government’s Vice-President is a member of the Independent Democratic Serbian Party (Samostalna demokratska srpska stranka, SDSS). However, local and regional officials have not followed this manifestation of good will towards minorities, particularly the Serbs. The dominant Catholic Church also contributed to the promotion of reconciliation, inter-confessional and inter-religious dialogue, particularly through the messages of its leadership. For example, on the occasion of his three visits to Croatia, the Pope John Paul II encouraged the Catholic believers in Croatia to forgive and to cherish the values of reconciliation. Similarly to the discrepancy between Zagreb-based politicians and local ones, the clergy at the local level does not always follow the instructions of its leadership and does not necessarily advocate forgiveness and mutual coexistence eagerly.

Ethnically motivated incidents, including both verbal insults and physical threats, have been occurring in last few years in parts of Croatia populated by returnees. This further intimidated members of the Serb minority and discouraged their return; particularly because local political leaders do not necessary condemn such incidents.

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45 Letter from the Permanent Representative of Croatia to the President of the Council, S/1997/772, 3 October 1977.
2.5. Facing the Crimes Committed by the Croatian Army: Collective versus Personal Accountability

War-crimes trials should serve as means of establishing truth and catalyst for future peaceful coexistence. Collective guilt and retribution can be avoided only if individual accountability is established. The latter constitutes an important component of reconciliation and conflict prevention. However, the public has not accepted the prosecution of Croatian army leaders and soldiers as necessary and just. The Croatian side is, in the eyes of wider public, perceived as a victim, since the Croats were merely forced to defend the country’s territory and their lives. The public generally rejects the idea that the Croatian side also committed war crimes, and the Croats are therefore not held accountable for the violation of war regulations and for crimes against humanity. The ICTY prosecutor however attempts to prove that the accused generals “knew or had reason to know that Croatian forces under [their] command, direction and/or control, or subordinated to under [them], were committing” war crimes and subsequently “failed to take necessary and reasonable measures to prevent the commission of [war crimes] or punish the perpetrators thereof” and therefore should be personally held accountable.

The role of the ICTY remains particularly unpopular for having identified the role and responsibility of the Croatian army officials in the 1991-1995 conflict. Each time the ICTY prosecution issued an indictment, the public condemned it. A great portion of the population perceives the Hague Tribunal outcomes as an unfair collective punishment of the nation. Nevertheless, the main political parties do not back such a mythologization of war crime suspects. Advocates of this position can be found only among minor extremist nationalist parties without parliamentary representatives. Official backing of the Hague Tribunal was declared back in the mid-1990s, when the Croatian Parliament passed the Constitutional Law on co-operation between the Republic of Croatia and the ICTY. In addition, full cooperation with the Hague Tribunal was a precondition for the opening of negotiations with the European Union, and Croatia’s EU application was delayed by Britain and the Netherlands because of non-cooperation over ICTY indictments.

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52 David Bruce MacDonald, Balkan holocausts?: Serbian and Croatian victim-centred propaganda and the war in Yugoslavia (Manchester University Press, Manchester, 2002).
53 See for example the Indictment against Ante Gotovina, Case No. IT-01-45-I.
54 Constitutional Law on the co-operation between the Republic of Croatia and the International Criminal Tribunal for former Yugoslavia, Official Gazette 32/96.
3. Situation, Role and Performance of Minorities and their Organizations and Institutions

The Republic of Croatia is an area traditionally inhabited by a great number of national minorities whose settlement is connected to various historical periods. However, it is rather difficult to give an unambiguous overview of minority rights in Croatia, as the position of specific minorities varies and greatly depends on their historical background, traditional status, organisational level, and their numbers within specific territories. Keeping in mind this fact, and keeping in mind that the process of reconciliation and reconstruction primarily concerned the largest minority in Croatia — the Serb minority — the following section of the paper will treat primarily, but by no means solely the Serbian national minority in Croatia.

When Croatia achieved international recognition as an independent state in 1992, all non-dominant ethnic communities received official recognition of their minority status, regardless of whether they had formally enjoyed such a status. However, the climate of torn intern-ethnic relations that was the legacy of the 1991-95 war, as well as first years of the post war transitional period did not provide fertile ground for ensuring proper minority rights protection. It can be said that only after the change of the party in power, which occurred in 2000, did the real political transition commence. It was also at this time that important steps towards the implementation of minority rights were made. The international community assumed a significant role in this process. The international community was aware of the violations of minority rights that took place in the first decade of Croatia’s independence, and began applying pressure and offering assistance and guidance to make improvements in this area ever since. Through an analysis of these events and of the legislative framework for minority rights protection in Croatia and its practice, we will try to look more deeply into the process of accommodating human and minority rights in Croatia in the light of reconciliation and reconstruction, thirteen years after the end of the armed conflicts.

3.1. Ethnic Structure of the Population

According to the census carried out by the Central Bureau of Statistics in 2001, 331,383 persons expressed belonging to national minorities, which accounts for 7.47% of the total population. According to the 2001 Census of the Population, in the decade between 1991 and 2001 the total population of Croatia decreased by 7.25% (from 4,784,265 to 4,437,460) while the majority Croatian nation’s share of the total population increased by 11.53% (from 78.1 to 89.63). This was paralleled by sharp decrease in number of national minorities, which fell by 50% and now accounts for 7.47% or 331,383 inhabitants.

According to the 2001 Census of the Population, the first census conducted in independent Croatia, the largest minority in Croatia with 4.54% of the total population (201,631) are the Serbs. In comparison to the 1991 Census of the Population, the number of Serbs decreased by 65%; of Montenegrins by 49%, of Slovenians by 41%, of Macedonians by 32%, of Hungarians by 25%, of Slovaks by 15%, and of Italians by 7%, while at the same time number of Roma increased by 41%, of Albanians by 25%, and of Germans by 10%. The reasons for the dramatic decrease in the largest minority groups could probably be seen as a consequence of the war. This is particularly the case for the Serbian minority group.

55 Data of the Public Institute for the Statistics, at <http://www.dsz.hr>.
3.2. Legal Framework for Minority Rights Protection

The legislative position of minority status and minority rights protection legislation had undergone significant changes between 1990 and today. These changes have always reflected the state policy, and portrayed Croatia’s path from independence, through years of war, into post conflict transition, and on to the pre-EU accession phase.

The legislative regulation of national minority rights protection in Croatia and their actual position in society during the last decade of the twentieth century took place in an environment shaped by the specific events in recent history that had deep consequences and influence on both the regulations themselves and on their implementation. Over the past fifteen years, Croatia has put in place a number of legislative provisions to guarantee the respect of minority rights. The legal position of national minorities in Croatia is regulated by certain provisions of the Constitution of the Republic of Croatia, the provisions of the Constitutional Law on the Rights of National Minorities (CLNM), the Law on Use of the Language and Script of National Minorities in the Republic of Croatia, the Law on Upbringing and Education in the Language and Script of National Minorities, the Law on Amendments to the Law on the Election of Members of the Representative Bodies of Local and Regional Self-Government Units and the Law on the Election of Members of the Parliament. Two additional documents guaranteeing minority rights to Croatian Serbs are the Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium — the Erdut Agreement signed in November 1995, and the January 1997 Letter of Intent by the Croatian Government to the UN Security Council on completing the peaceful reintegration. Croatia signed and ratified the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages, which, according to Article 140 of the Constitution of the Republic of Croatia, constitute part of the internal legal order of the Republic of Croatia and are above the law in terms their legal effects. Their provisions may be changed or repealed only under conditions and though means they specify, or in accordance with the general rules of the international law. In order to better understand the present day legal framework for minority rights in Croatia, it is important to briefly present their status in the period following independence.

One of the preconditions for Croatia’s international recognition was to pass a legal act on the protection of human, and specifically minority, rights protection. The Constitutional Law on Human Rights and Freedoms and the rights of National and Ethnic Communities or Minorities in the Republic of Croatia was passed in 1991, making Croatia one of the countries in which the position and the rights of national minorities are regulated by a special law. Since its passing, the Constitutional Law has undergone significant and relatively frequent amendments. At that time, Croatia, as all other states created in the area of the former SFR Yugoslavia, had been left with a relatively high level of minority rights protection. The existing system consisted of the right to the official use of language, the right to preserve ethnic, language, and religious identity, the right to education in one’s own script and language, and the political representation of political interest. This was the threshold for minority rights protection that Croatia had to meet; so immediately after independence it recognized these rights as rights inherited by the existing national minorities.

56 Constitutional Law on Human Rights and Freedoms and the rights of National and Ethnic Communities or Minorities in Republic of Croatia, Official Gazette 65/91.
This however raised the issue of defining ‘the new minorities’, which consisted of members of peoples that had previously been constituent nations of the former Yugoslavia. This particularly concerned the issue of Croatian Serbs who, in Socialist Croatia, had enjoyed the status of a sovereign people. This problem was solved legally resolved by passing the special Charter on the Rights of Serbs and Other Nationalities in the Republic of Croatia\(^{57}\). The Charter stipulated equal legal protection to all nationalities in Croatia, and the government recognized that “a just solution of issues concerning Serbs and other nationalities in the Republic of Croatia is one of the essential factors of democracy...”\(^{58}\).

In 1992 the Constitutional Law was amended to include an adequate right of the minorities to political autonomy in areas in which they constitute a majority. At this point the Constitutional Charter provided for the minorities’ cultural autonomy and other collective rights, determined the right to proportional participation in representative and other bodies, and the right to political autonomy in special status districts\(^{59}\) in which they made up an absolute majority according to the census of 1981. However, it is important to observe that although the Constitutional Law provided for international and internal control of the implementation of its provisions (specifically in the special districts), many of its provisions were never implemented. This occurred because at the time, these districts were occupied by Serbian rebels. Furthermore, at the end of September 1995, when Government took control over the whole region previously controlled by the Serbs, except for Western Slavonia, which was placed under temporary UN administration, the Croatian Parliament temporarily halted the implementation of the laws related to Serbian minority\(^{60}\). Ever since, although Croatia undertook to protect all other ethnic groups according to the standards of the international documents, until the Constitutional Law of 2002 there was no proper law to guarantee a level of minority protection that would be in accordance with European standards.

During the “interregnum” period, two additional legal instruments were created to guarantee minority rights upon the return of the territory to the sovereign control of the state. Both of these documents were the result of an agreement between the international community, Croatian authorities and the Serb insurgents. The first was the Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium — the Erdut Agreement\(^{61}\). The Erdut Agreement is a bilateral agreement signed between the Republic of Croatia and the representatives of local Serbs in Eastern Slavonia over the reintegration of the territory of Eastern Slavonia into Croatian jurisdiction. The signing of the agreement was witnessed by the then ambassador of the US Embassy to Croatia, Mr. Peter W. Galbraith and the UN mediator Mr. Thorvald Stoltenberg. The Erdut Agreement requested that the Security Council establish a transitional

\(^{57}\) The Charter on the Rights of Serbs and Other Nationalities in the Republic of Croatia, Official Gazette 31/91.

\(^{58}\) Ibid.

\(^{59}\) Self-government was guaranteed to the Serb minority in the regions of Glina and Knin.

\(^{60}\) Suspended were provisions related to the foundation, functioning and international control of special autonomous districts, and the provision which provided minorities that made up more then 8% of the total population in the census of 1981 proportional representation in the Parliament, Government and supreme judicial bodies. Only Serbian minority was influenced by this since the the right to be represented at the national level for minorities constituting less then 8% remained in force, and all special districts were populated by Serbs.

administration to govern the region for a period of 12 months and to maintain peace and security during that period. In regard to minority rights protection, the Erdut Agreement provided assurance of minority representation, in particular:

[T]he right of Serbs in Eastern Slavonia to be represented in local self-government, the right to have Serb sub-prefects in both counties of Eastern Slavonia and proportional representation in local health, police and judiciary, and the right to appoint deputy ministers in the Ministry of Public Works, Reconstruction and Construction, Ministry of Interior, Ministry of Justice, and Ministry of Education.

It also asserted that after the 2001 census, proportional representation would be guaranteed to the Serbs and to other national minorities in the parliament. The Agreement also provided for the establishment of a Joint Council of Municipalities (JCM), with the main goal of coordinating the interests of Serbian communities in Eastern Slavonia. Members of the Serb ethnic communities in Eastern Slavonia, which at the time was under the control of the United Nations Transitional Administration in Eastern Slavonia - the Baranja and Western Sirmium administration, were entitled to appoint a JCM, whose members held regular meetings with highly ranked politicians and reported their needs and requirements. A second instrument was the January 1997 Letter of Intent by the Croatian Government to the UN Security Council on completing the peaceful reintegration. More will be said concerning this document in the part of the report dealing with the return of refugees.

After a change of the party in power in 2000, political transition in Croatia began. This gave new momentum for the creation of the minority rights policy, which ultimately resulted in the production of the new Constitutional Law on the Rights of National Minorities that set the new legal framework for minority right. Since the passing of the CLNM was also one of Croatia’s commitments required under the EU Stabilisation and Association Agreement, the definition of the status of national minorities in the Croatia was worked out nationally in cooperation with the international community. The CLNM was adopted on 13 December 2002 and has played a pivotal role in the realisation of minority rights ever since. According to the Constitutional Law, a national minority is:

[A] group of Croatian citizens, 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 other citizens, and who are guided by the wish for the preservation of those characteristics.

According to this definition, the notion of minorities is restricted only to Croatian citizens, despite the Venice Commission’s opinions on the restriction of minority protection to citizens only. In an opinion on the draft Constitutional Law, the Commission stated that:

[S]uch a restriction departs from recent tendencies of minority protection under international law, as appears, inter alia, from the interpretation given by the Human Rights Committee to Article 27 of the International Covenant on Civil and Political Rights, and from the interpretation by the OSCE High Commissioner on National Minorities to his mandate. Indeed, for the enjoyment of minority rights, citizenship is generally considered to be relevant only in the case of certain political rights. As far as

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political representation is concerned, there is the tendency in Europe to extend the right to vote and to be elected to non-citizens at local levels, provided that they have been lawful residents of the area concerned for a certain period of time. 65

According to Article 7 of the Constitutional Law, under the CLNM, Croatia ensures the exercise of special rights and freedoms, which the members of its national minorities may 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 and in public use and in official use;
2. Education in their language and script;
3. The use of their signs and symbols;
4. Cultural autonomy in the preservation, development and expression of their own culture and the preservation and protection of their 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 their language and script;
7. Self-organization 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. Participation of members of national minorities in the public life and in the management of local affairs through councils and through representatives of national minorities;
10. Protection from any activity that endangers or may endanger their existence, or the exercise of rights and freedoms.

It can be said that the CNLM aims to foster minority confidence in public institutions as well as to ensure these institutions’ responsiveness to all segments of the Croatian society. This was demonstrated by the positive opinion expressed by the international community, but even more importantly by the representatives of Croatia’s national minorities66.

Apart from this basic legal act on minority rights protection, important stipulations in this area are to be found in the Constitution of the Republic of Croatia, which the Croatian Parliament amended in 2000 and 2001, once again after the change of the party in power. The Croatian Constitution assures equality between minorities and citizens of Croatian nationality as well as the right to realize their rights as members of national minority groups, guaranteeing minority freedom to express their nationality, to use their language and script, and to exercise cultural autonomy67. All constitutionally prescribed rights are guaranteed regardless of a citizen's ethnic background. Everyone is constitutionally guaranteed

the right to freedom of association for the purpose of protecting one’s interests or promoting social, economic, political, national, cultural or other convictions and objectives\textsuperscript{68}. The Constitution guarantees the right of every citizen, under equal conditions, to take part in public affairs, and to have access to public services\textsuperscript{69}. There were several other legislative instruments for minorities, all of which arose from the need to accommodate peaceful coexistence. All came into being as the result of pressure from the international community.

Minority rights guaranteed in the Constitution and the FCNM were further and more closely elaborated in the specific legal acts passed by the Croatian Parliament. In May 2000, the Law on the Use of the Language and Script of National Minorities in the Republic of Croatia\textsuperscript{70} was passed. This law regulates the official use of language and script of national minorities, and secures their equality with the Croatian language and Latin script. Implementation of these rights was passed on to the local and regional units of self-government in which the use of language and script is of direct importance for the life of the individual members of specific national minorities. The Law on Upbringing and Education in the Language and Script of National Minorities\textsuperscript{71} sets the conditions under which members of national minorities in Croatia realize their right to have an upbringing and education in their own language and script. These two specific laws were passed in the Parliament by a qualified majority, and they represent a great contribution to the improvement of the cultural autonomy of national minorities.

In order to provide a full legal framework for the minority rights protection, it is important to mention that the Republic of Croatia has signed three bilateral agreements on the protection of national minorities. Such agreements were signed with Italy, Hungary, and State Union of Serbia and Montenegro.

It can be concluded that after much hardship caused by the war and post-war transition, and after the democratic changes in 2000 and the assumption of international obligations, the legal framework for minority rights protection has been strongly improved through new legal acts, the amendment of old legal documents, and the ratification of international legal instruments. It can be said that Croatia has reached an important level of normative prerequisites for the protection of minority rights. Still, it is important to keep in mind that positive legislature is simply a legal prerequisite for the enforcement of the rights contained in it. Therefore in the following part of the paper, we will focus more on the full practical enforcement of all laws.

### 3.3. Political Participation of Minorities

Article 15 of the CLNM guarantees national minority representation in representative bodies at the national and local level, as well as in administrative and judicial bodies. It also guarantees the participation of persons belonging to minorities in public life and in the management of local affairs through councils and national minority representatives.

In Article 16 the CLNM guarantees representation of persons belonging to minorities in the Croatian Parliament through a minimum of 5 and a maximum of 8 representatives. Persons belonging to national minorities who make up more than

\textsuperscript{68} Article 43(1) of the Constitution of the Republic of Croatia.


\textsuperscript{71} The Law on Upbringing and Education in the Language and Script of National Minorities, Official Gazette 51/2000.
1.5% of the total population of the Republic of Croatia are guaranteed a minimum of one and a maximum of three representative seats, in compliance with the law regulating the election of representatives of the Croatian Parliament. The Law on Amendments on the Law on the Election of Members of the Croatian Parliament that was adopted in April 2003 extended the earlier right of national minorities to elect five representatives to the Parliament to eight representatives. Persons belonging to the Serb national minority elect 3, Hungarian and Italian minorities each elect 1, and other 19 minorities together elect 3 representatives.

Article 19 of the CLNM guarantees national minorities representation in the representative bodies of the units of local and regional self-government. In the last two election cycles for municipal and city councils and county assemblies held after the adoption of the CLNM, this provision ensured proportional representation of the minority population (of Serbs and Roma in particular) in 19 local and regional self-governments. This had not been realised by the earlier local elections held in 2001.

Remarks made by the Venice Commission concerned the number of seats to be reserved for representatives of national minorities, which cannot definitively be fixed beforehand.

Furthermore, both Article 18 and Article 19 imply that the voter will at the moment of voting have to reveal belonging to a national minority which may create “...difficulties for those who justifiably fear certain repercussions. [...] It should be clarified which precautions will be taken to protect the confidentiality of the information provided.”73

The CLNM guarantees persons belonging to national minorities the right to proportional representation in state administrative and judicial bodies as well as in the bodies of the units of local and regional self-governments. According to the Constitutional Law, persons belonging to national minorities shall, under the same conditions, be given priority over the others in employment within those bodies. At the time of adoption of the CLNM “[s]ome Government officials have expressed reluctance towards this part of the CLNM, suggesting that it is “too soon” for implementation that might result in a backlash”74 Ever since, under-representation of minorities in state-administration has remained an issue75.

73 Ibid.
Implementation of the CLNM has also been particularly limited with respect to those provisions on minority representation in State administrative and judicial bodies and in the police, where there is clear under-representation of minorities, especially Serbs. Discrimination appears to be common place when new vacancies arise and no programme has been developed by the government to ensure implementation of the provisions for minority representation laid out in the CLNM.\(^7^6\)

Nevertheless, many positive trends were observed in 2007. “For the first time, a recruitment plan for minorities in the State administration has been prepared in 2007, albeit at a certain level of generality and only for the year 2007.”\(^7^7\) After the mandate for creating the new Government was given to Mr. Ivo Sanader of the HDZ, he discussed support for his government the with representatives of minorities. Minorities reached a joint platform on demands for improvement of minority rights, which strengthened their negotiating position. Negotiations finished with the signing of the Framework Agreement between Sanader and the national minority representatives. Seven MP representatives of the national minorities demanded proportional employment in public administration, police and judiciary, as guaranteed in CLNM, and in public institutions and public companies\(^7^8\) as well. It was agreed that the Government would produce an Action plan for the employment of minorities, and compose a special body to observe its implementation. Minority representatives demanded that the state, and not only regional authorities, should co-finance the work of minority councils. The final part of the Agreement concerns national minority participation in the Government of the Republic of Croatia. Slobodan Uzelac of SDSS has thus become Deputy Prime Minister in Croatia’s Government.

The EC Progress Report of 2005 has also acknowledged that “the existing institutions of the Serb minority (political parties, schools, cultural organisations)\(^7^9\) can work without any particular obstacles.”\(^8^0\) Even the latest Progress Report warns that:

There are [...] still obstacles to the sustainable return of Serb refugees, such as enduring hostility in certain localities, and remaining housing concerns, mainly those involving former tenancy rights holders as well as problems with validation of pension rights.\(^8^1\)


\(^7^8\) Public companies (javna preduzeća) are companies such as Narodne novine, Hrvatske željeznice, Hrvatske šume, etc.

\(^7^9\) More about political parties, schools, NGO’s and cultural organizations in the following part of the report.


3.4. Gender Equality: Yet to be Achieved

Croatian society can be described as “traditional, conservative and undoubtedly prone not only to gender segregation at all levels, but also to the noticeable stereotypical image of the role of women and men in family and business life”. Therefore, it does not come as a surprise that the disproportionately higher unemployment rate of sixty percent among women, lower educational achievement and extremely low political participation and representation of only seven percent at the local level constitute the most obvious problems detected in the area of gender equality. The general picture of gender inequality is reflected in the minority communities, with the exception that the discrepancy is disproportionately higher among women of the Roma minority.

Even though awareness about gender equality still appears to be low, the legislative and the institutional framework have been put in place. The institutional set-up is composed of the Government Office for Gender Equality, the Committee for Gender Equality of the Parliament and the Ombudsman for Gender Equality. The approximation of national legislation to Western European standards had happened as a direct consequence of a process of harmonization of the Croatian legal system to the standards and principles of the aquis communautaire, i.e. it is directly linked to the EU accession process. However, certain criticisms could be made of the ius positivum, since, despite the positive effects of legislative harmonization on the areas of equal opportunities and gender equality, often in the parliamentary procedures the draft laws were subjected “to numerous discussions, modifications and amendments offered by Parliament members, who often do not understand the sense of harmonisation, followed by its adoption in the form which significantly differs from the original proposal.” This does not come as a surprise, since there were several chauvinistic and discriminatory comments made by the parliamentarians of both sexes regarding the role of the women in society.

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84 Mario Vinković, op.cit.
85 Ibid. See also Siniša Rodin (ed.), Jednakost muškarca i žene - pravo i politika u EU i Hrvatskoj (Institut za međunarodne odnose, Zagreb, 2003).
4. Performance of the International Community and International Organizations, States, State and Public Institutions, Political Parties, Media and Civic Society

4.1. State Institutions Responsible for the Protection and Promotion and Implementation of Minority Rights

Several important institutions are dealing with the protection and improvement of the position of minorities in Croatia. At the government level, there are several ministries participating in the protection of minority rights within the scope of their authority. These are the Ministry of Science, Education and Sports, the Ministry of Culture, the Ministry of the Sea, Tourism, Transport and Development, as well as the Central State Office for Administration, the Office for National Minorities, and the Office for Human Rights. The Committee on Human Rights and Rights of the National Minorities operates within the Croatian Parliament. The office of the Ombudsman also deals with some minority issues. The CLNM has also introduced a Council for National Minorities as an institution representing minorities at the state level.

The Office for Ethnic and National Minorities serves as a consultative body of the Government of Croatia. Its principal role is providing expertise and carrying out tasks entrusted to it by the government regarding policies undertaken in respect to national minorities. The Office conducts professional tasks regarding the realisation of the established policy for attaining equality of national minorities living in the territory of the Republic of Croatia, as well as of their rights as determined by the Constitution and law. It also proposes measures for fulfilling these rights, prepares proposals for securing funds for exercising constitutional rights of national minority members, and provides proposals and opinions on the financing of certain needs of national minority members and their associations. It cooperates with competent ministries and other state administration bodies and other institutions, with local and regional self-governments in the areas in which a larger number of national minority groups live, with the Council of Europe regarding the application of Council documents in the exercise of national minority rights, with institutions in minorities’ parent countries, and with other international institutions interested in exercising the national minority rights. It surveys international documents regarding the rights of national minorities, monitors the cooperation of associations and national minority institutions whose programmes obtain financial support from the State Budget, prepares opinions and professional analyses regarding the implementation of international standards in exercising the rights of national minority members, as well as other tasks. The Office also allocates financial resources to the various national minorities. It is noteworthy that representatives of minorities were not involved in the actual work of the Office, even though the Office deals with issues that pertain to the preservation of minorities. This was corrected in the new Constitutional Law, which prescribed that the president of the Council of National Minorities shall also be the Head of the Expert Office.

The Office for Human Rights analyses the condition of human rights and freedoms in the Republic of Croatia based on provisions of the Constitution of the Republic of Croatia, the CLNM, and the reports of international organizations, the ombudsman and non-governmental organizations. The Office proposes measures to the Government of the Republic of Croatia and measures for the more efficient fulfilment of human rights. The Office regularly surveys international standards and documents for the protection and promotion of human rights. The secretariat of
the Expert Working Group for combating all forms of discrimination is located in this Office.

The Committee on Human Rights and the Rights of Ethnic and National Communities or Minorities operates in the Parliament. Competences of this working body include passing laws concerning human rights issues, monitoring the implementation of ratified international legal acts that stipulate the protection of human rights, proposing measures for the realization of human rights entitled to minorities by the Constitution and laws, and assisting while signing bilateral and multilateral treaties and programs of international cultural, educational and other cooperation when this is of special interest to particular minority. However, in its assessment of this parliamentary body, the Croatian Helsinki Committee indicated in a 1999 report that there was no activity on its part regarding the effective protection of minority rights in Croatia. Another Parliamentary institution established by the Committee is the Subcommittee for the Realization of the Rights of Ethnic and National Communities or Minorities, whose task is to evaluate the Committee’s work and to propose measures and improvements to be made. The Parliamentary Committee for the Constitution, Political System and Standing Orders was responsible for the drafting procedure of the new Constitutional Law on Minorities. In addition to being covered by the offices of the Government of the Republic of Croatia, the issues of racism and xenophobia are also fall under the authority of the Office for Human Rights and the Office for National Minorities. 

The Department for Human Rights of the Ministry of Foreign Affairs was created to coordinate the drafting of national reports in the field of human rights in accordance with fundamental international instruments. The Coordination Board for Internal Policy and Human Rights harmonizes the work of all Government bodies that have certain segments of the protection and promotion of human rights within their competence. The Government of the Republic of Croatia has also established several offices, national committees and commissions and working groups to address human rights aspects that are of special state interest.

The Ombudsman (pučki pravobranitelj) institution was established in 1993. The Ombudsman protects the constitutional and legal rights of citizens before state administration bodies and public authorities. It falls under the authority of the ombudsman to analyze individual cases in which citizens’ rights are jeopardized in the course of the authorised operation of state administration bodies and public authority bodies (ministries, counties, city or municipal administrative bodies, public institutions, funds etc.) or their employees. In addition, the ombudsman analyzes other issues of interest for the protection of constitutional and legal rights based on other sources of information regarding the incorrect operation of administrative bodies or public authority bodies. As a rule, the Ombudsman does

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86 Ibid.
87 On 26 September 1996, the Government of the Republic of Croatia passed a decision to expand the system of the coordination board for internal policy when there are points on the agenda relating to the systematic following of the state of human rights and fundamental freedoms in Croatia.
88 Those would be the Office for Ethnic and National Communities or Minorities, Office for Displaced Persons and Refugees, Office for Victims of War.
not act on issues that are already being dealt with through an ongoing administrative or another procedure. However, in cases in which an administrative procedure lasts unreasonably long, the Ombudsman may intervene with a recommendation for a quicker resolution of a citizen’s request. The Ombudsman’s visits to other counties and to all areas of Croatia enable citizens to access the Office of the Ombudsman directly.

During 2005, the Human Rights Centre was transformed into an institution that serves citizens, the civil sector and the Government of the Republic of Croatia. The Centre provides strong logistic support to the protection and promotion of human rights. Each year, the Centre adopts a programme of activities, which includes a programme for organising round table conferences and seminars on current topics in the area of human rights and implementation of international agreements in the area of human rights. At the regional level, county coordination bodies for human rights are starting to be founded. These are administrative and professional institutions of the county representative bodies, whose task is to implement human legal principles at the local level.


In May 1997, the Government agreed with the Venice Commission to establish a Council of Ethnic and National Communities or Minorities in the Republic of Croatia91. The aim was to create a counselling body in which minority representatives could regularly meet with Government. A Council was established in the summer of 1998, but in the first years of its existence it was very passive in the implementation and promotion of minority rights.92 It was created with an aim to articulate the interests of national minorities and to propose solutions to the Croatian Parliament and to the Government for certain problems that might emerge in this field. The Constitutional Law on the Rights of National Minorities has provided for the establishment of councils and national minority representatives, as well as the Council for the National Minorities at the state level. The latter council is a successor to the previous Council of Ethnic and National Communities or Minorities. Its members are representatives of national minorities in the Parliament, representatives of national minorities from among the ranks of distinguished cultural, scientific, expert, religious groups and persons proposed by minority associations and other minority organizations, religious communities, legal persons and citizens, and members of national minorities.93 The President and two Deputy Presidents are appointed by the Government from among the members of the Council. It is prescribed that one of them must be a member of a national minority that accounts for over 1.5% of the country’s population.

Questions relating to the return of refugees, which also constitute part of the minority rights policies in Croatia, previously fell under the scope of the

91 Articles 43.1 of the Constitution as well as Article 4.2 of the Constitutional Law on Minorities have been implemented by the establishment of the Council of National Minorities.


93 Article 36, paragraph 1 of the Constitutional Law on the Rights of National Minorities.
Ministry of Public Works, Reconstruction and Construction (MPWRC). Since the restructuring of the Government in 2003 they are now under the jurisdiction of the Ministry of Maritime Affairs, Traffic, Tourism, and Development. As part of the Agreement on the Operational Procedures of Return\(^{94}\), the Government also created the Agency for Legal Transactions and Mediation of Real Estate (known as APN, after its Croatian abbreviation) to facilitate displaced persons and refugees in buying, selling or exchanging property.

4.2. Political Parties

4.2.1. Bipolar Pluralism

The seeds of today’s political parties in Croatia can be traced to the so-called citizens’ associations that were emerging in the late 1980s, i.e. in the last phase of the Yugoslav socialist system. The first non-communist citizens’ associations to emerge in Croatia at that time were the Croatian Social Liberal Alliance (Hrvatski socijalno liberalni savez, later Croatian Social Liberal Party, HSLS), the Croatian Democratic Union (Hrvatska Demokratksa Zajednica, HDZ), the Association for a Yugoslav Democratic Initiative, etc. Croatia amended its Constitution in 1990 in order to create a statutory basis for the multiparty elections that took place in spring of 1990.\(^{95}\) In the context of the emerging conflict with the Serb minority at the beginning of 1990s, ethnicity became the most salient societal cleavage, a majority of political issues became interpreted in ethnic terms, and mutual trust between the two biggest ethnic communities, Croats and Serbs, fell drastically. This situation naturally contributed to an additional rise in nationalistic rhetoric and ethnic-distancing among the population, which was also reflected in party programmes.\(^{96}\) The Croatian electoral and parliamentary system witnessed the disappearance and the appearance of numerous new political parties.

The Croatian Democratic Union ended up first since the runoff voting system of the time favoured the two strongest parties. Such an electoral system allowed the HDZ, the party with the relative majority, to win 205 out of 356 Parliamentary seats with 42% of the election votes.\(^{97}\) The reorganized Croatian League of Communists, renamed the Croatian League of Communists — Party for Democratic Changes (Savez komunista Hrvatske - Stranka demokratskih promjena, SKH-SDP, and later renamed again Socijaldemokratska stranka Hrvatske, SDP) and the Coalition of People’s Accord\(^{98}\) (Koalicija narodnog sporazuma, KNS), the bloc of mostly moderate nationalist parties, came in second and third, respectively.

\(^{94}\) Agreement on the Operational Procedures of Return, signed by the Croatian Government, the United Nations High Commissioner for Refugees (UNHCR) and UNTAES in April 1997.

\(^{95}\) Compare Mirjana Kasapović, Demokratska tranzicija i političke stranke: razvoj političkih stranaka i strančkih sustava u Istočnoj Europi, Zagreb: Fakultet političkih znanosti, 1996.


\(^{98}\) Ivo Golstein, Hrvatska povijest (Novi Liber, Zagreb, 2003), 378.

\(^{98}\) The Coalition of People’s Accord encompassed the Croatian Social Liberal Party, the Croatian Peasants Party, the Croatian Democratic Party, the Croatian Christian Democratic Party, the Social Democrats of Croatia and a number of local, youth and environmentalist groups and individual candidates.
The centre-right political space is occupied predominantly by the Croatian Democratic Union (HDZ), which has been a leading political actor since country’s independence, except during the period between 2000 and 2003 when the left-centrist coalition government occupied power. The first faction that emerged out of the HDZ was the Croatian Independent Democrats (Hrvatski nezavisni demokrati, HND) led by Josip Manolić and Stjepan Mesić. The faction came into being in 1993 as a response to the official Croatian irredentist policy towards Bosnia and Herzegovina. It merged with the liberal Croatian People's Party (Hrvatska narodna stranka, HNS) in 1997. Another moderate faction that emerged out of the HDZ, but after President Tuđman’s death and the parliamentary elections in 2000, was the Democratic Centre (Demokratski centar, DC). Even though the HDZ was seen as continuing its extreme nationalist position after 2000, the election of Ivo Sanader as a party leader in 2002 resulted in the reorientation of the party towards a centre-right position. Around the same time, two rightist political parties emerged as an outcome of the party’s shift towards a moderate course: the Croatian True Renaissance (Hrvatski istinski preporod, HIP) and the Croatian Block (Hrvatski blok, HB). Apart from the minor Croatian True Renaissance and the Croatian Block the right-wing Croatian Party of Rights (Hrvatska stranka prava, HSP) can be listed among the ethno-nationalist political parties. The Croatian Party of Rights has attempted to transform from a rigid ultra-nationalist party to a centre-right party, but this transformation caused a great loss of the support in the last elections.

Among parties at the centre-left side of the political scale are the Social Democratic Party (SDP) and the Croatian People’s Party (Hrvatska narodna stranka, HNS). In addition to the SDP, which remained a relevant political actor after the political change at the beginning of 1990s, several minor (ultra)-leftist political parties have emerged out of the membership of the former League of Communists: the United Left (Ujedinjena ljevica), the Action of Social Democrats of Croatia (Akcija socijaldemokrata Hrvatske, ASH) and the Socialist Workers’ Party (Socijalistička radnička partija, SRP).

The recent parliamentary elections, held in November 2007 indicated the return to a bi-polar political system, as the rightist HDZ and the leftist SDP together gained more than 80% of the popular vote.

4.2.2. National Minority Parties

Minority representation at the national level is assured through the eight minority seats guaranteed in the Parliament. In addition to those eight seats, several more MPs are elected from the slates of civic political parties. Nevertheless, Croatian political society is not yet completely (ethnically) de-segmented, as several dominant political parties address predominantly voters of the majority population, particularly rightists and central-rightists.

The Serbs of Croatia had already organized themselves politically in 1990. The Serb Democratic Party (Srpska demokratska stranka, SDS), led at that time by Jovan Rašković, requested a change of regional policy. Arguing that the policy no longer served the interests of the Serb people, they advocated full territorial autonomy at first, and later independence. The SDS, apart from the Knin region, did not manage to organize itself properly prior to the elections, which resulted in a gain of only five seats in the Parliament. The poor result was also a consequence of the fact that domestic opinion among Croatia’s Serbs was still moderate, as most of them chose to vote for the reformed communists, SDP. After the electoral victory of the HDZ in 1990, the SDS became even more radical in its demands. However, after Operation Storm in 1995 and the disappearance of the

Republic of Serbian Krajina, the party effectively seized to exist. A number of its leadership was charged by the International Criminal Tribunal for the Former Yugoslavia for crimes committed against Croats during the war. The most notable figure was its leader, Milan Babic, who committed suicide in the detention unit of the ICTY in 2006 in the midst of his testimony in a trial against the successor to his position of President of the RSK, Milan Martic.

Apart from the radically nationalist Serb Democratic Party (SDS), a moderate political option aiming to bring together the Serb electorate in Croatia was formed in 1991. This was the Serb People’s Party (Srpska narodna stranka, SNS) led by Milan Đukić. It was established as a political platform for Croatian Serbs who were not in favour of the radical and secessionist policies of the SDS. Being the only Serb political option that recognized the legitimacy of the newly independent state, and therefore favourably treated by President Tuđman in the first part of 1990s, it has often been referred to as the ‘Party of Tuđman’s Serbs’. In the mid 1990s, the SNS distanced itself from Tuđman’s government, and became radical in representing the interests of ethnic Serbs. However, unlike SDS, SNS has politically survived the end of war, and kept fighting for the votes of Serb refugees who returned to Croatia with yet another Serb party — the Independent Democratic Serbian Party.

The Independent Democratic Serbian Party (Samostalna demokratska srpska stranka, SDSS), led by Vojislav Stanimirović, whose agenda advocates the return of Serb refugees and the restitution of their property, as well as cooperation with neighbouring countries, was formed in 1997 as a social democratic political party of Serbs living in Croatia. SDSS was formed in Eastern Slavonia after the signing of the Erdut Agreement as the area was being reintegrated under the rule of the Republic of Croatia. This political party integrates the political will and activity of the largest part of the Serb community, as it won all three seats reserved for Serb representatives in the parliamentary election in November 2003, and repeated this success in the last parliamentary elections in November 2007. Furthermore, this political party provided needed support to the HDZ-led Government in its last two mandates, and has since maintained good collaboration with Croatia's ruling party. Prof. Slobodan Uzelac of SDSS became deputy prime minister in Croatia’s Government after signing the agreement between the HDZ and SDSS on support in Parliament and in Government. SDSS’s programme inter alia advocates equality before the law and the equal legal protection of all citizens, the protection of minority rights and respect for the acquired rights of the Serb ethnic minority, minority self-government and proportional representation of ethnic minorities in representative, executive and judicial bodies, the cultural autonomy of Serbs in Croatia, etc.

The Party of Danube Serbs (Partija podunavskih Srba, PPS), a non-parliamentary party that represents the Serb minority, was also founded during the peaceful reintegration of Slavonia, Baranja and Western Syrmium in 1998.

Members of the Italian minority in Croatia cling to the regional political options that advocate the regional development of Istria. The most prominent political party in this region is the Istarski demokratski sabor, IDS-DDI), which held 4 seats in the parliament formed in 2003, and now has 3 parliamentarians after the 2007 elections. This party is strongly present in the local and regional political affairs of Istria, where it works on the promotion of multi-ethnicity. The historic specificity of Istria is a core component of the IDS political programme, along with the promotion of the development of regions in Croatia and the creation of the Euro-region of Istria as a permanent form of cooperation between parts of Istria in Croatia, Slovenia and Italy. In addition, there are two non-parliamentary regional parties from Istria: the Istarska socijaldemokratska nezavisna stranka,
ISDNS) and the Istrian Social Democratic Forum (Istarski Socijaldemokratski Forum - Foro Social Democratico Istriano, ISDF-FSDI).

There are several other political parties that gather mostly minority members: the Democratic Union of Hungarians of Croatia (Demokratska zajednica Mađara Hrvatske, Horvátországi Magyarok Demokratikus Közössége) represents the Hungarian minority, the Party of Democratic Action of Croatia (Stranka demokratske akcije Hrvatske, SDAH) is comprised predominantly of Bosniaks/Muslims, whereas several political parties that counted on the representation of the Bosniak community ceased to exist (e.g. Bosanska demokratska stranka, Demokratska zajednica muslimana Hrvatske, Hrvatska muslimanska demokratska stranka). The German People’s Union — National Association of Danubian Schwaben in Croatia (Njemačka narodnosna zajednica — Zemaljska udruga Podunavskih Švaba u Hrvatskoj) represent the German minority and has secured one seat in the latest parliamentary elections. The members of the Roma community are represented by the Croatian Roma Party (Stranka Roma Hrvatske, Hromani partija ande Hrvatska, SRH) and the Democratic Party of the Croatian Roma (Hrvatska romska demokratska stranka, HRDS). Both political parties are non-parliamentary ones. The Albanians were previously associated in the Albanian Christian Democratic Party of Croatia (Albanska demokršćanska stranka Hrvatske), the Democratic Alliance of Albanians of Croatia (Demokratski savez Albanaca Hrvatske, DSAH) and the Albanian Islamic Democratic Union (Albanska islamska demokratska unija) but all those parties were deleted from the registrar of political parties due to the inactivity.

Currently, apart from the 3 seats won by Serbian minorities out of the 8 reserved seats in the Parliament of Croatia, the SDAH has only one mandate, while the other 4 were won by independent candidates running for specific minorities.

It can be concluded that a fully mobilised ethnic party system has never been in place in Croatia, for the simple reason that the majority of the Serb representatives at the beginning of the 1990s withdrew from the parliament, whereas later in 1990s they were not allowed to be represented in it. The decline in the number of members of the Serb minority after the ethnic conflict also significantly contributes to the inability to develop such a system. Due to the small population of the other minority groups, it is not likely that their political parties could form an influential political force. Probably taking this into consideration, legislators introduced reserved seats for the minority MPs in the parliament and prescribed that the minorities have to be proportionally represented in the elected bodies of the regional and local self-government units.

4.3. Civil Society

4.3.1. The NGO Sector

Max Van der Stoel, the first OSCE High Commissioner for National Minorities, argues that the best way to build up an environment favourable to vulnerable minorities is to “...build civil societies that protect human rights, including minority rights. In such systems minorities will feel that they have a stake in the society in which they live.”^100 The concept of civil society^101 introduced in the democratization

^100^ Max Van der Stoel, _Peace and Stability through Human and Minority Rights_ (Nomos Verlagsgesellschaft, Baden Baden, 2001), 169.

^101^ “Civil society is the realm of organized social life that is voluntary, self-generating, (largely) self-supporting, autonomous from the state, and bound by a legal order or set of shared rules. It is distinct from ‘society’ in general in that it involves citizens acting collectively in a public sphere to express their interests, passions and ideas, exchange
processes, according to Edward Shils, comprises three main components, the first being “a complex of autonomous institutions - economic, religious, intellectual and political - distinguishable from the family, the clan, the locality and the state.” The second one is “a particular complex of relationships between itself and the state and a distinctive set of institutions which safeguard the separation of state and civil society and maintain effective ties between them”, while the third is “a widespread pattern of refined or civil manners.”

As a consequence of the half-century-long rule of communist ideology, Croatia began to develop civil society only in the late 1980s. The pre-war concept of citizens’ associations in Croatia had grown into a concept of non-governmental associations based on individuals’ interests in solving particular problems in a particular segment of society.

During the 1990s the right wing government had an extremely negative attitude toward CSOs, especially those dealing with human rights and democratisation issues, declaring them enemies of the state. Under these circumstances some of the non-governmental organisations became an active part of the political opposition.

It was only after the elections of 2000 that the new coalition government addressed the problems facing civil society development in Croatia with more responsibility. This new policy resulted in the design of a "Programme of Co-operation between the Government of the Republic of Croatia and the Non-Government, Non-for-Profit Sector in the Republic of Croatia,” adopted in December 2000. Through the efforts of the Government Office of Associations, established in 1998, the Government has developed a transparent National Grant Programme from the State Budget with the involvement of civil society representatives.

Since 2001 citizens and corporate sector can provide up to 2% of their income as tax free donation to the non-profit organisations. The Government encourage foreign funders and strengthened indigenous recipients with new tax provision of not paying VAT of 22% for purchasing goods and services from foreign money.

Nevertheless, the scope of cooperation between the NGO sector and state institutions is still limited to participation in the drafting of a national program on specific areas of human rights, which is accomplished through yearly state reports on the state of human rights in the country. The aim of NGOs that address human and minority rights issues is to identify irregularities in society regarding the protection and respect of human and minority rights. Since non-governmental associations are familiar with problems citizens face, as many of provide legal aid and consultancy and are easily accessible, Government should cooperate with them more intensively. Even though the reform of the Law on Associations took place in the beginning of nineties, the country has been facing a discrepancy in standard setting and difficulties in implementing its provisions. Fostering responsible citizenship and greater popular participation in public affairs are key elements towards realizing the greater inclusion of the minority population in public life.

information, achieve mutual goals, make demands on the state, and hold state officials accountable...it excludes...political efforts to take control of the state.” Larry Diamond, “Towards Democratic Consolidation”, 3 Journal of Democracy (1994), 5.


Gojko Bezovan, “Croatian civil society on the pathway to becoming a legitimate public actor” 42 Družboslovne razprave (2003), 123-143.

Ibid.
Recognizing the importance of building up the NGO structure throughout Croatia, many international organizations and state agencies have been, and still are, actively involved in strengthening, supporting and building capacities of the Croatian NGOs sector.

The right of national minorities to freely organize NGOs cultural and other societies with the aim of protecting and preserving their national and cultural identity is recognized in the Constitution and the CLNM. National minorities may establish associations, endowments and foundations, as well as institutions for the performance of public information activities, cultural, publishing, museum, archival, library and scientific activities in their mother language and alphabet, while the state and the local self-government bodies provide financial aid for such activities. Protection of minority cultural autonomy is exercised in numerous associations and clubs.

Civil society organisations continue to play an important role in the promotion and protection of minority rights and democracy.

4.3.2. Media

An informed, objective and responsible media contributes to the fulfillment of rights and, if does not spread hate speech toward minorities of any kind, gives room for individuals and NGOs to openly and freely debate and criticize policies and institutions. In this way, the media contributes to the promotion of human rights in general, and to the rights of minorities specifically. In practice, segments of the Croatian media have been trying to draw attention to the violations of human rights of minority ethnic groups. Before 2000, however, the ruling establishment intended to keep control over the most influential media, i.e. television, and that considerably influenced the creation of mistrust among various national groups. A strong civil society sector is a countervailing force to government power and a protector of human rights. Openness of the media usually causes the development of civil society institutions, and vice versa. In the context of minority protection, the role of non-governmental organizations is significant. There are twenty-two registered minority associations in Croatia and seven national NGOs dealing with minority issues. Among these, the Croatian Helsinki

105 Article 43 provides a Constitutional assurance of the right to form free associations “for the purposes of protection of their interests or promotion of their social, economic, political, national, cultural and other convictions and objectives. For this purpose, citizens may freely form political parties, trade unions and other associations, join them or leave them.” This right though can be restricted by the prohibition of any violent threat to the democratic constitutional order and independence, unity and territorial integrity of the Republic.

106 Article 15.

107 Article 12 Cultural activities are executed in numerous minority organizations. Comprehensive list of them can be found in the booklet issued by the Government. See Mila Šimic (Ed.) Ostvarivanje kulturne autonomije nacionalnih manjina u Republici Hrvatskoj (Zagreb, Vlada Republike Hrvatske. Knjiznica Dokumenti, 1998), 187-30.


Committee’s Reports (HHO) have contributed most significantly to raising awareness of the violation of minorities’ human rights in Croatia.\textsuperscript{111}

Freedom of expression and information are cornerstones for the development of democracy, and the protection of the human rights guaranteed by international legal documents. Following these standards, the public Croatian Radio and Television news programme broadcasts a special weekly multinational show “Prizma” lasting 55 minutes regarding the activities of all national minorities. The Croatian Radio’s educational programme and Television broadcast shows in the languages and about the customs of national minorities. Croatian Radio broadcasts programmes for national minorities as part of its first programme and as well as through regional radio stations. Croatian Radio has regular hourly shows for national minorities, while the regional radio stations of Rijeka, Pula and Osijek broadcast regular shows for national minority members in these areas. Associations of national minorities participate in the production of shows included in these radio programmes.\textsuperscript{112}

Difficulties pertaining to receiving information in national minority languages in the local media most frequently occur due to financial reasons. In order to overcome this problem, the Council for National Minorities has been allocating funds for this purpose based on a public tender since 2003. Over the course of the past three years, the Council has co-financed radio programmes on the regional and local level that provide information to national minority members in the languages of national minorities for number radio stations.

Despite of the overall positive trends in the area of minority representation in media, in 2006 the European Commissioned warned that:

National minorities are still generally perceived in the media as separate entities and not as an integral part of society. Negative stereotyping in the press has continued. Provisions of the CLNM that public radio and TV stations at national and local level have to produce and/or broadcast programmes for minorities in their languages continue to be implemented at a slow pace.\textsuperscript{113}

\section*{4.4. International Actors}

As much as the response of the international community was untimely and weak once the Yugoslav conflict had begun, the role of external powers in the pacification of an ethnic conflict and their support (and pressure) for the improvement of minority rights protection and the establishment of democracy in former Yugoslavia is indisputable. As explained in the WP 3 country report on Croatia, mechanisms introduced and endorsed by the international community can be divided into two categories: those related to the pacification of the ethnic conflict, and those that contribute to reconciliation, democratic consolidation and economic recovery. The second category encompasses the work of the International Criminal Tribunal for the Former Yugoslavia (ICTY), the European Union (EU), the Council of Europe, the Organization for Security and Cooperation in Europe (OSCE), and the North Atlantic Treaty Organization (NATO). In the context of the improvement of and respect for minority rights protection during the armed

\textsuperscript{112} Data provided by the Office for National Minorities.
\textsuperscript{113} European Commission, 2006 Progress Report on Croatia, 10-13.
conflicts and post war period in the former Yugoslavia, three pan-European organizations played important roles, while in the process of reconciliation, the role of the ICTY remains crucial.

4.4.1. OSCE — Assistance in Post-War Damage Repair

OSCE Permanent Council Decision No. 176 of 26 June 1997 authorized the OSCE Mission to assist with and to monitor the implementation of Croatian legislation, agreements and commitments made by the Croatian Government on the protection of persons belonging to national minorities.

The biggest transition problem the Mission in Croatia encountered related to minorities was refugee return. Being the Organization with ‘small teeth and not so big carrots’, the OSCE has mostly played the role of watchdog, but also of assistant, in the improvement of minority rights protection. The OSCE Mission to Croatia has been continuously issuing warnings about discriminatory laws in the field of the return and repossession of property, and paid a great deal of attention to the implementation of the CLNM. The OSCE Mission was critical of the approach taken by some official bodies in regard to returning refugees’ taking possession of their own property, now occupied by others. It warned that the Housing Commission did not always meet the legal deadlines for issuing documents necessary for the repossession of property. It has also followed education issues related to the rights of national minorities.

After eleven years, the OSCE Mission to Croatia was closed on 31 December 2007, following a decision of the OSCE’s Permanent Council. This decision was based on the assessment that Croatia’s progress in its fulfillment of international commitments as foreseen by the Mission mandate. It has been evident and that Croatia has successfully dealt with most of the issues contained in the broad mandate under which the Mission had been operating. The Head of Mission, Ambassador Jorge Fuentes, said that the completion of the Mission mandate was possible due to the reinforcement of, inter alia, minority rights and the return and integration of refugees. However, the Organization will maintain its presence in Croatia with an Office in Zagreb to monitor war crimes trials and report on residual aspects of the implementation of housing care programmes.

4.4.2. EU Accession Process - Establishing Croatia as a Role Model for the Region

The European Union played a key role in the post conflict period in Croatia due to the ‘stick’ it held in the form of the conditionality principle, which it imposed on Croatia regarding minorities, the return of refugees, and cooperation with the ICTY. The EU, as an ‘exclusive club’, has determined that amongst other accession criteria, the criterion of respect for minority rights must be met by all countries wishing to become part of the ‘club’.

A shift in the liberal theory of social justice and the collapse of socialism in eastern Europe, together with ethnic conflicts, have induced international organizations such as NATO, the Council of Europe and EU, to start promoting the rights of national minorities as a precondition for the integration of East European democracies.114

This link between minority rights and EU membership emerged at the Copenhagen European Council meeting in 1993. At that summit, respect for minority rights was established as one of the political conditions for accession. Since then, any decision to initiate accession negotiations requires an assessment of the minority rights situation.

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rights situation in the country concerned. New criteria relating to the specific objectives set out in the Stabilisation and Association Process for the countries of former Yugoslavia include full co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY)\textsuperscript{115}, the creation of real opportunities for refugees and internally displaced persons to return, and a visible commitment to regional co-operation.

Mr. Olli Rehn summarized the EU’s performance in the Western Balkans as three C’s — consolidation, conditionality and communication\textsuperscript{116}. Although the fundamental goal of the conditionality principle was to promote reform that would lead Croatia (as well as other WB countries) into the EU, conditionality stands as a powerful instrument to support reconciliation and reconstruction of the region. Key instruments in monitoring and evaluating the candidate countries’ compliance with the Copenhagen and SAP criteria are the European Commission’s Regular Reports.

The Commission’s Regular Reports were the key EU instruments in monitoring and evaluating Croatia’s progress toward accession, and ensuring that the country is in compliance with the Copenhagen criteria. Since Croatia was awarded candidate status, the EC has produced three Regular Progress Reports in which it has systematically monitored the accession process.

The EC faces specific difficulties relating to political criteria and human and minority rights when producing Regular and Progress Reports.

For example, the condition that they [the applicant countries] have ‘fully functioning market economy’ may be straightforwardly correlated with the adoption of certain chapters of the acquis. The political concepts and standards prescribed by the other conditions that require aspiring members to be democracies and to operate according to the rule of law and respect human and minority rights are not so readily translatable into specific chapters of the acquis\textsuperscript{117}.

In order to receive information from the ground, the Commission depends primarily on its External Service. In applicant countries, EC Delegations are responsible for presenting, explaining and implementing EU policy, analyzing and reporting on the policies and developments in the countries to which they are assigned, and conducting negotiations in accordance with a given mandate. When given the mandate, these delegations are responsible for providing Reports on the progress their host country making in meeting the Copenhagen criteria so that the Commission can create a feasibility study, open SAP, sign an SAA, and finally start negotiating the membership, in that order. The EC Delegation to the Republic of Croatia is responsible for producing country reports in Croatia. The lack of human resources on the side of the Commission and the Delegations in an aspiring EU countries, as well as difficulties in evaluating human and minority rights conditions, obliged the Commission to rely on the help of proxies in collecting data. Proxies in Croatia are international organizations (European to be more precise), the Croatian Government, and Non Governmental Organizations.

The normative regulation and the practical realization of the rights of national minorities became one of the first conditions for Croatia’s economic and political integration in the EU and NATO. In order to earn a positive avis and EU candidate status, Croatia had to meet the political criteria concerning minority rights set in the European Partnership agreement. Short-term priorities required

\textsuperscript{115} Legal obligation under UN Security Resolution 827 of 25 May 1999. It is also an obligation under the Dayton/Paris Peace Agreement.

\textsuperscript{116} Speech by Mr. Olli Rehn, Member of the European Commission, responsible for Enlargement, ‘Beyond Homogeneity’ Conference at the Central European University, Budapest, 9 February 2006.

\textsuperscript{117} Dimitry Kochenov, \textit{Behind the Copenhagen façade}, 8 (10) EloP (2004).
the expansion of minority rights, in particular ensuring that the proportional representation of minorities was achieved in local and regional self-government units, in the state administration and judicial bodies, and in the public administrative bodies. In addition, authorities were asked to provide the necessary means, including adequate funding, to ensure the proper functioning of elected minority councils. Two medium-term priorities concern the implementation of Roma rights, including the enforcement of anti-discrimination measures aimed at fostering employment opportunities, increasing access to education and improving housing conditions; and the sustainability of refugee return, which was to be completed through the proper and timely implementation of the relevant legislation.

After demonstrating persistence in setting up the normative framework for minority rights protection, the EC, in its Progress Reports on Croatia, praised the adoption of the CLNM, which establishes the domestic legal framework for minority rights in Croatia. However, the EC warned that the implementation of the CLNM has been far too slow in some key areas. The EC drew attention to the under-representation of minorities, especially Serbs, in public bodies, the financial sustainability of the minority councils, the citizenship question of Serbs from Croatia, and the sustainable return of Serb refugees. Particular attention was also given to the Roma minority. The general message of the reports was that position of minorities in Croatia is slowly improving, and that greater efforts should be made towards achieving the objective of peaceful coexistence and reconciliation between ethnic groups (specifically Serbs).

After the accession talks with the European Union were initiated in October 2006, Croatia has far outpaced its regional neighbours on the way to the EU. It is widely accepted that that Croatia, with its good track record of reforms, could serve as an example to other (potential) candidates from the Western Balkans, since the prospect of membership has obviously contributed to state building and the consolidation of democracy. The accession process encourages further improvements in the field of the protection of minorities, in which a number of important challenges certainly remain in Croatia, particularly the implementation of minority related legislation and programmes (e.g. issues of refugee return, the Roma Action Plan, minority representation in state administration and recruitment plan for minorities in the state administration etc.)

4.4.3. The Council of Europe — Guiding Standards

Croatia was admitted to membership in the Council of Europe on October 16, 1996. It has ratified all Council of Europe conventions to which it had committed itself, such as the European Convention on Human Rights and Fundamental Freedoms, the Framework Convention for the Protection of National Minorities and the European Charter for Regional and Minority Languages. The obligation to adopt minority legislation derives from Croatia’s 1996 accession to the Council of Europe. The adoption of the CLNM derived from this obligation. The CoE body, the Venice Commission, has actively been involved in the drafting phases of several pieces of legislation dealing with minority rights, local self-government, the financing of political parties, the Constitutional Court, etc. On 26 September 2000 the Parliamentary Assembly of the Council of Europe voted to terminate the monitoring procedure for Croatia, as earlier visits of Lord Russell-Johnston, president of Parliamentary Assembly, indicated that Croatia had now met most of its

outstanding membership requirements. The resolution recommended conducting post-monitoring dialogue on some issues that remained open, including minority protection and refugee return.

Croatia’s increasingly intense cooperation with the CoE was accompanied by a harmonization of national legislation with European standards, in line with the CoE conventions, as well as comprehensive cooperation in other areas covered by 20 or so conventions to which Croatia acceded prior to admittance, and more than 40 conventions and protocols Croatia signed or both signed and ratified after the acquisition of full CoE membership.
5. Analysis and Conclusions

Croatia can be seen as the role model in the region in terms of European integration. In order to achieve this status, Croatia had to comply with high standards in the area of minority rights and to complete the state building process. Generally, the position of national minorities in Croatia has improved over the last decade due to the political, administrative and social changes that have taken place. Croatia has adopted an international legal framework for minority protection, and has made legal and institutional arrangements that balance human rights and group related minority rights. This had a significant impact on the process of reconstruction and reconciliation following the ethnic conflict that occurred between 1991 and 1995. Although the international community’s role in the monitoring process — through EU, OSCE and CoE — contributed strongly and decisively to the formation of a very broad and comprehensive legislative framework, Croatia is not bound to protect minority rights simply because this is required by the international community and is one of the conditions for EU membership. In order to establish a fully functioning democratic, multicultural and multiethnic state, Croatia was obliged to set up its normative framework for minority rights. The implementation of these legal norms in practice remains an open issue, specifically in the sphere of the social and political rights of minorities. Other problems related to national minorities are the return of refugees and the resolution of their status (for the Serbian national minority), and social and integration problems (for the Roma national minority).

There is still a need to build the political culture and raise the level of tolerance between people who are still heavily burdened by the recent past. The work of the civil sector is important in eradicating prejudices. Educational reform and the inclusion of the principles of multiculturalism and interculturalism into all aspects of school activities would help the cause.

Although the Government claims that the legislation was designed to help all returnees solve their housing problems, the return of Serb refugees has been hindered by discriminatory treatment in providing repair assistance and the failure to provide an adequate solution for former tenancy holders. More than ten years after the end of the conflict, the process of property restitution has been almost completed. The problem of restoring the flats of former tenant right owners of Serb origin nevertheless remains, and the Government appointed in January 2008 has made a commitment to solve this remaining obligation during its tenure. Since the implementation of such a commitment depends solely on funds allocated from the budget, this has been allowing the Government to find an excuse for failing to implement those laws. Nevertheless, providing a solution to the tenancy right holders constitutes a part of the coalition agreement between the Government and the Serb representatives, thus making the realization of this commitment more tangible and probable. Despite the accomplishment of reconstructing housing, the return of the population has not yet been completed. Part of the reason is a decade long time-span in which (particularly the younger) part of population established a new life in Serb controlled parts of Bosnia and Herzegovina and in Serbia. The average returnee of Serb origin in the Krajina region is older, usually in retirement. Inter-ethnic incidents and even killings in recent years definitely do not encourage return. The overall impression is that the Government has not been investing sufficient efforts in achieving inter-ethnic reconciliation in the post-conflict society. Some initiatives do exist at the local level, but those are often initiated and fostered by civil society organizations, and only rarely by religious communities.
Still, Croatia’s devotion to the full improvement of minority rights is on a slow, but none the less firm positive course. This was proven after HDZ’s return to power in Croatia in 2003. There were certain speculations and scepticism relating to the HDZ’s commitment to human rights and the possible continuation of negative policies in treatment of minorities. However, the newly elected party president Ivo Sanader gained enough support to cleanse the HDZ of firm nationalists and disciplined others to support the EU path for Croatia. Prime Minister Sanader signed several co-operation agreements with elected members of the parliament belonging to Serbian and Italian national minorities, which in return supported the new government in the Croatian Parliament.

It should be expected that given Croatia’s upcoming membership in the European Union, and all the benefits it brings, it will soon become clear national minorities are an advantage to Croatia and not a burden. By achieving European standards for minority rights protection, Croatia has not only made an important step towards achieving its goal of EU membership, but also complemented the process of reconstruction and reconciliation needed to strengthen the young Croatian democracy.
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