

COMMENTAIRES DU GOUVERNEMENT CONCERNANT LE RAPPORT SUR LA CROATIE ANNEXE : POINT DE VUE DU GOUVERNEMENT

L'annexe qui suit ne fait pas partie de l'analyse et des propositions de l'ECRI concernant la situation en Croatie

Conformément à la procédure pays-par-pays, l'ECRI a ouvert un dialogue confidentiel avec les autorités de Croatie sur une première version du rapport. Un certain nombre des remarques des autorités ont été prises en compte et ont été intégrées à la version finale du rapport (qui selon la pratique habituelle de l'ECRI ne pouvait tenir compte que de développements jusqu'au 22 mars 2012, date de l'examen de la première version).

Les autorités ont demandé à ce que le point de vue suivant soit reproduit en annexe du rapport de l'ECRI.

Zagreb, 12th June 2012

Comments by the Croatian authorities on the Fourth Report of the European Commission against Racism and Intolerance on Croatia

The Government of the Republic of Croatia appreciates that in the Fourth Report of the European Commission against Racism and Intolerance on Croatia the progress in a number of areas concerning the field of racism and intolerance has been recognized. Croatian Government is fully determined to take into consideration the issued recommendations in order to further improve the situation in the field of racism and intolerance.

The Government would also like to thank ECRI for the adoption of a number of comments made by the Croatian authorities to the Draft ECRI Report on Croatia as well as for accepting some of their explanations that improved the quality of the final text of the Report.

In line with the established procedure concerning the possibility for a country under ECRI monitoring to provide its viewpoint in a separate Appendix, Croatia would like to provide ECRI with the following additional comments, in particular in the field of citizenship and national minorities:

CROATIAN CITIZENSHIP

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- With regard to the problem "of obtaining Croatian citizenship by the long-term residents who are not ethnic Croats", we would like to provide the following additional explanation:

"In accordance with Art. 19 of the Law amending the Law on Croatian Citizenship, persons who had permanent residence in the Republic of Croatia on 08/10/1991 were acknowledged the necessary duration of stay in the procedures for obtaining Croatian citizenship under the condition that their permanent stay is granted. Also, the new Law on Foreigners regulates, in Art. 94 para 2, that a foreigner who had permanent residence in the Republic of Croatia on 08/10/1991 and who benefits from the program of return or reconstruction or housing accommodation and who has returned to Croatia with the intention to permanently live there, may directly regulate his/her permanent stay under extremely favorable conditions. This means that apart from fulfilling other conditions, these individuals can obtain Croatian citizenship quickly, without fulfilling the condition of the necessary duration of stay, in accordance with all the legal bases concerning authorized permanent stay."

- Concerning the dual citizenship, we would like to inform you about the fact that:

"Different categories of persons who obtain Croatian citizenship on the basis of legitimate and actual stay in the Republic of Croatia do not need to submit evidence of the cancellation of foreign citizenship. For example, according to the Law on Croatian Citizenship, individuals who are married to a Croatian national (Article 10), as well as juvenile children (Article 13), in case they obtain Croatian citizenship, shall keep their foreign citizenship and thus become individuals with dual citizenship".

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- In connection with the ECRI comment noted in this paragraph that "the amendments have increased the restrictions on obtaining Croatian citizenship", we would like to provide the following explanation:

"Comparing the Law on Croatian Citizenship with European laws, it is evident that the regulations on the necessary continuous registered stay in the duration of 8 years and authorized permanent stay required for regularly obtaining Croatian citizenship are harmonized with the laws of other European countries. For example, Germany, Macedonia and Hungary prescribe that in order to regularly obtain citizenship 8 years of continuous stay are required, and Austria, Italy and Montenegro prescribe 10 years.

Knowledge of the Croatian language and Latin alphabet as well as of Croatian culture and society is only legally required of the foreigners who obtain Croatian citizenship on the basis of regular stay (Article 8), of emigrants and their descendants who live abroad. (Article 11) and of the foreigners who obtain citizenship on the basis of regular naturalization (Article 8).

Foreigners who are born in the territory of the Republic of Croatia (Article 9), foreigners married to Croatian nationals (Article 10), and juvenile children (Article

13) do not have to fulfill the above mentioned legal prerequisite, which is extremely favorable. The prerequisite of knowing the Croatian language and Latin alphabet has not resulted in any difficulties for the foreigners during the legal implementation, because not a single application for Croatian citizenship has been denied on this account in the last 5 years”.

10 - 11

- *As concerns the ECRI observations in those paragraphs, we would like to explain that:*

“The only criterion for admission to Croatian citizenship for any person living in the Republic of Croatia is meeting the requirements of the Law on Croatian Citizenship, regardless of the ethnic, social, religious, cultural or other origin of a person. Article 16 provides for obtaining Croatian citizenship by ethnic Croats living abroad, and this regulation is not discrimination on the basis of ethnic origin. The article only allows for one of the several special instances of admission to Croatian citizenship at more favourable terms. It allows for admission to Croatian citizenship in order to preserve the linguistic and cultural identity of members of Croatian people abroad, according to the constitutional commitment. According to Art. 10, para 2 of the Constitution, members of the Croatian people in other countries are guaranteed special care and protection by the Republic of Croatia.

Such a regulation in the Law on Croatian Citizenship is a regular legal basis for the beneficial naturalisation known in the citizenship naturalisation legislation of many European countries, (Hungary, Portugal, Germany, Poland, Greece). The admission to Croatian citizenship of the Croats who live abroad cannot, by its nature, be brought into legal connection or be equalized with the requirements for obtaining Croatian citizenship by foreigners who live or are granted stay in the Republic of Croatia.

Obtaining Croatian citizenship is enabled under more favourable terms, on various legal grounds found in the Law, to persons who live in Croatia, regardless of the ethnic identity. Beneficial naturalisation is made possible for foreigners born on the territory of the Republic of Croatia (Art. 9), foreigners married to Croatian nationals (Art. 10), persons of special interest for the Republic of Croatia (Art. 12), minor children (Art. 13) and persons re-admitted to Croatian citizenship (Art. 15)”.

LAW PROVISIONS

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- *With regard to the Article 87 of the new Criminal Code, we would like to explain that:*

“The qualifying form of the crime includes characteristics that make the basic crime more severe and it is expressly prescribed by law, e.g. the murder as a basic crime and aggravated murder as a qualified crime, for example because of an incentive. A court takes into account the aggravating circumstance in each specific case when

determining the sentence or decision on the choice of type and severity of the sentence, which will be imposed to the perpetrator. The motive of hate, and the racist motivation will always be an aggravating circumstance in determining the sentence. For some crimes, committing the criminal offence with hatred is always prescribed as a qualifying circumstance. The qualifying form of the crime is not an aggravating circumstance as referred to in the above-mentioned reasons."

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- We would like to amend the statement with the statistics concerning Split Pride 2011 held on 11 June 2011, with the data on 31 December 2011, as follows:

"There were 65 misdemeanour acts filed to the Misdemeanour Court in Split (the most of proceedings - against the Act on Public Assembly Art. 37; the Misdemeanour Act against public order and peace, Art 13). The 36 cases were resolved; 25 judgement of conviction in which fine was from 700, 00 till 5000, 00 kn.; 6 refusing judgments and 4 judgement of acquittal. The educational measure was enforced for one minor. There are still 33 unresolved cases. There were 15 criminal cases in which 16 persons were charged. For now, there are 2 convictions judgement resolved (one is final judgement) and two persons are convicted".

38

- We would like to amend the statement with the statistics:

"In 2009 there were 1 civil case and 7 criminal cases that remained unresolved. In 2010 there were: 39 civil cases (3 were resolved and 36 remained unresolved), 14 criminal cases (2 were resolved and 12 remained unresolved), 15 misdemeanour cases (4 were resolved and 11 remained unresolved). In 2011 there were: 65 civil cases (13 were resolved and 52 remained unresolved), 17 criminal cases (6 were resolved and 11 remained unresolved), 58 misdemeanour cases (26 were resolved and 32 remained unresolved)".

ADMINISTRATION OF JUSTICE

92

- With regard to the free legal aid we would like to explain that:

"At the end of 2011, the Ministry of Justice began the implementation of the Twinning Light Project "Improving the system of free legal aid in the RoC", within the IPA 2009 program for Croatia. The importance of this project reflected primarily in the fact that, by a systematic analysis of the existing legislative and institutional framework of free legal aid, the deficiencies may be corrected and the full potential of the system may be utilized in the future by using the project results as well as recommendations. Also, through the enforcement activity, the system has become clearer and closer to the representatives of the judicial and administrative authorities, other entities active systems, as well as the general

public. Transferred knowledge and newly learned skills by the implementation of this project will help the Ministry of Justice in the future improvement of the system and its further formation in accordance with the actual needs of system users”.

NATIONAL/ETHNIC MINORITIES

- *With regard to the underrepresentation of national minority members, especially of the Serb national minority, in the public administration, we would like to clarify the current situation:*

"Representation of national minority members in state administration bodies

Recruitment planning

On May 9, 2011, the Minister of Public Administration issued the Plan of Recruitment of National Minority Members to State Administration Bodies for the Period 2011–2014 (long-term plan). The Croatian Government approved the Plan at the meeting on May 12, 2011. The Recruitment Plan was published in the Official Gazette of the Republic of Croatia 65/2011. Plans of recruitment to the civil service in state administration bodies for each calendar year in the period 2011-2014 (short-term plans) will be adopted in accordance with the above Plan.

Taking into consideration the limited possibilities for recruiting new civil servants to state administration bodies, including from the ranks of the national minorities, and the necessary layoffs from those bodies, it is planned to recruit a total of 802 national minority members to state administration bodies and 75 into state administration offices in the counties in the period from 2011 to 2014.

The adoption of a long-term plan of recruitment of national minority members to state administration bodies covering a period of four years is one of the measures established by the Action Plan for the Implementation of the Constitutional Act on the Rights of National Minorities for the Period 2011-2013.

We note, however, that a 2011 (short-term) plan of recruitment to civil service in state administration bodies was never adopted.

Measures aimed at improving the exercise of rights

In line with measure 8.17 Organisation of regional consultations for national minority members and representatives of the bodies of local self-government units on the exercise of the national minority right to adequate representation in self-government units, with the aim to improve the exercise of rights, motivate and encourage national minority members to make use of the rights guaranteed by Art. 22 para 2 and 3 of the Constitutional Act, as laid down by the Action Plan for the Implementation of the Constitutional Act on the Rights of National Minorities for the Period 2011-2013, the Ministry of Public Administration and the Academy of Local Democracy organised two regional seminars, i.e. consultations, in late 2011.

The seminars i.e. consultations, were organised in Karlovac on 12 December, for the areas of the Karlovac and Sisak-Moslavina Counties, and in Daruvar on 13 December, for the areas of the Bjelovar-Bilogora, Požega-Slavonia, Virovitica-Podravina and Brod-Posavina Counties. A total of 45 national minority council members and representatives, and representatives of the bodies of local and regional self-government units participated in the seminars (consultations).

Status of representation as of 31 December 2011

At the beginning of 2012, the Ministry of Public Administration conducted an analysis of the status of representation of national minority members on state administration bodies.

According to the updated information from the records of the Ministry of Public Administration, as of 31 December 2011, a total of 52,165 civil servants and state employees were employed with state administration bodies and administrative and professional services and offices of the Croatian Government, of whom 1,783 or 3.418% were members of national minorities.

According to the information from the said records, as of 31 December 2010, a total of 52,798 civil servants and state employees were employed with state administration bodies and administrative and professional services and offices of the Government of the Republic of Croatia, of whom 2,070 or 3.92% were members of national minorities.

The above data indicate that the total number of civil servants and state employees employed with state administration bodies and administrative and professional services and offices of the Croatian Government was reduced in the one-year period (31 December 2010 - 31 December 2011) by 633 staff or 1.20%.

Simultaneously, the number of civil servants and state employees from the ranks of national minority members was reduced by 287, or 0.50% of the total staff number.

We emphasize that the Decision Prohibiting New Recruitment of Civil Servants and State Employees with State Administration Bodies, Professional Services and Offices of the Croatian Government, from December 2009, is still in force, which generally resulted in a smaller number of new recruits in state administration bodies during 2011, including a smaller number of newly recruited national minority members.

According to the data as of 31 December 2011, of the civil servants and employees from the ranks of national minorities, the Serbs account for the largest share – 1,267, amounting to 2.43% of the total staff number, followed by the Hungarians – 89, or 0.17% of the total; the Czechs – 79, or 0.15% of the staff; the Bosniaks – 70, or 0.13% of the staff; the Italians – 56, or 0.10% of the staff; the Slovenes – 54, or 0.10% of the staff; and the Albanians – 18, or 0.04% of the staff. The said bodies also employ two members of the Roma national minority who make 0.004% of the total number of civil servants and state employees.

Representation of national minority members in administrative bodies of local and regional self-government units

At the beginning of 2012, the Ministry of Public Administration also conducted an analysis of the status of representation of national minority members in the administrative bodies of local and regional self-government units.

The data from the records of the Ministry of Public Administration about the representation of national minority members on the administrative bodies of local and regional self-government units, as of 31 December 2011, show that out of a total of 576 units of local and regional self-government, 127 units have secured the representation i.e. employed national minority members with their administrative bodies. In relation to the status as of 31 October 2010, the number of self-government units securing representation of national minority members increased by 12 units.

Of 97 local and regional self-government units (85 municipalities and towns/cities, and 12 counties) that need to secure the representation of national minority members with their administrative bodies, this right has been fully exercised in 64 of them, which is an increase by 7 units in relation to the status as of 31 October 2010. The 97 self-government units include 16 units in which members of a certain national minority constitute the majority of the unit's electorate.

As of 31 December 2011, administrative bodies of local and regional self-government units have a total of 12,915 civil servants and employees, of whom 592 or 4.58% are members of one of the 22 national minorities, 61 or 0.472% are of unknown ethnicity, and 2 of them or 0.015% have declared themselves as Muslims. For the sake of comparison, in relation to the status as of 31 October 2010, there was an increase in the total number by 50 civil servants and employees in the administrative bodies of local and regional self-government units, and the number of civil servants and employees from the ranks of national minorities increased by 8; the number of civil servants and employees of unknown ethnicity rose by 14; whereas the number of civil servants having declared themselves as Muslims fell by 7.

Among 592 civil servants and employees from the ranks of national minorities, the Serbs have the largest share - 338, followed by the Italians - 87, the Bosniaks - 37, the Hungarians - 31, the Czechs - 24, the Slovenes - 22, the Montenegrins - 14, the Macedonians - 9, the Slovaks - 8, the Germans - 6, the Ruthenians - 4, the Roma - 3, there are two Albanians and two Jews, while the least represented, with one member each, are the Austrian, Bulgarian, Polish, Romanian and Russian national minorities.

Representation of national minority members within wider public sector

With regard to the issue of representation of national minority members within wider public sector, we note that the exercise of such a right has not been regulated by the provisions of the Constitutional Act on the Rights of National Minorities or other relevant regulations, and consequently, the Ministry of Public

Administration does not monitor the status of the representation, i.e. does not have the data on the representation of national minority members within wider public sector.

However, in accordance with the obligations of the Republic of Croatia arising from the EU Common Position on Chapter 23 – Justice and Human Rights, the Minister of Public Administration issued a decision on 28 September 2010 to establish a Working Group for conducting a survey on the representation of minorities within wider public sector, comprising representatives of relevant ministries and the Government Office for National Minorities.

By a decision of the Croatian Government of 17 December 2010, the task of preparing the survey on the national minority representation within wider public sector in Croatia was entrusted to the Ivo Pilar Institute of Social Sciences that produced the Survey on the Share of National Minority Members in Wider Public Sector, i.e. published the results of the research on representation in late February 2011.

The study showed a positive result, that is, that the share of national minority members among the wider public sector staff in the geographic areas covered by the study (16.3%) is only slightly lower than their share in the population (17.7%)."