

APPENDIX

The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Croatia

ECRI wishes to point out that the analysis contained in its third report on Croatia, is dated 17 December 2004, and that any subsequent development is not taken into account.

In accordance with ECRI's country-by-country procedure, ECRI's draft report on Croatia was subject to a confidential dialogue with the Croatian authorities. A number of their comments were taken into account by ECRI, and integrated into the report.

However, following this dialogue, the Croatian authorities requested that the following viewpoints on their part be reproduced as an appendix to ECRI's report.

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

The Government of the Republic of Croatia appreciates that in ECRI Third report on Croatia the progress in a number of areas concerning the field of racism and intolerance has been recognized. The examples of this progress are: the ratification of Protocol No. 12 to the European Convention on Human Rights, the adoption of the new criminal law provisions and Labour Code provisions on the prohibition of discrimination, as well as the adoption of the new Asylum Law. Also the National Program for the Roma has been adopted, and an Expert Working Commission on Discrimination Combating has prepared a National Strategy against all forms of Discrimination. Additionally, we would like to mention that the National Program for the Suppression of Trafficking in Human Beings (2005-08) and the Operative plan for 2005 were adopted by the Government on 15 December 2004.

Since the ECRI Second report on Croatia, the situation in the field of human rights, whether on international or national level, has improved. We would like to underline that Croatia performed its democracy by adoption of all modern standards which it successively confirms through the relations with neighboring countries, and, much broader, through cooperation within the regional and global international order.

Croatian Government is fully determined to take into consideration the issued recommendations in order to improve the situation in the field of racism and intolerance.

Further, the Government would also like to thank ECRI for the adoption of a great number of comments made by the Croatian authorities to the draft of the Third Report of ECRI, as well as for accepting some of the explanations which improved the text of the Report.

In addition, Croatia would like to give the remarks concerning the constitutional protection of the national minorities which we would appreciate to be included as an annex to the Third Report on Croatia.

On the international level, in the field of combating the racism and intolerance, the Republic of Croatia is firmly committed to the suppressing and prevention of new discrimination phenomena, as are the new migrants flows, the issue of asylum and trafficking in human beings, especially women and children, as well as spreading racism through internet technology, and so on.

Croatia, through its constitutional regulation established transparent system concerning the implementation of international law. Pursuant to article 140 of the Constitution of the Republic of Croatia, international treaties which have been concluded in compliance with the Constitution, published and are currently in force, represent a part of the internal legal order and are above the national law in the hierarchy of legal sources. As such, international treaties can apply directly.

On the national level, beside the regular legal protection of the human rights in the field of racism and discrimination, the Constitutional court plays an important role as a court functioning outside the structural division of power to legislative, judicial and executive branches, and independent of the influence of any government body. In the Republic of Croatia there are also three ombudspersons: General Ombudsperson, Ombudsperson for Children, and Ombudsperson for Gender Equality, all appointed by the Parliament and independent human rights institution that are autonomous in their work i.e. examination of cases of human rights violation and issuing recommendations for their solution.

The Republic of Croatia is a party to all the major international treaties on global and regional levels in the field of human rights (without reserves concerning their texts) and

has incorporated their relevant standards in domestic legislation. Croatia is also meeting its regular commitments concerning the periodic reports and recommendations on it. The Republic of Croatia clearly extended an open invitation to the thematic mechanism of the Human Right Commission to visit its institutions, which was accepted by the international community as an act of transparency and good will. In addition to that, the Human Right Commissioner of Council of Europe for the first time visited Croatia in June 2004.

CONSTITUTIONAL PROVISIONS AND OTHER BASIC PROVISIONS

10.

- We believe it is particularly important to draw attention to a more detailed explanation of Art. 14 of the Constitution.

1. Interpretation of the concept of "national origin"

Art. 14 of the Constitution prevents discrimination on various bases, including "national origin". This constitutional term refers to the concept which includes a broader national identity pursuant to which national minorities may or may not be constituted as such (consequently, national minority is by all means part of this concept).

2. Interpretation of the concept of "other characteristics"

The provision of Art. 14 is not exhausted by enumerating reasons for discrimination, so this leaves open the possibility to prevent discrimination on the basis of the criteria mentioned in this provision as "other characteristics", which by all means include national minority.

3. Interrelation of Art. 14. and 15.

For a more complete interpretation of the provision of Art. 14 it is necessary to take into consideration the provision of Art. 15 which guarantees equality to members of all national minorities, free expression of their national identity, the use of the language and script and cultural autonomy. Moreover, Article 82 regulates the rights of national minorities by the laws passed by Croatian Parliament by a two-third majority of all the MP votes (also known as organic laws), which speaks in favour of special care with which Croatian authorities treat national minorities and their equality in rights and freedoms. In a broader sense, we draw attention to the necessity of taking into account the provision of Art. 4 paragraph 4 of the Constitutional Law on the Rights of National Minorities, which explicitly states that any discrimination on the basis of nationality is prohibited.

All these arguments are important for a better understanding of the legislative framework concerning the protection of national minorities from discrimination in Croatia. Notwithstanding the permanently open possibility of interpretation of the constitutional text, by various courts and the Constitutional Court it is apparent that the legislative framework in Croatia is in line with international standards, and that the explicit addition of the term "national minority" in the provision of Art. 14 of the Constitution would in itself not mean a greater contribution, in terms of its content, to the protection of national minorities in Croatia.

12, 13.

- In connection with the comment noted in the Report, that the autochthonous minorities listed in the Preamble to the Constitution do not include Bosniak and Slovenian national minorities, we note that it is necessary to have a more complete interpretation and take into account the text following the word "Ruthenians" that quotes "and others". The term "and others" in the spirit of Croatian lexical usage relates to other national minorities as well, not only to the "autochthonous" ones, and, consequently, to Bosniak and Slovenian

national minorities. Thus, no national minority in the Republic of Croatia may be considered as left out from the Preamble in the Constitution. The status of national minorities, particularly their participation in the decision-making processes, is not derived from their explicit mention in the Preamble. Their individual rights are mainly provided in the Constitutional Law on the Rights of National Minorities, but their exercise often depends on the numerousness of the minority itself. We, however, believe that, since the legislator has not envisaged numerous clauses, but left the term "and others", that is open to interpretation and as such includes all other national minorities.

Members of ethnic groups have the right to declare themselves as belonging to a national minority, provided that they meet all the criteria mentioned in Art. 5 of the Constitutional Law on the Rights of National Minorities."