NACJONALIZMY W ŚWIECIE SPECIFIC NATIONALISMS

DOMINIKA MIKUČKA-WÓJTOWICZ

THE RIGHT TO POLITICAL REPRESENTATION FOR MEMBERS OF NATIONAL MINORITIES IN THE REPUBLIC OF CROATIA, 1990-2004

INTRODUCTION

One of the most fundamental tasks that contemporary states face is protection of the rights of the minorities inhabiting their territories. This is especially the case with fundamental rights, which include the freedom to preserve their own language, customs and religion, development of their own culture, but also with political rights, including in particular the answer to the question how to ensure political representation for members of political minorities. This article presents the relevant changes that were introduced into the Law of the Republic of Croatia from the beginning of the democratic transformation in 1990 until 2004. Such a timeframe results from the fact that the first laws regulating the question were introduced in the Republic of Croatia in 1990, while the year 2004 marked the final constitution of the last bodies representing this group of citizens provided by law. Normative regulations are contrasted with their practical observance. One of the goals of this article is to demonstrate that – on their own – regulations of political rights of minorities are insufficient to speak about their genuine safeguarding. For these rights to be exercised, there must be the political will of governments and authorities so that legislation is abided by in practice.

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Dominika MIKUČKA-WÓJTOWICZ, MA
Institute of Political Sciences,
Pedagogical University of Krakow.
domiwojt@gazeta.pl

ETHNIC STRUCTURE OF CROATIA

The ethnic structure of Croatia underwent major changes between the national censuses of 1991 and 2001. According to the figures from the first of these censuses, Croatia was inhabited by 4,784,265 persons, of whom 78.1% (3,736,356) were citizens of Croat nationality, while the remaining 21.9% represented several national minorities. The most numerous among the minorities were Serbs, whose share in the inhabitants structure accounted for 12.2%. In the census of 2001, the share of citizens of Croat nationality increased to 89.6% of all inhabitants (3,977,171). Even though Serbs were still the most numerous minority, their share in the general structure of population dropped to as little as 4.5%. Moreover, the latter census also showed a significant fall in the number of the Bosniak,¹ Montenegrin and Macedonian minorities – i.e. constituent nationalities of the former Yugoslavia – but also of the Hungarian and Czech ones.² These falls were caused primarily by the flight of those groups of population to their home countries, either in fear of military operations or as a result of them. Similarly, the main reason behind the fall in the number of Serbian people was beyond doubt the military operations conducted within the territory of the country, mostly in Krajina and Slavonia. The number of people who were subsequently forced to relocate or escaped from Croatia is estimated to be between 300,000 and 350,000.³ Moreover, as experts in this problem have rightly noticed, some respondents “changed” their declared national status between the two censuses and began to pass themselves off as Croats. Experts believe the reasons for such a *status quo* to lie in the policy conducted in the 1990s by President Franjo Tuđman, and the presidential party HDZ (Croatian Democratic Union), who more willingly tried to limit the rights of minorities, treating them as an unnecessary ballast, and led to their assimilation with society.⁴

PROBLEMS WITH THE EXECUTION OF MINORITY'S RIGHTS

Especially difficult in this context was the situation of the Serbian minority. It was primarily the result of historical enmity and resentment that laid heavy on Serbian-Croatian relations and the Serbian-Croatian conflict continuing in the first half of the 1990s, which additionally encumbered the mutual relations. Similarly, the Italian population living primarily in Istria experienced problems with the execution of their political rights. It is worth recalling that its territory was for the first time included into Croatia only after the Second World War, and the Italian minority inhabiting the area is treated by the authorities with a certain distrust, as Croats prefer to be secured against escalation of separatist tendencies within that population. This fear of separatists among Istrian Italians was very much visible during the discussions of the so-called Statute of the Region of Istria (2001), on whose power bilingualism was to be introduced within the whole of Istria. The lack of compromise from members of the alliance, who feared that this in future might provide

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¹ There are two terms used for the people of Bosnia. The name “Bosnians” defines all citizens, independent of their nationality and denomination, while “Bosniaks” are the Muslims living within the territory.

² See www.dzs.hr (as of 20th November 2008).

³ Zoran Malenica, *Ogledi o hrvatskom društvu. Prilog sociologiji hrvatskog društva* (Zagreb: Golden marketing – Tehnička knjiga, 2007), p. 173; Human Rights Watch, *Hrvatska desetljeće razočaranja. Kontinuirane prepreke za reintegraciju srpskih povratnika*, *Report*, 7 (2006), p. 1.

⁴ Ivo Goldstein, *Hrvatska povijest* (Zagreb: Novi Liber, 2003), p. 437; Malenica, p. 173; Siniša Tatalović, *Nacionalne manjine u Hrvatskoj*, (Split: STINA d.o.o., 2005), pp. 26-27.

the region with grounds for claiming autonomy, led to the crisis in the then governing "2+4" democratic coalition, which resulted in the resignation of the Minister of European Integration, Ivan Jakovčić, and his party, IDS (Istrian Democratic Assembly), walking out of the governing coalition.

Similarly, problems with the execution of all rights, not only political, were also felt painfully by the Roma minority. Even though, according to the figures from the 2001 census, this minority accounted for only 0.2% of the total number of residents, which in absolute terms meant less than 10,000 people, according to estimates by non-governmental organisations, this figure was at least four times understated.⁵ The basic problem concerning the Roma minority is on the one hand the refusal of the right of citizenship, and on the other frequent cases of failing to apply basic human rights towards this minority. For a very long time, that is until the end of the 1990s, the Roma population had no right to political representation, although their share in the population structure, according to the data of the 1991 census, was comparable to that of the Slovak or Rusyn minorities that enjoyed such a right.

THE RIGHT TO POLITICAL REPRESENTATION FOR MEMBERS OF NATIONAL MINORITIES AND ITS CHANGES

On leaving the Yugoslavian Federation, Croatia declared that it would observe the regulations concerning the rights of minorities binding in the legal order of the Socialist Republic of Croatia. These guarantees pertained to the rights of minorities: Hungarian, Czech, Italian, Slovak, Rusyn, and Ukrainian. According to the standards carried over from the old legal system, they maintained the right for the language of the minority to be used and education in such languages to take place, the right for minority cultures to be developed and organisations set up, as well as the right to proportional representation in the organs of the state. The right to representation was granted for all levels of state authorities, from commune to central. As Siniša Tatalović recalls, on the power of the Constitution of the Socialist Republic of Croatia of 1974, they guaranteed – besides the right of representation – also other opportunities for direct participation in the process of undertaking political decisions. Within communes and regions where the participation of minorities was significant in the population structure, special bodies were established, namely Committees for Nationality Issues (*Komisije za narodnosti*), and – at the central level – the Commission for Relations Between the Nationalities of the Parliament of the Socialist Republic of Croatia (*Odbor za međunacionalne odnose*), entrusted with the task of ensuring equal rights for members of minorities in the legal order of the Republic, and opposing all forms of their discrimination.⁶

The basic problem that surfaced after 1989, when systemic changes began in Croatia, was the problem of the so-called new minorities, that is nations that until that time had been the constituent nations of the Socialist Federal Republic of Yugoslavia. Even during the work on the Constitution passed on 22nd December 1990, the status of that group of inhabitants was considered, with the final decision constituting Croatia as a national state "(...) of the Croatian nation and the state of representatives of other nations and

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⁵ Siniša Tatalović, *Manjinski narodi i manjine* (Zagreb: Prosvjeta, 1997), p. 97; Idem, 2005, p. 75.

⁶ Idem, 2005, pp. 18-20.

minorities being its citizens.”⁷ It is worth mentioning that this clause found its way into the preamble that led a variety of experts to speculate for years whether it had any legal power at all. Among the stipulations of the Constitution, there was, however, one that guaranteed all citizens the equal right to participate in public life and the right of access to civil service,⁸ yet the explicitly expressed question of political representation of minorities was passed over altogether. The countries of the European Communities considered these regulations insufficient and made Croatia assume additional detailed regulations in the field, which was to be the basic condition for recognition of the state’s sovereignty. As the Serbian-Croatian conflict was already escalating at the time, the EC primarily claimed a guarantee of rights of the Serbs living within territory of Croatia. As an answer to those claims, received in Croatia with great reluctance and believed to be “piling up the obstacles before the young and partially occupied state,”⁹ the Croatian Parliament (*Sabor*) passed the “Charter of Rights of Serbs and Other Nationalities in the Republic of Croatia” on 25th June 1991. Even though the Charter included a clause guaranteeing Serbs and representatives of other minorities the right to participate in the bodies of local and central authorities,¹⁰ it was nonetheless fairly enigmatic. Besides that, the issue was not regulated by any bylaws.

Another step that followed criticism from the European Communities was the passing, on 4th December 1991, of the “Constitutional Act on Human Rights and Liberties of Ethnic and National Communities’ or Minorities’ Rights in the Republic of Croatia.” In this Act, the right to political representation of minorities was elaborated for the first time. In line with its provisions, representatives of minorities whose share in the population exceeded 8% enjoyed the rights of proportional representation in the *Sabor*, government, and highest organs of the judiciary.¹¹ This regulation in fact referred only to the Serb minority, whose share in the population was 12.2%. On its power, Serbs had a guaranteed right to elect 13 representatives. Members of the other minorities had a guaranteed right to elect five representatives to the Lower Chamber of the *Sabor*, i.e. the Chamber of Representatives (Art. 18). Yet at a local level, members of all minorities had the right of representation proportional to their share in the population of the given unit of local authorities (Art. 19). Moreover, two *kotars*¹² of special status – Knin and Glina – were established on the power of the Act. Compared to the remaining *kotars*, they enjoyed a far greater degree of autonomy in the regulation of their internal affairs. They were established in territories where – in accordance with the results of the 1981 census – members of national minorities accounted for the absolute majority of residents. Legislation on their functioning was temporarily suspended in 1997, when the Croatian authorities considered that due to the significant loss of the Serb population they had become ineffective, and were finally liquidated during the territorial reform of 2001. To ensure the implementation of the rights guaranteed by the Act, a special body was established, namely the Office for Relations Between the Nationalities (ethnicities) (*Ured za međunacionalne odnose*).

Regulations concerning the representation of members of minorities in the *Sabor* were implemented into the election statute of 9th April 1992. Moreover, this statute

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⁷ „Ustav Republike Hrvatske”, *Narodne novine* 56 (1990).

⁸ Ibidem.

⁹ Igor Dekanić, *Demokratizacija Hrvatske. Uspjesi i kompleksi suvremene hrvatske politike* (Zagreb: Prometej, 2004), p. 57.

¹⁰ Povelja o pravima Srba i drugih nacionalnosti u Republici Hrvatskoj, Art. 5, *Narodne Novine* 31 (1991).

¹¹ Ustavni zakon o ljudskim pravima i slobodama i o pravima etničkih i nacionalnih zajednica ili manjina u Republici Hrvatskoj, Art. 18, *Narodne novine* 65 (1991).

¹² *Kotar* was a unit of second-tier regional administration in operation before the reform of 2001.

stipulated that in the case when the proportional participation of members of minorities should not be guaranteed in the result of elections, they would be nominated from the lists of parties participating in the elections. That was actually the case, as no representative of the Serb minority won a mandate as a result of the elections. The Constitutional Court appointed three representatives of the SNS (Serbian People's Party) as members of the Chamber of Representatives, considering that in this case it was not necessary for the party to exceed the threshold set at 3%. The remaining representatives were appointed by the Court from the lists of the SDP (8) and HNS (2). Members of the SDP, i.e. the party that was the legal inheritor of the League of Communists of Croatia (*Savez Komunističke Hrvatske*) were afraid that this would additionally cause detriment to its image, i.e. that it would be perceived as Serb party. For this reason they convinced five of the eight activists nominated from its lists to leave the party and establish an independent circle. Moreover, the election statute provided detailed rules in the case of representatives of those minorities whose share in the population did not exceed 8%. The right to elect representatives was awarded to the representatives of the Hungarian and Italian minorities (which elected one representative each), and jointly to the Czech and Slovak, Rusyn and Ukrainian, and German and Austrian ones, which elected one representative for each of the joint groups. Voting in this segment was based on the principle of relative majority. According to the guidelines of the State Electoral Commission (DIP – *Državno izborno povjerenstvo*), representatives of minorities had two votes. They cast their vote for minority representatives in an especially established constituency covering the entire territory of the state, while the other vote they cast like any other citizens, voting for the party list within the constituency where they were registered as permanently resident.¹³ Initially, these regulations did not pertain to the Serb minority, whose candidates canvassed for votes in all the constituencies within the parties they established. The solution operated with small modifications until the days of the last election statute under the HDZ and President Tudman in 1999.

The regulations concerning proportional representation of the members of the Serb minority did not last long, only to the pre-term parliamentary election in October 1995. On 21st September, five weeks before the election, a number of changes were introduced into the election statute. The right to proportional representation was suspended on the grounds of Article 1 of the "Constitutional Law on Temporary Suspension of the Constitutional Law on Human Rights and Freedoms and the Rights of Ethnic and National Communities or Minorities,"¹⁴ passed on the same day as the election statute. At the time, Croatian authorities recognised that due to the significant drop in the Serb population, such representation was ineffective. According to the new regulations, representatives of the Serb minority had the right to three mandates. On the power of the order of the DIP, much like in the case of other minorities, a special constituency was established and a voting list made of persons entitled – or rather forced – to vote in it. Interestingly, it is not clear on what grounds that list of voters was drafted, as no general census of population was made at the time. Moreover, there were no legal regulations providing the grounds for making a separate list of citizens of Serb nationality. Srđan Vrcan believes that the authorities used police records to prepare it. The list included less than 180,000 citizens of Serb nationality, which according to Vrcan allows the entire Serb population to be esti-

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¹³ Nenad Zakošek, *Politički sustav Hrvatske* (Zagreb: FPZ, 2002), p. 25.

¹⁴ Ustavni zakon o privremenom neprimjenjivanju pojedinih odredbi ustavnog zakona o ljudskim pravima i slobodama i o pravima etničkih i nacionalnih zajednica ili manjina u Republici Hrvatskoj, *Narodne novine* 68 (1995).

mated at approximately 220,000.¹⁵ Such calculations meant that Serbs accounted for 4% of all residents, which was also corroborated by the census in 2001. For precision's sake, it must be mentioned that non-governmental organisations believe these figures to be greatly underestimated, and lay the blame on the census being conducted in line with UN guidelines and not according to the formerly binding principles.

The regulations concerning the representation of national minorities in the Sabor were again amended in 1991. According to members of the minorities this was the most discriminatory statute approved under the HDZ.¹⁶ First, on the grounds of the new regulations, the number of minority representatives was limited to five, of which only one was elected by the Serb minority. Similarly, the representatives of the Hungarian and Italian minorities elected one representative each. Besides electing their candidate, voters also had to nominate the candidate's deputy to be appointed to the post should the representative be unable to perform his function. The right to elect jointly one representative was retained by the Czech and Slovak minorities. The fifth representative was to be elected jointly by members of the Austrian, German, Rusyn, Ukrainian, and Jewish minorities. In the case of the representatives elected by the last two groups of minorities mentioned above, no deputy was appointed for the representative. Should the representatives elected by those minorities be unable to perform their function, they were to be replaced by the next highest-ranking candidate on the list.¹⁷ On the power of the new regulations, members of minorities lost the additional vote, which they were entitled to earlier following DIP orders. As was mentioned above, from that moment, they were forced to decide whether they wanted to vote in a special constituency for representatives of minorities or for party lists. The statutes also provided detailed regulations concerning the procedures for putting forward minority candidates (Art. 18) and drawing lists of voters' support (Art. 19). Doing away with the regulation assuring minority members positive discrimination was received very badly by them. The more so, as the authorities prepared a special list of voters entitled to vote in the constituency where the representatives of minorities were elected. If one wanted to vote for party lists, it was necessary to apply in an administrative procedure to be removed from the list of minority voters, and subsequently – should one's application receive positive consideration – apply again, this time to be added to the voter register at the place of residence. These regulations beyond doubt rendered the process of integration of members of minorities with Croatian society more difficult. Even though the procedures related to being added to the lists of "normal" voters described above were time-consuming and required determination, many members of minorities, and especially the Serb minority, decided to follow them. Due to the harsh criticism of regulations contained in the election statute – both from non-governmental organisations and from the European Union – a decision to change them was reached before the parliamentary elections of 2003. It was based on the new "Constitutional Act on the Rights of National Minorities" of 13th December 2002.¹⁸ According to its stipulations, members of minorities have the right to choose from 5 to 8 of the representatives to the *Sabor*. The right to choose the largest number of representatives – from 1 to 3 – is guaranteed to the members of the minorities whose share in the general structure of

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¹⁵ Srđan Vrcan, 'Izbori 1995. i 1997. Od vladavine uz isfabricirani pristanak većine ka vladavini bez pristanka većine', in *Pakiranje vlasti. Izbori u Hrvatskoj 1995. i 1997*, ed. by Srđan Vrcan et al. (Zagreb: Alinea), pp. 80-81.

¹⁶ STINA. Edukativno-informativni servis za prava manjina i međuetničku toleranciju, 12 (2002), 7th Nov 2002, p. 5.

¹⁷ Zakon o izboru zastupnika u Hrvatski državni sabor, Art. 17, *Narodne novine* 116 (1999).

¹⁸ Ustavni zakon o pravima nacionalnih manjina, *Narodne novine* 155 (2002).

population exceeds 1.5%, which in effect means that this regulation pertains only to the Serb minority.¹⁹ It is worth mentioning that Serbs believe these guarantees to be insufficient as they consider their rights to have been greatly curtailed, and postulate a return to the regulations from the early 1990s that assured them of a representation that was proportional to their share in the population. The statutes define precisely the question which groups of minorities are to be represented by individual members of parliament. The right to elect one representative was retained by members of both the Hungarian and Italian minorities, while the Czech and Slovak minorities retained the right to elect one candidate. The seventh representative is now jointly elected by the representatives of the following minorities: Austrian, Bulgarian, German, Polish, Roma, Romanian, Russian, Turkish, Ukrainian, Wallachian and Jewish, while the last one is jointly elected by Albanians, Bosniaks, Montenegrins, Macedonians, and Slovenes.²⁰

CONTROVERSIES ABOUT POLITICAL REPRESENTATION OF MINORITIES

It must be mentioned that the right of members of minorities to representation in the *Sabor*, and the method of reserving seats in advance for the minority representatives, continues to cause plenty of controversy. First, it is noticed that ensuring minority rights to representation by statutory guarantees of mandates is used primarily in communities that are deeply divided and/or fail to respect principles of democracy, e.g. in Colombia, Nigeria, Jordan, Pakistan, and the Palestinian Autonomy.²¹ Critics of this right maintain that once such an option is resorted to, the mandate of minority members should be limited to decisions concerning the matters of those minorities only; moreover, they believe that such representatives find no other questions interesting. Moreover, attention is also turned to the fact that such guarantees decrease the motivation to greater involvement in the solution of social problems among minorities. They believe the privileged position of their candidates also to discourage political parties from including members of minorities in their lists, as they have their seats in the *Sabor* already guaranteed.²² These charges seem, however, strongly exaggerated, as for the most part members of minorities have for years successfully run also from a number of parties including the SDP (Social Democratic Party of Croatia), HNS (Croatian People's Party – Liberal Democrats), and IDS (Istrian Democratic Assembly of Istria). Moreover, the representatives – contrary to the opinions quoted above – are often highly competent and involved in the solving of various civic problems. Suffice to mention one of the representatives of the Serbian minority, Milorad Pupovac, who has for years featured highly in rankings made of the best, most involved, and competent members of parliament. Similarly, the repeated representative of the Italian minority, Furio Radin, enjoys the opinion of being a very good MP. Questioning the legitimacy of maintaining reserved seats for representatives of minorities, some experts in these matters claim that members of minorities have for some time voted for party lists increasingly often and more eagerly. Moreover, they emphasised that the power of the voter's vote in this segment is far greater, which also violates the principle

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¹⁹ Ibidem, Art. 19 point. 3.

²⁰ Zakon o izmjenama i dopunama zakona o izborima zastupnika u Hrvatski državni sabor, Art. 16, *Narodne novine* 55 (2003).

²¹ "Servis za kulturu manjinskih prava i međuetničku toleranciju", 1 (2000), 11th Oct 2000.

²² STINA, pp. 3-4.

of equality of votes in the material sense. For example in 2003, the power of the voter electing minority representatives in parliamentary elections was 4.3 times greater than in other constituencies, where party lists were voted for. Jasna Omejec highlights the fact that the average number of votes required to win a mandate in the case of party lists was 17,209, while one MP representing the Serbian minority won his mandate with the support of only 265 voters.²³ The supporters of such solutions claim in turn that these also operate successfully in such democratic states as, for example, Germany or Slovenia. Besides that, they believe the level of political culture in Croatia to be too low for members of minorities to be able to participate in normal party campaigns. As Omejec emphasises, the method of reserving seats in advance for members of minorities should be applied as long as the Croatian society does not reach the level of development where the threat of political discrimination of members of minorities in the *Sabor* would disappear, which she believes still to require plenty of time.²⁴ The supporters of top-down statutory reservation of seats for representatives of minorities postulate the return to the principle of positive discrimination of this group of voters, which means allowing them to vote both for the representatives of minorities and for party lists. They believe that this would help to integrate them with the society as they would be able to fulfil their civic duty without the need to cease maintaining the link with their national or ethnic group. It must be mentioned that such an option, although envisaged in the amendments of the basic act of November 2000, was to be regulated by the election statutes in the light of the provisions of the amendment. However, their amendment from 2003 does not provide for such an option.²⁵

After the parliamentary election of 23rd November 2003, Ivo Sanader's government signed an agreement with the representatives of the Serb minority, in which – in return for the support of the government – he guaranteed them a few posts in the state administration. These actions were approved by the European Commission in its communication "Opinion on Croatia's Application for Membership of the European Union," as actions favouring integration and at the same time allowing the government to carry the constitutional guarantees to ensure minorities the access to public administration at all its levels.²⁶

Even more controversies than those concerning the representation of minorities in the *Sabor* result from the question of proportional representation in the bodies of local and territorial regional authorities. As already mentioned, such a right was awarded to some minorities even at the time of the Socialist Republic of Croatia. In turn, the so-called new minorities were awarded that right on the grounds of provisions of the constitutional act of 1991 regulating the issues of human and minority rights.²⁷ Even Siniša Tatalović, who seems to be not only the greatest expert in this subject in Croatia but also an actual promoter of the development of minority rights, believes this solution to be improper, focusing on two questions. First, in the case of seats reserved in local authorities, the mandate of minority representatives should be limited only to dealing with matters that directly concern minorities, first and foremost being the execution of the right to maintain their own identity. Second, he believes such a solution to be against the idea of self-govern-

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²³ Ivica. Jurić, "Lokalno važnije od parlamentarnog, Politička predstavljenost nacionalnih manjina", Regionalni glasnik za promociju kulture manjinskih prava i međuetničke tolerancije, 8 (2004), 25th Nov 2004, p. 9.

²⁴ Jasna Omejec, *Uloga lokalne samouprave u multikulturalnim pitanjima i međuetničkim odnosima u Republici Hrvatskoj* (Zagreb: Hrvatski pravni centar, 2001), p. 27.

²⁵ Promjene ustava Republike Hrvatske, *Narodne novine* 113 (2000).

²⁶ Mišljenje Europske Komisije o zahtjevu Republike Hrvatske za članstvo u Europskoj uniji, 20th April 2004, www.mvp.hr (20th Jan 2009), p. 27.

²⁷ Ustavni zakon o ljudskim pravima i slobodama i o pravima etničkih i nacionalnih zajednica ili manjina u Republici Hrvatskoj, Art. 19, *Narodne novine* 65 (1991).

ment functioning in Europe and rooted in the European Charter of Local Self-Government of 1985. Along the lines of the Charter, members of local authorities should act as citizen-residents of a given region, and their ethnic origins should be of no consequence. This is to favour the development of civic model of management and full integration of residents at the local level.²⁸ Despite the existing regulations, the level of representation of minority representatives proportional to their share in population was not reached in the local elections of 20th May 2001 in many individual communes. Moreover, despite the fact that the statutes governing local and regional authority elections included a regulation stipulating that proportional representation must be ensured by September 2002, the authorities failed to fulfil this obligation. The arguments used pertained to the work of the new act on the rights of minorities, which was to regulate these issues in detail.

NEW LEGAL SOLUTIONS

The new "Constitutional Act on the Rights of National Minorities" was eventually passed on 13th December 2002, and according to its provisions, the minorities that account for at least 5% of the population of the given commune, or *županija* (county), are entitled to the right to be represented in representative bodies at the local level. The share of minority in the local population should be based on the results of general censuses, whose figures should be updated before every election on the grounds of lists of voters administered by the offices of communes and *županijas*. Should no mandate be won by a representative of a minority encompassing 5-15% of population, the candidate who won the largest number of votes in the election becomes a member of such a body. In the case of such a situation occurring in a minority whose participation in the local population exceeds 15%, the mandate is awarded to such a number of candidates participating in the election that would ensure proportional share of that minority's participation. If, in following such actions, the appropriate level of representation of minority members is not ensured, by-elections are organised.²⁹ The act also includes a provision that by-elections to the representative bodies of local and regional authorities are to be held within 90 days of the date of the act, that is, not later than 1st March 2003. Despite that, such an election was postponed until 15th February 2004, which meant that it in fact took place barely more than a year prior to the end of the term of office of those bodies. Incidentally, this delay became the object of sharp criticism in the opinion of the European Commission quoted above.

While the act on minority rights of 2002 was being worked on, the government decided to introduce special advisory councils at the local level – the so-called minority councils (*Vijeća općina*) and – in the case when the formal requirements allowing members of minorities the election of the council were not met – election of the so-called representatives of national minorities (*Predstavnik nacionalnih manjina*), and the Council for National Minorities (*Savjet za nacionalne manjine*) at the central level, to ensure a better standard of protection of the rights of minorities and coordination of relevant actions.³⁰ These bodies may present their opinions concerning the developed legal regulations concern-

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²⁸ Tatalović, 2005, pp. 55-56.

²⁹ Ustavni zakon o pravima nacionalnih manjina, Art. 19-20, *Narodne novine* br. 155 (2002).

³⁰ Ibidem, Art. 23-24, 35-36.

ing minority issues, and comment on the government's activities that would positively influence the development of such rights, and take a position on the programme content of public radio and television in questions related broadly to minorities.³¹ The first elections to minority councils were conducted on 18th May 2003, yet due to the poor information campaign concerning their constitution and scope of competence, the voters' reaction was very weak. The highest turnout was recorded in cities, yet it amounted to only 24.45%. Only every other member of the councils was elected on that day. The by-election did not take place until 5th February 2004, yet that round did not enjoy major popularity among minorities either.³² This was further aggravated by technical problems, which the non-governmental organisation GONG pointed out in its report; they included: dated voter lists, lack of information about the location of polling stations, non-existent definition of national minority associations – which in a number of cases led to a ridiculous situation whereby associations considered as eligible by DIP were refused the right to participate in municipal elections by municipal electoral committees, who claimed that these did not represent minorities – and lack of detailed guidelines regulating financing of election campaigns.³³

CONCLUSION

Summing up, the principal problem of members of minorities in the period discussed is found in the policy of permanent changing of their rights. For example, even though the minorities have had a statutory guarantee of the right to representation in authorities at various levels since the 1990s, that right was modified before each election. Moreover, there have frequently been various limitations imposed on that right in the case of representatives of individual national groups, and especially the Serb minority. Thus, one of the most basic principles concerning the operation of the law of the country in this scope, namely the one that normative regulations should be lasting, common, known, and predictable, has not been respected.

Summary

The goal of this article is to analyse the changes in the normative regulations concerning the political representation of members of national minorities in the Republic of Croatia in 1990-2004. These regulations are contrasted with their practical use. Furthermore, attention is turned to the political dimension of these issues, visible through the incessant amendments to regulations. The period from 1990 to 2004 was selected due to the fact that the first legal regulations governing this question were introduced in the Republic of Croatia in 1990, while 2004 saw the final constitution of the last bodies representing this group of citizens provided by law. Moreover, the author aims to prove that on their own normative regulations – even if favourable for minorities – are never sufficient to speak about protection of minority rights, if the good will to respect them in practice is missing.

Key words: Republic of Croatia, national minorities, political representation

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³¹ Ibidem, Art. 31, 35.

³² Tatalović, 2005, pp. 27-28.

³³ Izvještaj udruge GONG o manjinskim izborima, STINA. Edukativno-informativni servis za prava manjina i međuetničku toleranciju, 14th Jun. 2004, pp. 11-18.

PRAWO DO REPREZENTACJI POLITYCZNEJ DLA CZŁONKÓW MNIEJSZOŚCI NARODOWYCH W REPUBLICIE CHORWACJI W LATACH 1990-2004

Streszczenie

Artykuł analizuje zmiany w regulacjach normatywnych dotyczących politycznej reprezentacji członków mniejszości narodowych w Republice Chorwacji w latach 1990-2004. Okres ten został wybrany z uwagi na fakt, iż w roku 1990 wprowadzono pierwsze regulacje normujące tę kwestię, natomiast w 2004 roku ostatecznie ukonstytuowały się ostatnie ustawowo przewidziane organy reprezentujące tę grupę obywateli. Celem autorki jest skontrastowanie regulacji na poziomie normatywnym z praktyką ich przestrzegania oraz pokazanie, iż same gwarancje normatywne nigdy nie są wystarczające, aby można było mówić o rzeczywistym zapewnieniu praw obywatelom. Ponadto uwaga została zwrócona na polityzację tej problematyki, czego przejawem były niewątpliwie ciągłe zmiany przepisów.