

Political rights for national minority groups
through reserved seats in national parliaments

A case study of Croatia, Romania, and Slovenia

Susanna Celén

European Master's Degree in Human Rights and Democratisation

Supervised by : Barbro Gustafsson
Kristian Myntti
Markku Suksi

Åbo Akademi University, Institute for Human Rights

July, 2003

TABLE OF CONTENT

1 INTRODUCTION	p.1
1.1 Introduction	p.1
1.2 Minorities political rights, and right to effective representation	p.2
1.3 Lund recommendations	p.3
1.4 Limitations	p.4
1.4.1 Representation in the national parliament	p.5
1.4.2 Cases of Croatia, Slovenia and Romania	p.5
1.5 Research questions	p.6
1.5.1. Who has to the right to vote and to stand for office to the reserved seats?	P.6
1.5.2. What are the strong and the weak points of the election formula chosen by the states in relation to the minority?	p.7
1.5.3. Is the specific representation creating equal representation in-between minority groups?	p.9
 2 MINORITY GROUPS, SPECIFIC REPRESENTATION AND LEGAL PROTECTION FOR MINORITY GROUPS	 p.9
2.1 Slovenia	p.9
2.1.1 Minority groups	p.9
2.1.2 Specific representation	p.10
2.2 Croatia	p.10
2.2.1 Minority groups	p.10
2.2.2 Specific representation	p.12
2.3 Romania	p.14
2.3.1 Minority Groups	p.14
2.3.2 Specific Representation	p.15
2.4 Legal Protection for minority groups	p.16
3. SUFFRAGE RIGHTS	p.19
3.1 Right to stand as a candidate	p.20
3.1.1 Right to stand for office for reserved seats in Slovenia	p.21
3.1.2 Right to stand for office to the reserved seat in Croatia	p.21

3.1.3 Right to stand for the reserved seat in Romania	p.22
3.2.1 Nomination procedures Slovenia	p.22
3.2.2 Nomination procedures Croatia	p.23
3.2.3 Nomination procedures Romania	p.24
3.3.3 Right to vote for the reserved seats	p.26
3.3.1 Right to vote protected in law; Slovenia, Croatia and Romania	p.26
3.4. Voters register	p.27
3.4.1 Slovenia	p.28
3.4.2 Croatia	p.29
3.4.3 Romania	p.30
3.5 Practical exercise of the suffrage right on Election Day	p.31
3.5.1 Slovenia	p.32
3.5.2 Croatia	p.33
3.5.3 Romania	p.35
4. ELECTION SYSTEMS	p.38
4.1 SLOVENIA	p.38
4.1.1 Specific representation	p.38
4.1.2 Constituencies	p.38
4.1.3 Election formula	p.40
4.2 Croatia	p.41
4.2.1 different groups, different specific representation	p.41
4.2.2 One-man one vote	p.43
4.2.3.1 Weight of the votes and Constituencies	p.44
4.2.3.2. The groupings that share representatives with other groups	p.46
4.2.4. Election formula	p.47
4.3 ROMANIA	p.48
4.3.1 Specific representation	p.49
4.3.2 One person-one vote principle	p.49
4.3.3 Weight of the votes and constituencies	p.49
5. EQUAL TREATMENT OF MINORITY GROUPS	p.52

5.1 Affirmative action not discriminatory action	p.53
5.1.1 Slovenia	p.54
5.1.2 Positive discrimination justified	p.57
5.2.1 Croatia	p.59
5.2.2 Affirmative action justified and in accordance with the law	p.60
6. CONCLUSIONS	p.61
6.1. Who has the right to vote and to stand for office to the reserved seats?	p.63
6.1.1 The right to stand for office	p.63
6.1.2 The right to vote for the representative	p.64
6.2. What are the strong and the weak points of the election formula chosen by the states in relation to the minority?	p.66
6.2.1. Slovenia	p.66
6.2.2. Croatia	p.67
6.2.3. Romania	p.68
6.3. Is the specific representation creating equal representation in-between minority groups?	p.70

1. INTRODUCTION

1.1 Introduction

“ Equality in fact may involve the necessity of different treatment in order to obtain a result which establishes an equilibrium between different situations. “

This was a quote of a statement made by the Permanent Court of International Justice. ¹It refers to the very controversial aspects of reaching equality through positive discrimination of groups that are in a different vulnerable position in relation to the majority.

The right to equal treatment and non-discrimination are enshrined in international human rights instruments, in particular the Universal Declaration of Human Rights adopted in 1948 article 7 and the Covenant on Civil and Political Rights adopted 1966 article 26. If States are to conform with the requirements of these conventions, they have to take steps including legislation to deal with the protection of rights. In so far these States do take steps, protection by law must be made without discrimination. However if equal treatment and non-discrimination is to treat everyone in the same way, assimilation will follow. While this may help to achieve equality of opportunity, it may create conflicts with minorities striving to protect their identity.

Promotion of equality by giving preference treatment to some (and thereby excluding others) has often referred to as affirmative action or positive discrimination. This is the focus of this study.

¹ Advisory Opinion on minority schools in Albania. P.C.I.J. Ser. A/B, No. 64, p.4 (6 April 1935)

1.2 Minorities political rights, and right to effective representation

The emphasis on ethnic identity during the past decade has produced a particular concern with participation of rights of minorities. It is through participation that a person expresses and protects his/her identity, and the survival and dignity of the groups is ensured.

As far as the exercise of political rights is concerned, the general principle of non-discrimination is not sufficient. As a minority, a groups interest may well be different from those of the majority; and it's culture is likely to be marginalized by that of the majority. This is why some states have introduced special procedures through which minorities can make decisions, exercise legislative powers, and develop their culture and identity. The rationale of these special measures is actually not to create a privileged position for minorities but to place them effectively in the same position as members of the majority. The theory behind them is that involvement of minorities promotes integration and peaceful coexistence in a state.

A minority population may be dispersed throughout the country, and will not, as a general rule, have the strength, the adequate number of legislators to influence the formation of government and it's policies.² In the admissibility decision of G & E vs Norway the European Commission of Human Rights held unanimously that the fact that the minority group of Sami had no success in getting representation through the general election system did not entitle the group to have special rights to representation. Despite the fact that the Sami in Norway amount to 40.000, the representation in the Norwegian parliament has remained marginal.³ Considering this case, a state may well be justified to introduce positive discriminatory measures when the general principle of non-discrimination is not sufficient for a minority to get representation. Various international human rights documents encourage States to promote minority participation in such situations.⁴ Today,

² Kymlika, W., *Multicultural Citizenship: A liberal Theory of Minority Rights*, Oxford, Clarendon Press, 1995, p. 132. "In Canada the indigenous peoples hold only 1 percent of the elected offices, although they are 3.5 per cent of the population."

³ Mynnti K. "Minoriteters och urfolks politiska rättigheter" Rovaniemi, Laplands University Press, 1998, p.225.

⁴ 1992 UN Declaration on Minorities Article 2, paragraphs 2 and 3, "...persons belonging to minorities have the right to participate effectively in public life" and "the right to participate effectively in decisions on the national level..."; and, according to Article 15 of the Council of Europe's 1994 Framework Convention for the Protection of National Minorities (hereafter the "Framework Convention"), States Parties "shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural,

some states introduces special affirmative action to enable members of minority groups to participate in legislatures, to protect their interest on national level on equal terms as the majority. These practices have been referred to as preferential treatment, reverse discrimination or affirmative action.

1.3 Lund recommendations

The High Commissioner of National Minorities (HCNM) is a permanent body under OSCE with the mandate to carry out preventive diplomacy for tension between national minorities. In 1998, the HCNM identified the exclusion of national minorities from political influence as a source of potential conflict.⁵ Experts on minority issues have under the auspices of HCNM issued recommendations for minority participation in public power. The Lund recommendation (drafted in Lund in Sweden) No 6:1 is more specifically recommending states to reserve a seat for minorities in legislative powers as a means to improve their political influence in countries where ethnic tensions otherwise might occur.⁶ It has in reality recently been implemented in some OSCE participating states. Among these, we find Romania, Croatia and Slovenia.

The basis for the Lund recommendations refers to the international standards to which each State has agreed. In this context the commitments undertaken by all OSCE participating States, in particular those of the 1990 Copenhagen Document of the Conference on the Human Dimension, articulates detailed standards relating to national minorities. All OSCE States are also bound by United Nations obligations relating to human rights, including minority rights, and the great majority of OSCE States are further bound by the standards of the Council of Europe.

In order to give better effect to those Recommendations, the Office for Democratic Institutions and Human Rights ODIHR proposed that practical guidelines be developed in

social and economic life and in public affairs, in particular those affecting them, Paragraph 35 of the 1990 Document of the Copenhagen Meeting on the Human Dimension the "Copenhagen Document", OSCE participating States "will respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities";."

⁵ Lund Recommendations on the effective Participation of National Minorities in Public Life, explanatory Note September 1999, p. 3.

⁶ Idem. p. 6.

respect of the four recommendations concerning elections. These guidelines were developed by the ODIHR in conjunction with International Institute for Democracy and Electoral Assistance (International IDEA) and the Office of the HCNM.⁷ These recommendations hereinafter called “Practical guide to Lund recommendations” will serve as a reference to assess the implementation of the 6:1 recommendation i.e special representation of national minorities through reserved seats in national parliaments

It is only in recent years that consideration has been given to the adaptation of electoral systems to minority representation.⁸ Two widely different approaches have been advanced on their representation. The first focuses on ensuring representation for minorities by members of the minority, hopefully in the proportion of their size of the population, either through a national electoral system which facilitate this, or If necessary, by a system of separate representation. The other approach is less concerned with direct minority representation than with their political integration. The system is sometimes blurred, for some methods for direct minority representation are compatible with their integration, such as proportional systems. In this study the first approach will be analysed.

Croatia, Slovenia and Romania have taken positive action by reserving seats in the parliament to secure effective representation of minorities. It is a sort of communal representation. It is the most explicit form of specific representation of national minorities that results from creating communities or circles of persons, where the electorate is made up not of citizens who reside in a particular territory, but of those belonging to an ethnic group.

⁷ Office for Democratic Institutions and Human Rights (hereinafter ODIHR) “ Guidelines to assist National Minority Participation in the Electoral Process” January 2001.

⁸ See de Silva, K.M., “Electoral systems” in C.Young (ed.), *Ethnic diversity and public Policy: A comparative policy*, London MacMillan, 1998; and Reilly B. and Reynolds, A., Washington, DC, National Academy Press. 1999.

1.5 Limitations

1.4.1 Representation in the national parliament

The focus on this research paper is on the representation in national parliaments. However, other mechanism for dealing with minority issues on the national levels can be equally effective. In Croatia, the Office for Ethnic and National Communities or Minorities within the Government was established in 1991. The main task of this office is to propose measures for the implementation of rights of ethnic and national minorities. In Romania, there is a Department for the Protection of Minorities. The Department, which works under the Prime minister deals with issues in relation to minority rights. In Slovenia within the government, minority issues are dealt with by the Office for Nationalities.

Representation at local level to facilitate minority representation is receiving increased attention. In Croatia, Slovenia and Romania minority groups are allowed to participate in local councils and which is a form of local self-government. These forms of representation might be very interesting out of a minority perspective, and might give minorities a more important form of participation in decision- making than one reserved seat in the parliament might offer, yet this analysis does not deal with these. The focus is the representation in the parliament on the national level. Through reserved seats in the parliament, minority representatives are able to play an important role in the political process as part of the opposition, and be able to bring attention to minority issues that would otherwise be missed.

1.4.2 Cases of Croatia, Slovenia and Romania

The OSCE established the HCNM “ to be an instrument of conflict prevention at the earliest stage”. This mandate was created largely in reaction to the situation in the Former Yugoslavia which some feared would be repeated elsewhere in Europe, especially among the countries in transition to democracy, and could undermine the promise of peace and prosperity as envisaged in the Charter of Paris for a New Europe adopted by Heads of State and Government in November 1990. Slovenia and Croatia was two of those states that became independent states after the disintegration and the war in the Former

Yugoslavia. This two States have introduced the reserved seats for minority groups in the national parliaments, however in a different manner. I will contrast these two cases with Romania that also introduced such a measure. It will be a comparative study on how these states have implemented this specific measure.

1.6 Research questions

1.5.1. Who has to the right to vote and to stand for office to the reserved seats?

Article 25 (b) of the International Convention of Civil and Political Rights puts special emphasis on inclusiveness by stipulating that elections shall be by universal suffrage. Some reasonable restrictions are justified however. Citizenship, minimum age limit are examples of reasonable restrictions, restriction according to property requirement, education and illiteracy are examples of excessive restrictions.⁹ These requirements are meant to apply for general elections to parliaments. In the empirical study it will be demonstrated which restrictions the States put up to the right to vote for and to stand for office to the reserved seats. OSCE/ODIHR have in their “best practice “ guide formulated certain recommendations on how to improve the right to vote and to stand for office. This guide will serve as additional guideline to clarify what practical components that could improve the implementation to satisfy international human rights standards regarding the right to stand as a candidate.

1.5.2. What are the strong and the weak points of the election formula chosen by the states in relation to the minority?

To highlight the rationale of the “reserved “ seats in the countries chosen, I will focus on the election elements. This is done to demonstrate the uniqueness of the mechanism of preferential treatment in the election system in Croatia Slovenia and Romania. It will be demonstrate how the states have introduced these measures in relation to election elements

⁹ Paragraph 10 of UN HRC General Comment 25 .

and to what extent this facilitate their influence. Representation is a key instrument for participation, enabling voices to be heard in official bodies. The process of electing these representatives should act to mobilise the minority and reinforce it's corporate character. Which are strong and weak points of the different electoral formula applied in Slovenia, Croatia and Romania, in relation to the minority members and the weight of the votes, the drawing of constituencies, the registration of minority voters and facilitation for candidates to run for office?

1.5.3. Is the specific representation creating equal representation in-between minority groups?

The intentional differentiation to give some minority members such rights and exclude others, are referred to as affirmative action. This is provided for in International Convention on the elimination of All Forms of Racial Discrimination, article 1 paragraph 4 and article 2 paragraph 2.¹⁰ Even if such differentiation is acceptable or perhaps obligatory in order to create equality between groups, it must be justified on some grounds that do not amount to discrimination¹¹. This also follows of article 5 of the same Convention. This article stipulate that States that have ratified the convention should undertake to prohibit discrimination and guarantee the right of everyone without distinction on the grounds of

¹⁰ International Convention on the Elimination of All forms of Racial Discrimination (Hereinafter ICERD) Ratified by Romania 15 September 1970, by Croatia 12 October 1992, by Slovenia 6 July 1992. Article 2 paragraph 2 “ State parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose to guaranteeing them full an equal enjoyment of human rights and fundamental freedoms...”Article 1 Paragraph 4 “ Special measures taken for the sole purpose of securing adequate advancement of certain racial of ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided however, that such measures do not, as a consequence, lead to maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they have been achieved.” However as stated in “ Minority Rights: International Standards and Monitoring Procedures Latvian Human Rights Quarterly 5/6 1998 page 18. “Some special measures, such as maintenance of educational institutions, *Political Participation in the State affairs*, autonomy and land right, will require prolonged or permanent measures.”

¹¹ ICERD Article 1 Paragraph 4. “ That such measures do not, as a consequence, lead to maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they have been achieved.”

national or ethnic origin, in particular in the right to participate in elections and the right to vote and to stand for elections.¹²

¹² ICERD Ratified by Romania 15 September 1970, by Croatia 12 October 1992, by Slovenia 6 July 1992. Article 5 “ In compliance with the fundamental obligations laid down in article 2 of this Convention, State Parties undertake to prohibit and to eliminate racial discrimination and distinction in all forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (c) Political rights, in particular the right to participate in elections- to vote and stand for election-on the basis of equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service.”

2 MINORITY GROUPS, SPECIFIC REPRESENTATION AND LEGAL PROTECTION FOR MINORITY GROUPS

2.1 Slovenia

2.1.1 Minority groups

According to the census of 2000, Slovenia has a population of about 2 million (the total number is 1.990.272¹³). The census provided information that 1.727.018 declare themselves as Slovene. The minority groups that are recognised as autochthonous minority are Hungarians 6.200, and Italians 2.300. ¹⁴ Roma 2.300¹⁵. Other ethnic groups are Serbs 39.001, Croats 35.000, Bosnians 21.500, Albanian 6. 200, Macedonian 4.000, these are new minority groups after the disintegration of the Former Republic of Yugoslavia. They are not regarded as minority groups.

The Italian and Hungarian autochthonous minority communities entitled to special representation, amount to 0.5 % of the total population. Members of these communities elect 2 seats out of 90 parliamentary seats that constitute 2 % of the representatives in the parliament. While the general seats should represent 20 000 citizens each, the Italian mandate for instance, represents only 3.500 citizens. As affirmed in paragraph 6 of Constitutional article 64, the right of representation for these communities are protected regardless their amount of the population. The affirmative action is in accordance with the law. The autochthonous Roma minority and the non-autochthonous Roma minority are not given the same protection. Slovenia fulfils the political rights protection for the Italian and Hungarian autochthonous community in a very generous way.

¹³ Statistical Yearbook (annual reviews) and Statistical information. www.sigov.si/zrs/leto/96/index.html

¹⁴ 2002 census available at <http://www.stat.si/popis2002/en/SLO-T-07ENG.htm>, last visited 10 July 2003.

¹⁵ Official figures amount to 2293 but most sources estimate the Roma to amount to 7000 to 10 000 individuals, counting the thousands non-autochthonous Roma. European Commission Regular Report on Slovenia's Progress Towards Accession, 1999 p.17, and Statistical Yearbook of the Republic of Slovenia 2000, Statistical Office, Ljubiana, Vol XXXIX, appendix A.

2.1.2 Specific representation

The Slovene affirmative action is allocated to Italian and Hungarian autochthonous minority communities. The Hungarian and Italian minority communities have the right to elect one representative each to the National Assembly in Slovenia.

The right to have a reserved seat in the parliament was first recognised in the constitution in 1989 with the constitutional amendments to the 1974 Constitution.¹⁶ It was later on reconfirmed in the Constitution from 1991 in paragraph 3 of Article 64 and paragraph 3 of article 80 and the first paragraph of Article 82 of the Constitution.¹⁷ Paragraph three of article 80 in the Constitution recognises that;

“ One deputy of the Italian and one deputy of the Hungarian autochthonous communities should always be elected”

The above-mentioned provisions signify a breach of the principle of the equality of suffrage rights in two ways. The affirmative action creates a system where the minority voter has one additional vote in comparison to the general electorate. Moreover, the vote on the special minority representative has an additional weight. This right is not equally protected for members of the majority and not for the members of other national minorities. In this sense, these provisions constitute a preferential treatment of these two groups.

2.2 Croatia

2.2.1 Minority groups

The results of the 2001 census were officially released in mid June 2002. The Serb minority group accounted for 4.5 % of the population, a decrease with two thirds from 1991. No other minority group accounted for more than 1 % and all together they

¹⁶Constitutional amendments in 1989 to the Constitution of 1974 published in Official Gazette RS, no 32/89, third paragraph of article 338.

¹⁷ Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia published in Official Gazette RS, no.1/91-I.

accounted for 7.4 % of the population. ¹⁸Serb representatives criticized the 2001 census result for failing to include a large number of Croatian Serb refugees currently outside the country. Together the minority groups are secured special representation in maximum 8 or 5.3 % of 151 seats in the Parliament. The reserved seats in the parliament are approaching to become proportional to their size of the population. If the proportionality should be exactly according to the figures presented in the census 2001, the Serb minority would be allocated 7 seats instead of maximum 3 and Roma should not be included in the smaller minority group that elects a 12th part of a seat, but rather as the Slovak and Czech that are entitled to half of a seat each.

The Croat affirmative action has its justification according to the size of the population. This distinction is founded on justifiable and objective grounds and in relation of the aim with the introduction of the measure. The fact that some of these groups would need affirmative action in order to be better integrated in society is evident, especially in two cases. The affirmative action provided for in Croatia is resulting in a less than proportional representation of the various minority groups in the Parliament. The total amount of members of minorities constitute 7.4 % of the population and the seats reserved constitute only 5.3 % of deputy seats in the Parliament.

Two of the national minority groups have suffered most discrimination after the independence of Croatia. The first group is the Serb minority group. Discriminatory attitudes against this minority group are common especially in war-affected areas. This discrimination included in 2002 according to the Helsinki Committee of Croatia, court disputes related to restitution of the property of Serb returnees, allocation of reconstitution assistance and residency and citizenship issues. The unemployment of this group is evident in some areas. Not even in schools were there are over 300 Serb children attending classes, any Serb teacher is in employment. ¹⁹

¹⁸ Population Census of 2001. www.Dzs.hr/Eng/census/census/2001.html.

¹⁹ IHF Annual Report on Human Rights Violations 2003-05-08. p. 6

The Roma minority group suffer from racial violence, discrimination from public institution such as schools and hospitals etc. The article in the weekly *Medimurje* from the 23 April 2002 (newspaper in the region of Medimurje) express the attitude against this group quite clearly:

“unsatisfied Roma people should be loaded on a trains of no return. “ The author Ivica Jurgec wrote that Croats should not be against minority rights, because in the future in some regions, such as Medimurje, Croats might need this rights themselves in order to protect them from the majority Roma (...)and we the people in Medimurje good-hearted as we are gave them everything, and more than that (...)for it is a common fact that it’s always lazy, indolent people and hooligans that complain, who blame other for their misfortunes (...) “ In few years time, my neighbour will say - blood will prevail and all of us will become gypsies”(...) perhaps, it would be good to ensure a train of no return on which they will be put together with their families. “²⁰

The position of Roma in Croatia is burdened by the systematic policy of the Ministry of Education of segregating Roma children in special classes, 43% of the school children of Cakovec region attended separate classes from non-Roma children in more than 20 of it’s district.²¹

The need of affirmative action to integrate these Roma, Serb and other minority groups are evident. Therefore it must be concluded that positive discriminatory measures are justified and necessary to promote a truly democratic society. A reserved seat to the groups in proportion to their size of the total population could be a good start. The equal suffrage is violated in one way. The weight of the vote from a minority member can be more efficient since it only takes one vote to assure the group such reserved seat in the Parliament. The distinction made in Croatia is according to the national minority origin. If a citizen identifies himself as a member of a minority and register as such, he or she is entitled to vote for the minority representative. Since all minority groups are included, there is no

²⁰ IHF Annual Report on Human Rights Violations 2003-05-08. p. 6 .p.8

²¹ CERD Concluding observations of the Committee on the Elimination of Racial Discrimination: Croatia. 21/05/2002.

unfair treatment. However the Roma group should be entitled to elect their representative only with one other minority group, and not twelve as it is today.

2.2.2 Specific representation

Under the pressure of the International community, Croatia has introduced the rights for minorities to have special reserved seats in the Parliament. The special rights for minority groups were protected ever since the Independence of Croatia in 1990. In the preamble to the Constitution of 1990 the notion of minorities appear for the first time.²² The definition of national minorities at that time was members of autochthonous national minorities who were citizens of Croatia. The preamble contained a list of eight minority groups that were protected, the Serbs, Muslims, Slovenes, Czechs, Slovaks, Italians, Hungarians, Jews, and others. Paragraph three article 15 of the Constitution gave special right to these groups.

“ Beside the universal franchise, the law may ensure a special right to members of national minorities to elect their representatives into the Croatian Parliament”

The second paragraph of article 15 confirmed the rights of national minorities to be protected in a special Constitutional Law. This law²³ was first adopted in December 1991, and ever since been amended and adjusted during a ten years period. The list of the national minority groups that are protected have changed during time and also the definition of national minority. With the new Constitutional Law on the Rights of National Minorities (hereinafter CLNM) adopted in December 2002 the old ceased to be valid. CLNM does not contain a list of minorities. All the references to autochthonous have been changed to references to national minorities. Article 4 of CLNM stipulate that every citizen of Croatia shall have the right to express freely that he or she is a member of a national minority and deserve the protection in the law.

²² Constitution of Croatia adopted December 1990.

²³ Constitutional Law on Human Rights and Freedoms and the Rights of National and Ethnic Communities or Minorities in the Republic of Croatia. Adopted in December 1991 as amended in May 1992. Official Gazette no 65/91,27/92,34/92,51/00 and 105/00.

When Croatia signed and ratified the FCPNM, Croatia did not make any reservation nor declaration. All citizens that identifies themselves to belong to a national minority group, shall enjoy equally the protection from this convention.²⁴

2.3 Romania

2.3.1 Minority Groups

The biggest minority group in Romania is the Hungarian. They amount to 1 583 300 persons and constitute 7.1 % of the total population. The Parliamentary Group of the Democratic Alliance of Hungarians in Romania (UDMR) is today holding 27 or 7.8 % of 345 parliamentary seats. In other words this group is more than proportionally represented in the parliament.

The 17 smaller minority groups constitute together 333 5000 persons or 1.5% of the total population. They hold 5.2 % or 18 out of 345 deputy seats in the Parliament. The positive discriminative measure introduced in Romania is in an effective manner providing for proportional representation of these smaller minority groups.

The Romanian system is effectively ensuring that every minority group that have at least one legally constituted organisation in the elections gets one reserved seat in the parliament. 17 seats are occupied by 17 different minority organisations. These groups are over represented in proportion to their size of the population. One representative from the minority party shall protect and promote the interests of the minority group.

There is no formal differentiation in these legal provisions with regards to minority groups. There is no specific list or group mentioned that should be particularly entitled to this right as was the case in Slovenia and Croatia. The special treatment is allocated in general to all members of national minority groups that are citizen of Romania if they present a candidate list to the elections of the Parliament. There are, however some indirect

²⁴ The Framework Convention for the Protection of National Minorities, ETS no. 157. Signed by Croatia 6 November 1996 and ratified 11 October 1997, entered into force 1 February 1998.

administrative requirements that serve as an obstacle for the representation of the Roma minority group.

The members of the Roma minority group are not represented in proportion of their size of the population. This groups officially amount to 400 000 citizens or 1.8% of the total population. In the parliament they hold one seat, that constitute 0.2% of the total amount of parliamentary seats. The positive discriminatory measure applied in elections to the Romanian Parliament, is in general promoting groups that are well organised politically and that have members that take part in elections. The Roma group suffers from the fact that they are fragmented in smaller communities and do not in principle cooperate in-between these. There are several Roma organisations that present lists in the elections and members of Roma minority groups do not support only one candidate list. Additionally this particular group suffer from administrative obstacles to be registered to vote in the elections. These obstacles will be analysed in the next chapter. If all members of Roma would back up one minority organisation they would profit a lot from the Romanian system of positive discrimination. The reason behind the fact that the Roma minority group is not well represented may be due to more cultural obstacles than associated with the design of the election system and the positive discrimination of minority groups in Romania. Nevertheless the system promotes that the Roma minority group have one representative in the Romanian Parliament. If the system would offer this minority group proportional representation, it would provide 6 seats in the Romanian Parliament.

2.3.2 Specific Representation

After the people's revolution in 1989 and the overthrow of Ceausescu regime, a new Government was installed in office in 1990. The following year the Parliament adopted new Constitution in November 1991. Ever since that year, the national minority-groups have enjoyed special protection for representation in the Parliament.

Article six of the Romanian Constitution guarantees the rights of persons belonging to minorities. Article 20 in the Romanian constitution gives precedence to the covenants and treaties on fundamental human rights that Romania is a party to. Romania signed the

Framework Convention (FCPNM) the first of February 1995 and ratified the Convention the 5th November the same year. Romania did not make any declaration nor reservation to this Convention. Article three of the Framework Convention guarantees persons belonging to national minorities the right to choose freely to identify, or not to identify as a national minority. The Romanian law apply such definition. According to the Romanian Government the following minorities are covered by the Convention (the names are those used in a State Report to the monitoring committee of the FCPNM): Magyars/Szeklers, Gypsies, Germans/Swabians/Saxons, Ukrainians, Russians/Lipoveni, Turks, Serbs, Tatars, Slovaks, Bulgarians, Jews, Croats, Czechs, Poles, Greeks, Armenians.²⁵

2.4 Legal Protection for minority groups

International and regional human rights instrument

Slovenia, Croatia and Romania are parties to all important binding international human rights instruments covering, respect for the rights of individuals belonging to ethnic, religious and linguistic minorities that is protected in International Covenant on Civil and Political Rights, art. 27.²⁶ Some instruments protecting the respect for the non-discrimination, including the “ association with a national minority” are protected in European Convention for the Protection of Human Rights and Fundamental Freedoms, art 14.²⁷ These states are also State Parties to measures for the elimination of all forms of

²⁵ Advisory committee on the Framework Convention for the Protection of National Minorities, Opinion on Romania adopted 6 April 2001. ACFC-INF-OP-I(2002)00 under specific comments to articles 1-19, here article 3.

²⁶ International Covenant on Civil and Political Rights adopted by General Assembly resolution 2200 A (XXI) 16 December 1966, entered into force 23 March 1976, signed and ratified by Slovenia 6 July 1992, Romania 9 December 1974 and Croatia 12 October 1992.

²⁷ Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms ETS No.009 entered into force 18 May 1994. Croatia signed the Convention and Protocol 6 November 1996 and ratified 5 November 1997. Slovenia signed the Convention and Protocol 14 May 1995, ratified 28 June 1994, Romania signed the Convention 7 October 1993 and the Protocol 4 November 1993, and ratified 20 June 1994.

racial discrimination such as the Convention on the Elimination of All Forms of Racial Discrimination²⁸ and other instruments of international law.

By acceding to international conventions, particularly to the International Covenant on Civil and Political Rights and its First Optional Protocol, and to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Slovenia, Romania and Croatia adopted the system of international monitoring over the fulfilment of obligations which include the possibility of a petition on the part of an individual.

In accordance with the three countries constitutional provisions, the ratified international instruments constitute a part of international law. The Constitutions of the three states provide that statutes and other legislative measures shall comply with generally accepted principles of international law and shall accord with international agreements binding on Slovenia (art. 8)²⁹, on Croatia (141) and on Romania (art 20). The ratified and proclaimed international agreements take immediate effect. The provision of the International Convention as a whole, therefore form part of the internal legal system and are binding on the state and its population.

As being members of the United Nations, The Council of Europe and OSCE, the three States strive for the consistent respect and implementation of the provisions relating to the protection of human rights and rights of national and ethnic groups.³⁰ They have already signed and ratified the Framework Convention of the Council of Europe for the Protection of National Minorities³¹, which includes the principles of the international community in

²⁸ International Convention on the Elimination of All forms of Racial Discrimination Adopted and opened for signature and ratification by General Assembly resolution 2106 A (XX) of 21 December 1965, Slovenia ratified 6 July 1992, Croatia ratified 12 October 1992, and Romania den 15 September 1992.

²⁹ Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia published in Official Gazette RS no 1/91-I, Constitution of Romania adopted 21 November 1991. Constitution of the Republic of Croatia. December 1990.

³⁰ Romania admission as Member State to United Nations with the resolution 995 (x) ,14 December 1995, OSCE 25 June 1973, Council of Europe 7 October 1993, Slovenia, admission to UN with the resolution 46/236 22 May 1992, OSCE 24 Mars 1992, Council of Europe 14 May 1993, Croatia admission to United Nations with the resolution No 46/238 22 May 1992, OSCE 24 March 1992, Council of Europe 6 November 1996.

³¹ Croatia Ratification 11 October 1997, Slovenia 1 February 1995, Romania 11 May 1994.

relation to the protection of national minorities as part of the entire issue of human rights protection under international law.

3. SUFFRAGE RIGHTS

The right to vote and to stand for office under the auspices of international human rights instruments put special emphasis on an inclusive right by stipulating that elections shall be by universal suffrage, but who has the right to vote for the reserved seat and to candidate for the seat?

The electoral systems in Romania, Croatia and Slovenia applies electoral formula that should ascertain the right to vote and to stand for office according to the criteria established by OSCE/ODIHR in Guidelines for minority participation.³² These guidelines recommends among other, proportional representation, low thresholds, and non-discriminatory constituency drawing. Romania and Slovenia have introduced such systems and freedoms after independence, and Croatia after electoral amendments in 1999.³³ In these three countries, citizens belonging to national minorities are given specific political rights as well. It is the most explicit form of specific representation of national minorities that results from the creation of communities or circles of persons where the electorate is made up, not of citizens who reside in a particular territory, but of those belonging to an ethnic group. In Slovenia such right is given to the Italian and Hungarian autochthonous national minorities, in Croatia to 23 groups of minorities specifically mentioned in the election law, and in Romania to legally constituted organisations of persons belonging to a national minority.

³² Guidelines to assist the national minority participation in the electoral process developed by the ODIHR in conjunction with the international Institute for Democracy and Electoral assistance (International IDEA) and the Office of HCNM. (Hereinafter guidelines for minority participation) They were the result of an extensive discussion at a workshop held in Warsaw 3-4 July 2000 in Warsaw.

³³ Romania, Constitution Article 59 and Law on elections to the Chamber of Deputies and State No 68/1992. Adopted 15 January 1992. Article 3 paragraph 1 Slovenia Article 80 paragraph 3 of the Constitution in force 23 December 1990 and Croatia Law on Elections of representatives to the Croatian State Parliament Official Gazette No 116/99 5 November 1999, article 38 and 40.

3.1 Right to stand as a candidate

The International Covenant on Civil and Political Rights, protects that all citizens that qualify under the national law should have the right and opportunity to stand as a candidate.³⁴ Even though restrictions to the right to stand for office are permitted, it must be assessed that they are reasonable and not discriminating against certain groups.³⁵ This is particular interesting for members of national minority groups. The above stated Covenant and the International Convention for the Elimination of All Forms of Racial Discrimination protects the equal right to stand for election on a non-discriminatory basis.³⁶ Article 3 Protocol 1 to the ECHR, has been interpreted by the European Court of Human Rights as a subjective right to stand for elections to the legislature.³⁷ Regional conventions and international declarations particular for minority protection affirm the right to citizens belonging to minority groups as well. Citizens belonging to minority groups qualified to vote must be eligible to nominate candidate to stand for office in order to make the special right to representation for such groups effective.³⁸ The restrictions to the right to stand for office should be based on justifiable, objective and reasonable criteria.³⁹ While minimum age and citizenship are reasonable requirements for eligibility, residency requirement or limitation by reason of political affiliation are excessive ones.⁴⁰ In order to establish sufficient electoral support to justify participation in elections, the presentation of individual candidates may be made conditioned of a reasonable minimum number of signatures. The conditions should be sufficient to discourage frivolous candidates but not serving as an obstacle for legitimate candidates to obtain the opportunity to run for elections.⁴¹ The grounds for rejection of a registration application should be based on objective and clear rules, established in law.⁴² The procedures for

³⁴ ICCPR article 25 b).General Comment paragraph 1. Article 3 Protocol 1 of the ECHR

³⁵ General Comment 25,paragraph 17 and 15.

³⁶ General Comment 25, paragraph 15, ICERD Article 5 c)

³⁷ *Mathieu-Mohin and Clearfayt v. Belgium* judgment 2 March 1987, Publications of the European Court of Human Rights, Series A, vol. 113, paragraph 51, Copenhagen Document. Paragraph 7:5.

³⁸ FCPNM 1994, article 15, Declaration on National Minorities 1992, article 2 paragraph 2 and article 4 paragraph 1, Copenhagen Document 7:5.

³⁹ General Comment 25 on Article 25. Paragraph 15.

⁴⁰ General Comment 25,paragraph 15, Copenhagen Document 7:5.

⁴¹ General Comment 25, paragraph 17.

⁴² Idem. Paragraph 16.

election disputes must include mechanisms for challenging registration or denial of registration of a candidate or a political party.⁴³

3.1.1 Right to stand for office for reserved seats in Slovenia

Article 43 of the Slovene Constitution proclaims that every citizen who has attained the age of eighteen years has the right to be elected. The more specific regulations on the nomination of candidates are found in the Slovene Parliamentary election law chapter seven. The restrictions to the right to stand for office are limited to age, citizenship and certain offices that are incompatible with the office of deputy. These restrictions fall within those justified on objective and reasonable grounds according to Article 25 of ICCPR.⁴⁴ Additional to the basic requirements for candidacy in Slovenia, a candidate for representing the autochthonous minority must be a member of one of these minority groups.⁴⁵

3.1.2 Right to stand for office to the reserved seat in Croatia

To be eligible for the reserved seat of a minority, a candidate must be citizen, over 18 years old and of national ethnic origin corresponding to the groups he or she will represent.⁴⁶ The CLNM article 5 stipulate that a national minority member is an individual that himself recognises that he or she is part of a group that have been traditionally settled in Croatia and who have ethnic, linguistic, cultural and or religious characteristics which are different than those of other citizens and who wishes to preserve these characteristics. The national minority groups recognised to have the right to special representation are the following, Serbs, Italian, Hungarian, Czech, Slovak, Austrian, German, Ruthenian,

⁴³ ODIHRs Practical Guidelines to Effective Implementation of HCNM Lund Recommendations; “Guidelines to Assist National Minority Participation in the Electoral Process” (Herein after Practical Guidelines to Lund Recommendations) 2001. p. 26.

⁴⁴ General comment 25 paragraph 17.

⁴⁵ Elections to the National Assembly Act, official Gazette RS, no 44/92, Paragraph 2 Article 37.

⁴⁶ Article 45 of the Croat Constitution affirms the right to vote for all citizens that have reached the age of 18. This in combination with article 5 and 19 of CLNM and article 16 of the amended Parliamentary election law gives the eligible criteria for a minority candidate.

Ukrainian, Jewish, Bulgarian, Polish, Roma, Romanian, Turkish, Russian, Vlach, Albanian, Montenegrin, Bosnian, Slovenian, and Macedonian.⁴⁷

3.1.3 Right to stand for the reserved seat in Romania

The eligibility is granted to all citizens having the right to vote, who meet the requirements for voting, unless they are forbidden to join a political party because of the office they hold. Candidates must have attained, by or on the election day, the age of at least twenty-three, to be elected to the Chamber of Deputies or local administration. Persons who, on the day of presentation of nominations, do not fulfil the constitutional conditions for the exercise of the "right" to be elected, as well as the persons who, during the last 6 months previous to the election day, have exercised, within the area of the constituency where they want to stand for election, offices of prefect, sub-prefect, or head of the public services of ministries and of other governmental authorities decentralized in these units, cannot stand for election, the law introducing an absolute interdiction in this respect.

3.2.1 Nomination procedures Slovenia

Political organisations of the Hungarian and Italian nominate their candidates for a minority delegate within one of the special constituencies for these minorities. Candidates can be proposed by a minority organisation or by individual voters. If candidates are proposed by individual voters, the nomination must be supported by at least 30 votes from autochthonous minority members with the right to vote. In reality, this provides that a candidate as a minimum must have 30 supporters to be elected. The voters do not have to be resident in the constituency.⁴⁸ This is a form of positive discriminative measure since the nomination of a candidate for the "general" deputy seats, requires the support of 100 signatures besides this those voters have to be resident in the constituency.⁴⁹ The number candidates on a candidate list in regular elections cannot exceed the number of delegates

⁴⁷ Article 17 of the Parliamentary election law amended April 2003.

⁴⁸ Idem paragraph 2 Article 37.

⁴⁹ Idem Paragraph 1 of Article 37.

elected in a constituency.⁵⁰ In the case of the special constituencies for the Hungarian and Italian minorities, this does not apply since there is only a one candidate to be elected and there can be unlimited amount of candidates as long as there is one. Article 80 paragraph 3 of the Constitution defines that “ The Italian and Hungarian ethnic communities will always be entitled to elect one candidate. “

The list of candidates is submitted to the constituency electoral board 25 days prior to the Election Day.⁵¹

3.2.2 Nomination procedures Croatia

The right to propose a minority candidate is allocated to political parties, voters, and associations for minorities.⁵² This means that it is not only persons with a national minority origin that have the right to propose a candidate. A candidate, proposed by minority voters, must collect 100 minority member signatures, in order for the candidacy to be valid.⁵³ It is easier for minority voters to nominate a candidate than for the majority, 500 voter signatures must support nomination of candidates to general deputy seats.

All candidate lists, regardless if they concern national minority candidates or regular ones are send to the State Election Commission.⁵⁴ The National Electoral Commission collects and recognises the lists and announce them in the national newspapers, television and radio.⁵⁵ Complaints, due to irregularities in the procedure of nominations and registrations, may be filed by the proposes of a candidate, a political party, or at least 5% of the voters in 1 electoral unit.⁵⁶

⁵⁰ Elections to the National Assembly Act, official Gazette RS, no 44/92,, 60/95, 67/97 70/00 Article 55.

⁵¹ Idem Article 54

⁵² Law on Elections of Representatives to the Croatian State Parliament official Gazette No 116/99, Nov 5 1999 Article 18.

⁵³ Idem.

⁵⁴ Idem. Article 22.

⁵⁵ Idem Article 23

⁵⁶ Law on Elections of Representatives to the Croatian State Parliament official Gazette No 116/99, Nov 5 1999 Article 97

3.2.3 Nomination procedures Romania

Parties or political formations participating in the election, and in case of independent candidates, on the basis of a list of supporters, can make the nomination of candidates. As regards the independent candidates, they may participate in the election by self-proposal, if they have the support of at least 0.5 per cent out of the total number of voters recorded in the permanent lists of the localities situated in the constituency where they stand for election. A statement accepting the nomination, personally written, signed, and dated by the candidate must accompany each nomination of candidate in election. Nominations of candidates are made by constituencies, and are presented to the constituency bureaux not later than 30 days before the Election Day.

Paragraph 2 of Article 4 of the election law stipulates that organisations of citizens belonging to national minorities that participate in elections shall be juridical equivalent to other political parties. Members of organisations of citizens belonging to national minorities, which enter their candidates in the elections, may belong to a political party but there is no obligation to belong or not belong to a party.⁵⁷ The list of candidates shall specify the political affiliation. Minority organisations specify the national minority group they represent.⁵⁸

3.3 Right to vote for the reserved seats

Paragraph 3 of Article 21 of the Universal Declaration of Human Rights⁵⁹, stipulate that the will of the people shall be the basis of the authority of the government. Article 25 (b) of the International Convention of Civil and Political Rights⁶⁰ confirm this right, furthermore the Copenhagen Document Paragraph 7.3⁶¹ affirms that all OSCE

⁵⁷ Paragraph 3 and 4 of article 5. Law on political parties No 27. April 1996.

⁵⁸ Paragraph 4 of Article 5 Parliamentary election law 1992.

⁵⁹ Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948. Article 21 paragraph 1 “ Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. Paragraph 3 “ The will of the people shall be the basis of the authority of government..”

⁶⁰ International Covenant on Civil and Political Rights adopted by General Assembly resolution 2200 A (XXI) 16 December 1966, entered into force 23 March 1976, signed and ratified by Slovenia 6 July 1992, Romania 9 December 1974 and Croatia 12 October 1992.

⁶¹ Document of The Copenhagen Meeting of The Conference on the Human Dimension of the CSCE July 1990. paragraph 7:3” To ensure that the will of the people serve as the basis of the authority of government, the participating States will; guarantee universal and equal suffrage to adult citizen. “

participating States shall protect and guarantee of universal suffrage to adult citizens. This right is also protected in the European Convention for Human Rights article 3 Protocol 1. All Participating States of ECHR shall protect the universal suffrage⁶². While international human rights protection is protecting the rights of individuals, the political right to vote is restricted to citizens. Article 25 of CCPR, Article 3 protocol 1 of ECHR and Paragraph 7.3 restrict the suffrage right to citizenship⁶³. This is also the case for national minorities.⁶⁴

National minorities that are citizens have the right to vote in national elections. The question regarding the protection of their electoral rights is depending on whether the electoral system guarantee this right without discrimination, and if the citizens belonging to a national minority can exercise this right to vote, equally as all citizens in the State.⁶⁵

While direct restrictions to the general right to vote, is citizenship and age limit⁶⁶ the accessory direct restriction to the specific participatory right is dependent on membership to the groups included in the special electorate. An indirect restriction is when a person who fulfils the eligible requirements is restricted from voting due to administrative, cultural or procedural barriers.⁶⁷

⁶² Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms ETS No.009 entered into force 18 May 1994. Croatia signed the Convention and Protocol 6 November 1996 and ratified 5 November 1997. Slovenia signed the Convention and Protocol 14 May 1995, ratified 28 June 1994, Romania signed the Convention 7 October 1993 and the Protocol 4 November 1993. And ratified 20 June 1994. Article 3 Protocol 1 "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

⁶³ Copenhagen Document paragraph 7:3 "To ensure that the will of the people serve as the basis of the authority of government, the participating States will; guarantee universal and equal suffrage to adult citizen. "the International Covenant on Civil and Political Rights Article 25 "All citizens shall have the right to...", ECHR Article 3 Protocol 1 in judging the compliance with article 3 of protocol no 1 the European Court of Human Rights case *Mathieu-Mohin and Clerfayt v. Belgium* judgement of 2 March 1987, Publications of the European Court of Human Rights, Series A, vol 113, paragraph 54. "the principle of equality of treatment of all citizens in the exercise of their right to vote and their right to stand for election."

⁶⁴ Thornberry.P in (eds) Horn F. 1996. p. 45 "There is an obvious conceptual tension between texts on general rights and those on minorities on the question of citizenship. The sharply political and electoral domains tend at present to be reserved to citizens under the international and domestic law. " Rosas A. in (eds) Horn F, 1996. p. 57. "...Thus one can say that approximately twenty European States grant some or all "non-national" residents electoral right in local elections, while national elections are normally excluded from such arrangements.

⁶⁵ Rosas. A. "Electoral rights and foreigners " in (eds) Horn F. "Minorities and their right of Political Participation" 1996, Rovaniemi, Lapland's University Press. P. 51.ff.

⁶⁶ General Comment 25 of Article 25 ICCPR, paragraph 3.

⁶⁷ Idem paragraph 10.

In the empirical study it will be demonstrated which formal and informal restrictions the Croatia, Slovenia and Romania put up to the right to vote for the minority representative. Indirect restrictions are often connected to accurate electoral register (the voters list) and in fact, a central component for the exercise of a democratic right to vote is the existence of such a comprehensive and inclusive electoral register. All registration of voters should be guided by certain principles.⁶⁸ A voters list is complete if it includes all eligible voters. The goal is to ensure that all voters who are legally eligible to vote are not prevented from voting because they are not properly registered.⁶⁹

3.3.1 Right to vote protected in law; Slovenia, Croatia and Romania

A person can exercise the right to vote in the three countries if he or she is citizen, have reached the age of 18 years, and is registered on the voter list.⁷⁰ In Slovenia, a special voting right (double) is entitled to members of the Italian or the Hungarian autochthonous community that fulfil the general voting requirements.⁷¹ In Romania and Croatia, no such double voting right exist. The right to vote for a national minority representative is an alternative vote to the general voting right. In Croatia as opposed to Romania, only certain members of national minorities have this alternative, those that belong to the 23 groups protected in the provisions. In Romania, the right is not attached to person but to legally constituted organisations created by minority groups. All eligible voters can vote for a candidate lists proposed by such an organisation, even the members of the majority. In fact in the last elections, numerous voters of Romanian nationality voted for the Hungarian Democratic union party. In Slovenia, a citizen has to be member of the Italian or Hungarian autochthonous minority group. The self-identification of membership to the minority group is not applied in Slovenia. This stand in contrast to the system applied in Croatia where persons that identify themselves as members of national minorities can register as such on the voters list, and obtain the right to vote for minority representatives.

⁶⁸ IDEA ACE project , 1999, p. 50.

⁶⁹ Ibid p. 50.

⁷⁰ Croatia, Constitution Article 45, The Law on the List of Voters, Official Gazette No 19/92 article, 2 and 6, Slovenia Constitution article 43, Law on the Records of Voting Rights Act, Official Gazette No 52/2002, article 2. Romania Constitution Article 34, Law for election of the Chamber of Deputies and Senate Official gazette No 68/92. article 14.

⁷¹ Slovenian Constitution article 64: 4.

3.4. Voters register

Eligible voters need to exist on an electoral register in order to be able to vote.

Romania, Croatia and Slovenia have a continuous list of voters, which provide that the list is maintained permanently and continually updated. The information in the register of voters is approximately the same in all three countries; the name of the voter, the date of birth, the place of residency. In Croatia, nationality is added as well. Voters are enrolled in the register automatically in all three countries based on the voters residency in a constituency. Continuous lists require an appropriate administrative structure to maintain them.

3.4.1 Slovenia

Slovenia have a special commission appointed to supervise and draft the electoral register, in Croatia the voters register are compiled in municipal by administrative offices and the police, in Romania the ministry of interior handle and compile the voters register.⁷² The transparency is secured especially in Slovenia where members of Italian and Hungarian national community must be nominated. The Croatian voter register administration has been criticised for being un-transparent when drafting the list and the list has been to transparent when ready. The Romanian administration of register have been modernised since its transfer to the Ministry of Interior. The previous administration were held by mayors, the national administration is more transparent and modernised. The three countries have continuously updated voters. The advantage of this as opposed to periodic register is that those are less expensive and more cost effective.⁷³

In Slovenia, the electoral registers for citizens who are members of the Italian and Hungarian autochthonous minority group, are compiled by the electoral commission of the relevant self-governing community. Election commissions in Lendava (headquarter for Hungarian constituency) and Koper (Italian Constituency) issue a separate electoral roll, and send this out to all polling stations on the territory of two special constituencies. It is

⁷² Croatia, The Law on the List of Voters, Official Gazette No 19/92 article 4, Slovenia Law on the Records of Voting Rights Act, Official Gazette No 52/2002, article 20, Romania Law for election of the Chamber of Deputies and Senate Official gazette No 68/92. article 8.

⁷³ IDEA, ace project, 1999, p. 54.

crucial to be on this roll to exercise the double voting right. The autochthonous minority members who have their residency outside the territory of the special constituencies, can be enrolled upon a written request to the special election commission.⁷⁴ The idea is enable minority members resident outside the territory of the special constituencies. However, this practise has been debated since it is up to the decision of the election commission if the applicant is accepted or not. In case of doubt the commission should follow the law which regulates general administrative procedures.⁷⁵ If there is further doubt they should issue a statement. There is no definition in law on autochthonous membership and it has been up to the arbitrary decision of the commission to accept the applicant or not. The Slovene Constitutional Court held the lack of statutory provisions unconstitutional in 1998.⁷⁶ The anonymity is assured to every person with electoral rights on a firm basis of the law.⁷⁷

In Slovenia, Republic Election Commission nominate a voters register commission to which members of the Italian or Hungarian national community must be nominated.⁷⁸ The competent commission confirms the election register one-week prior the Election Day.⁷⁹ This requirement help voters of national minority origin to have confidence in the administration of this register, and make the administration of registration and upholding of the list transparent. The voters registers are compiled in the municipals in Croatia, and in Romania, the Ministry of Interior have taken over the task from the mayors.

⁷⁴ Law on the Records of Voting Rights Act, Official Gazette No 52/2002 article 22.

⁷⁵ Slovene Constitution article 120 paragraph 2.

⁷⁶ Slovene Constitutional Decision U-I-283/94 Section BV, “ The concept of autochthonous is not precisely defined in the constitution, and similarly not defined in the law. More precise measures for establishing which electors have special voting rights are not found in the election law nor in any other law. In practice, at elections of the delegates to the National Assembly in 1992,1996 the commissions carried out inscriptions in the special roll without statutory measures... The lack of such measures enables completely arbitrary decision making...”

⁷⁷ Law on the Records of Voting Rights Act, Official Gazette No 52/2002 article 64.

⁷⁸ Law on the Records of Voting Rights Act, Official Gazette No 52/2002, article 20,

⁷⁹ The Slovene law on the Records of Voting Rights Act, Official Gazette No 52/2002 article 16.

3.4.2 Croatia

In Croatia, the electoral register is single and permanent. There is no official special election register for national minorities, however in Croatia an unofficial minority voter's register has been issued to the polling stations prior the Election Day.⁸⁰ The election register is drawn up by the administrative office in the municipality. The police maintain the registers on residence on which the voter registers are primarily based. The municipal civil status offices maintain the books of births, deaths and citizenship, thus being an additional source of data for the voters registers.⁸¹ The law guarantees citizens the possibility to amend the data concerning him or her. This can be done at the administrative office in the town or municipality of the residency upon request. The law provides for voters register to be updated on an on-going basis and to be open for inspections by individual voters.⁸² Although voter lists should be subject to public scrutiny, as long as a record of ethnicity remains on the list, it may open the potential for discrimination and intimidation if it is publicly displayed. To do this may also be contrary to Paragraph 32 of the OSCE Copenhagen document, which stipulates, "To belong to a national minority is a matter of a person's individual choice and no disadvantage may arise from the exercise of such choice". Article 3(1) of the Council of Europe's Framework Convention for the Protection of National Minorities (1994) provides similarly that "Every person belonging to a national minority shall have the right to choose to be treated as such or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice".

⁸⁰ Interview with Vanja Skoric Croatian non-governmental election supervision organisation (hereinafter GONG), 10 June 2003. OSCE/ODIHR Final report on Croatia Parliamentary election report 2-3 January 2000 p. 6.

⁸¹ Law on list of voters Official Gazette No 19/92 April 2 1992, article 23.

⁸² Croatia, The Record of Electoral Right Act official Gazette No 44/92. Article 23.

3.4.3 Romania

The voter's list in Romania is drawn up by each municipal on the basis of residency in cooperation with the ministry of Interior.⁸³ The list is updated every year.⁸⁴ If a citizen moves to another locality, he or she can notify the election commission corresponding to the new residency. The law provide for inspection, verification and correction of data on the register.⁸⁵

In Romania, voter registration is a passive system in which all age-eligible citizens are added to the list based on their civil records maintained at registry offices at local, county and central levels. Persons enrolled in the voters register are entitled to vote on the basis of a voter's card. The present Election Law has reintroduced the voter's card, which is an interwar tradition in Romania, beginning with the first suffrage after the 1992 parliamentary and presidential election. The voter's card is a permanent electoral identity paper valid for all the consultations with a national character, attesting the quality of voter. The mayor of the locality where the voter has his domicile will issue voters the voter's card. A voter can receive only one, which he must keep and use only for himself. The Election Law provides the possibility of formulating certain ways of attack in connection with the drawing up and delivery of the voter's card (omissions, wrong registrations, or other errors).⁸⁶ The card is handed over to the voter in person after identification. The identification procedure requires a personal ID card and signature of the voter.⁸⁷

In spite of the liberal access to the voters register, many thousands of citizens, particularly among the Roma minority, may be unable to vote because they have no birth certificate, have no permanent residence address, and have not applied for documents.⁸⁸ This has

⁸³ Law for election of the Chamber of Deputies and Senate Official gazette No 68/92. Article 25 designed the task to the Central Election Commission but since then this has been changed, OSCE/ODIHR election observation mission observing parliamentary elections preliminary statement 26 November 2000, p. 4.

⁸⁴ Law for election of the Chamber of Deputies and Senate Romanian Official gazette No 68/92, article 9.

⁸⁵ Idem article 12.

⁸⁶ Law for election of the Chamber of Deputies and Senate Romanian Official gazette No 68/92. article 14.

⁸⁷ Paragraph 2 Article 16 Parliamentary Election law 1992.

⁸⁸ According to Romani CRISS, and NGO working on Romania social issues, in a two month period, their organisation identified close to 2000 individuals in Bucharest without identity documents. They are

served as an indirect obstacle for various Roma voters who lack permanent residence in municipals, and even if the delivery of the voters card were carried out in regions where Roma lived, there were obstacles to issue the cards to Roma voters since several of them lacked identity papers. The fact that there is no permanent election administration is additionally unfortunate for this group, since no voter education is carried out. This group suffer from such administrative procedures that make it more difficult to register and vote.

89

3.5 Practical exercise of the suffrage right on Election Day

Elections for minority representatives deals as well with issues that arise on the voting day in the polling station.⁹⁰ In order to effectively exercise the right to vote for candidates the procedure have to be secure on Election Day. Persons entitled to vote will go to the polling station on Election Day and vote for candidates. States are required to inform the voters concerning the election process and take necessary actions to instruct the voter of how to vote. In order for minority voters to successfully enjoy the special voting rights, this information should be provided in the languages of national minorities.⁹¹

In order to encourage minority members to participate in elections the State can organise voters education. In Romania, this has not been provided for through the State since there is no permanent election administration. It has been up to the political parties to organise such education. Currently the Hungarian Democratic Union of Romania (UDMR) has organised information campaigns for increasing the electoral support.⁹² In Croatia, this has not been introduced so far.⁹³ In Slovenia, the governmental office for national

concerned this number may be as high as 20 000. MINELRES moderator, Greek Helsinki Monitor 20 November 2000.

⁸⁹ OSCE/ODIHR election observation mission observing parliamentary elections preliminary statement 26 November 2000, p. 2

⁹⁰ Suksi (2002) p. 27.

⁹¹ OSCE /ODIHR “International standards and Commitments on the Right to Democratic Elections: A practical Reference Guide to Democratic Elections Best Practice (hereinafter “Best practice guide”) Draft paper, 8 November 2002.

⁹² Interview with Nora Dinca , Department of Territorial Organisation of the executive presidium Romania 6 June 2003.

⁹³ Vanja Skoric GONG, interview 10 June 2003.

minorities provides for election and voting information in Hungarian and Italian constituencies in respective language.⁹⁴

3.5.1 Slovenia

Article 57-69 of the Elections to the National Assembly Act⁹⁵, specify how the entitled voters shall exercise the voting right. A voter votes in person at the polling station where he or she is enrolled in the register. A member of the national communities that are inscribed in the general electoral rolls and special electoral rolls may cast two votes, one vote for the general mandates and one vote for the special mandate at elections to the National Assembly.

The identity can be established on the basis of an identity card which provides personal data of the voter. If needed the president or a member of the polling committee can establish the identity of an individual in any other way. The voters that are found on the general voters register and additionally on the special voters register will be issued two ballots. A polling committee member issues the voter the ballots and instructs the voter how to vote. If somebody is not enrolled in the general or special electoral register he or she can vote on the basis of a certificate issued by the authorised body, stating that the voter is enrolled as a voter on the general or special voters roll. If a voter is enrolled in the general or the special voters register, the polling committee cannot deny the voter the right to vote.⁹⁶

When voting for a list of candidates of the general assembly mandates, a voter may vote for only one candidate. A voter votes by encircling the serial number alongside the name of the list for which he or she votes. A voter can give his or her preferential vote to one of the candidates from the list for which he or she has voted. In this case the voter writes in the serial number of the preferred candidate in the indicated space on the ballot.⁹⁷ When voting for a delegate of the Italian or Hungarian minorities, a voter rank the candidates

⁹⁴ Janez Obreza Vicegerent of the Office for Nationalities interview the 2nd of June 2003.

⁹⁵ National Assembly Elections Act Official Gazette No 44/92, 60/95, 67/97, 70/00 enacted March 10 1992

⁹⁶ National Assembly Elections Act Official Gazette No 44/92, 60/95, 67/97, 70/00 enacted March 10 1992, article 59

⁹⁷ Idem, article 60

presented on the ballot after preference. When a voter vote he or she casts his general ballot in the ballot box for the general elections and the special ballot for the special elections of the Hungarian or Italian representative in that ballot box.⁹⁸

Each voter should be able to cast his or her vote in privacy at the polling station. This is important for the intention to give the voter the possibility to freely express his or her choice concerning the candidates or parties.⁹⁹ The secrecy of voting should be guaranteed for the voters. The Election of the National Assembly Act provides for the legal support for secret vote. Articles 9 and 10 affirm that voters shall vote in person and nobody shall be allowed to vote through an authorised person. Votes shall be given by secret ballot and the freedom of the choice shall be granted to the voter. The secrecy of vote shall be protected afterwards according to the Slovene election law. Nobody can be called to account for his vote or to be requested to answer whether he or she voted, and for whom she voted for, or why he or she did not vote.¹⁰⁰ However, the election law allows for assistance in voting. If a voter is not able to vote due to a physical disability or illiteracy, a person may accompany a voter, normally someone from the polling committee, who decides in this matters and puts it into the minutes.¹⁰¹

3.5.2 Croatia

A minority voter must make a choice to vote for the minority candidate list or the general candidate list. The right to vote is allocated to each minority voter in a way that he or she can choose whether to vote for a majority list or a minority list. The choice is made on Election Day, in the polling station.

There are 2 ballots in Croatia, one for general candidate lists and the other for the representative of the national minority.¹⁰² The ballot paper on which voting is done for the representative of an ethnic minority and his deputy contains names of the candidates and his

⁹⁸ Idem , article 62

⁹⁹ Suksi (2002) p. 31 and General Comment on Article 25 paragraph 19.

¹⁰⁰ National Assembly Elections Act Official Gazette No 44/92, 60/95, 67/97, 70/00 enacted March 10 1992 , article 10

¹⁰¹ Idem, article 66

¹⁰² Law on elections of representatives to the Croatian State Parliament Official Gazette No 116/99 enacted 5 November 1999 amended April 2003, article 77 and 75.

deputy. The minority voter that wish to vote for a special minority candidate marks the ordinal number in front of the name of the candidate and his deputy.¹⁰³ In Croatia as opposed to Slovenia, there is only one ballot box and the same polling station committee counts and register the results. Objection to irregularities in the procedure of election may be issued to the competent electoral commission or to the Constitutional Court of Croatia if not resolved by a competent election commission.¹⁰⁴

In the polling station:

A voter belonging to a national minority state his name and present an ID card to the polling committee. A person from the polling commission detects the voter on the voters register. The official voters register is single and permanent, however, for the purpose of the elections each polling station gets two separate register, one register based on the residency in the constituency, and a separate for the minorities in that area. The polling commission member is then legally bound to ask the voter if he or she would like to vote for a minority candidate list or a general candidate list and gives the voter the corresponding ballot. If the minority voter desired to vote for a national minority representative and is registered as such he ask for such a ballot and vote, the ballot will be placed in the same ballot bow as other votes. If a minority voter desire to vote for a general list, and is enrolled in the “unofficial minority” list, the voter will be enrolled on sight in the general register and crossed in the minority register, the voter will get corresponding ballot and will vote and put his ballot in the same ballot box as all other voter.¹⁰⁵

The practices with unofficial ethnic voter’s register have caused distress for voters belonging to a national minority raising objections and concerns.¹⁰⁶ The OSCE/ODIHR

¹⁰³ Law on elections of representatives to the Croatian State Parliament Official Gazette No 116/99 enacted 5 November 1999 amended April 2003, article 77.

¹⁰⁴ Article 97 of the Parliamentary election law provision as amended in April 2003.

¹⁰⁵ Vanja Skoric GONG, interview 23 of June 2003.

¹⁰⁶ International Election Observation Mission Republic Croatia, election to the House of Representatives 4 January 2000, available at www.Osce.org/odihr/documents/reports “provisions of the law of electoral registers (article 9) has been used to justify the creation of separate ethnic voter registers, with ethnicity of individuals identified, that risk of discrimination and intimidation. Observers reported that many voters were uncomfortable with the inclusion of ethnicity on the notification of entry in voters register that were sent to all voters. Some parties and voters objected that voters were included on a separate voters list. “

observation mission in Croatia January 2000, observed that the polling stations in areas of national minorities concentration were few and as a result of this some voters had to travel far in order to reach the polling stations. Some of the polling stations were also located in private houses, which could endanger the minority voters trust in the impartiality of the election. This may be contrary to Paragraph 7.4 of the Copenhagen document that affirm that votes should be able to cast their ballot in a free voting procedure. Further more in some polling stations, polling committee members had refused to issue the minority voter a ballot, when they desired to vote for a minority representative.¹⁰⁷ This contradicts the right to vote as such which is safe guarded under the European Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol 1 article 3, and article 25 of International Covenant of Civil and Political Rights¹⁰⁸. Polling committee members had also been insulting verbally the voters that were listed as national minorities.¹⁰⁹ Such practices of polling committee members may have influence the member of minorities to not vote for a minority candidate, which would restrict the right to vote free from compulsion or manipulative interference of any kind. This would be contradicting the right to free expression safeguarded by article 25 of International Covenant of Civil and Political Rights.¹¹⁰

3.5.3 Romania

A voter vote normally in the polling station where he or she is registered, but provisions in the law allow a voter to be added to a supplemental list at any polling station even if the

¹⁰⁷ OSCE/ODIHR election observation of the Parliamentary elections 2 and 3 January 2000 Final report 25 April 2000. p. 14, 16, 21.

¹⁰⁸ Suksi , Hinz 2002, p. 28 , General Comment on article 25 paragraph 19: “ In conformity with subparagraph b) of article 25, elections must be conducted freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights. Persons entitled to vote must be free to vote for any candidate for election and for or against any proposal submitted to referendum or plebiscite, and free to support or to oppose government , without undue influence or coercion of any kind which may distort the free expression of the electors will.

¹⁰⁹ According to Vanja Skoric GONG this had been the case in previous elections in year 2000 in some polling stations in Knin and Vukovar areas. “ in some places in Croatia (war affected areas) people in the polling commissions use to bother verbally those who were on minority registers. This is still sometimes the case, although the situation is improving during time, and polling commissioners are more educated about voters right today”. Interview 23 of June 2003.

¹¹⁰ General Comment 25 paragraph 19.

voter is not registered in the constituency.¹¹¹ The voter vote on the basis of the voter card, upon being detected by the polling committee member in the constituency voter's list or the supplemental voters list. The voter will receive one ballot for voting. The ballots in Romania differ significantly from the ballots in Croatia and Slovenia. Due to the large number of parties, formations and independent candidates, the ballots are prepared in booklets with no more than four choices on each page. The parties, independent candidates and formations are presented randomly on the ballot, based on a lottery system for the parties and formations, and based on the date of registration in the case of independent candidates. This can make it time consuming for the voters to find their choice in constituencies where various parties, formations and candidates run for office.¹¹² A voter can vote for a candidate of a party list, formation or independent candidate, and for one only. The ballot design is furthermore complicated for illiterate voters. There is no separate system provided for the election of the special minority representatives. When voting a voter cast the ballot in the common ballot box.

¹¹¹ Romania Law for election of the Chamber of Deputies and Senate Official gazette No 68/92 article 10.

¹¹² OSCE/ODIHR election observation mission observing parliamentary elections preliminary statement 26 November 2000, p. 4

4. ELECTION SYSTEMS

How are these representatives elected?

The election system is a set of methods to translate the electorate's votes into representative's seats. As Lijphart formulated in his comparative study of 27 states the election system can be described in terms of three most basic properties, the electoral formula, the district magnitude and the electoral threshold.¹¹³ I will use these three elements to describe the election formula of the representative seats in Slovenia, Croatia and Romania.

4.1 SLOVENIA

4.1.1 Specific representation

Members of the Hungarian and Italian communities may cast *two votes* at the election to the National Assembly, one vote for the election of the delegate of the national community and one for the election of other delegates.¹¹⁴ Their preferences will be respected twice, in the distribution of the mandates of the delegates of national communities and in the distribution of the mandates of other delegates. The double voting right signifies a departure from the principle of the equality of voting rights.

In the ODIHR guidelines for the implementation of Lund recommendations it is stated that if national minorities is given a special entitlement to elect minority representatives to a legislative body, it is imperative that this "minority" vote should be in "addition" to rather than an "alternative" to the ordinary right to elect representatives. The reason behind is that it is wrong to assume that members of ethnic or other communities will automatically vote along such lines. Members of a minority groups do not identify themselves only as

¹¹³ Lijphart A. 1994, "Electoral systems and party systems – a study of twenty seven democracies, 1945-1990" Oxford University Press, p. 1.

¹¹⁴ The complete protection for the double voting rights derive from the third paragraph of article 64 of the Constitution, and in relation to the composition of the National Assembly and the position of delegates within it, also from the third paragraph of article 80 and the first paragraph of article 82 of the Constitution. In relation to the rights of members of national communities who live outside the nationally mixed regions, the fourth paragraph of article 64 of the Constitution, which stipulate that the rights for this minority communities shall be realised in all territory of Slovenia, and where members of these minority communities live. Minority members that live outside the special constituencies can register within the special constituencies and have the right to vote for the special minority representative.

minority members. Individuals also vote for other candidates or in some states might like to.

In the “general” elections, a voter has a preferential for on one candidates only from a candidate or a party list. The proportional system is used to transfer votes into seats. In the special election for the national minorities, the vote is an alternative vote. This entail that a voter can express his preferences for all the candidates that has been nominated in the way that he ranks all of them after his taste. In this sense the vote for the national minority candidate, offer a bigger expression of the will of the voter, than the vote for in the “general” election in Slovenia.

4.1.2 Constituencies

The elections to the National Assembly in Slovenia take place within constituencies. For general elections the territory of Slovenia is divided into 8 multi-members electoral districts, 11 candidates are elected in these constituencies by a proportional election system.¹¹⁵ To protect that minority groups will elect a representative, two single-member constituencies have been specially constructed for the ethnically mixed areas where these minority members live. This is a sort of positive Gerrymandering. Since the members of the minority have not been sufficiently numerous, in the construction of the ordinary setting of the constituencies in Slovenia- a sort of additional constituency has been created. This constituency covers territories of municipals where the Italian and Hungarian minority live.¹¹⁶ These territories also form part of constituencies in the “general” election system. The municipalities of Murska Sobota and Lendava located close to the Hungarian boarder form this special Hungarian minority constituency.¹¹⁷ The territory of these municipalities is as well included in the general constituency of Ptuj (the 8th constituency of Slovenia) that covers additionally 8 more election districts. In polling stations in Murska Sobota and Lendava there are two ballot boxes, votes on the general lists will be placed in

¹¹⁵ The Elections of the Assembly Act. Official Gazette SRS, no 42/89, 5/90, 10/90 and 45/90. Article 80 of Slovene Constitution 1991, see further The Electoral System described on <http://www.sigov.si/elections/system.html>

¹¹⁶ Law on the Determination of Constituencies for Election to the National Assembly (Official Gazette No 46/92) Article 2 “ For the territory where the Italian and Hungarian national minorities live, two special constituencies will be determined in which one Italian or one Hungarian national deputy will be elected”.

¹¹⁷ Idem article 4 passage 10” electoral district oncompassing municipalities of Murska Sobota and Lendava for the election of a deputy of the Hungarian national minority” The constituency has it’s headquarters in Lendava.

a general ballot box, and counted as part of the “general “ constituency of Ptuj. The votes on the national minority candidates will be put in the special ballot box for the national minorities and be counted as part of the special constituency of the Hungarian minority.

The equal weight of votes and the equal suffrage is greatly affected by the size of the voting districts.¹¹⁸

The ratio of deputies to inhabitants is a good measure to compare the weight of the votes.¹¹⁹ If few inhabitants elect one deputy seat, the voter’s vote will count more than votes of inhabitants that are many to elect one deputy seat. The ratio of deputies to inhabitants is approximately constant in the general election system in Slovenia with two exceptions, the deputy seat reserved for the Italian minority, and the deputy seat reserved for the Hungarian minority.¹²⁰

For one deputy seat in the National Assembly there are in general 22.300 inhabitants.¹²¹ There are

2. 258 Italian inhabitants that exclusively elect the special reserved deputy seat for the Italian minority. The Hungarian minority counts to 6243 inhabitants with the special right to elect a reserved seat for this community. In comparison to the weight of the majority voter’s vote, one vote of the Italian minority weight almost ten times heavier than those of the majority voter’s votes.¹²² In comparison between the weight of the Hungarian minority voter’s vote and the majority voter’s vote, the Hungarian minority voters vote weight more than three times as much as the majority voter’s vote.¹²³ In other words the smaller number of inhabitants for one deputy seat constitute a violation of the equal suffrage principle where one vote should have the same weight as another vote.¹²⁴

¹¹⁸ Suksi Hinz, 2002.p. 29.

¹¹⁹ Ratio of deputy to inhabitants count the amount of inhabitants to deputy seats. The figures in the text refer to amount of inhabitants and not to registered voters. The amount of inhabitants in each ethnic group are based on the figures from each countries last census. In Slovenia this census was from 2002

[Http://www.stat.si/popis2002/en/](http://www.stat.si/popis2002/en/)

¹²⁰ Electoral system of Slovenia www.uvi.si/eng/slovenia/background-information/elections-2002/legislation/.

¹²¹ 1964036 inhabitants in Slovenia elects 88 seat in the Parliament, 1964036 divided by 88 deputy seat equal 22318 inhabitants per seat.

¹²² 22 318 majority inhabitants per deputy seat, divided by 2258 Italian inhabitants for their seat equals 9.8.

¹²³ 22 318 majority inhabitants per seat divided by 6243 Hungarian inhabitants for their special seat equals 3.57.

¹²⁴ Elections to the National Assembly Act adopted Official Gazette RS, no 46/92 article 200 paragraph six.

In this manner the Hungarian and Italian minority communities profit successfully from the affirmative action and members of these minority communities can easier elect a minority representative than if the general election system would apply.

The special constituency for the Italian minority encompasses the territory of Koper, Izola and Piran. These territories are located close to the Italian boarder and the coast.¹²⁵ The territory of the communities where members of the Italian minority live mixed with Slovenes is also included in a “general” constituency. The constituency of Postonja covers 8 more election districts additional to these three.

4.1.3 Election formula

The candidates of a national community are elected in one-member constituencies by preference ranking plurality system.¹²⁶ In last elections in the Hungarian national community constituency, Mária Pozsonec was the winning candidate. The election formula to transfer votes into seats is a form of First-Past-the-Post preference ranking system. It has features of an Alternative Vote but as opposed to an alternative vote that will elect a candidate that have the absolute majority, this system elect the candidate that get more votes than any other.¹²⁷ Instead of simply indicating voter’s favoured candidate as done in Croatia, a minority voter rank all the candidates after his preferences and mark, 1 for their favourite candidate, 2 for their second and so on. In the elections in November 2001, there were 5 candidates for the Hungarian minority deputy post. In the counting of the votes a sort of “Points” system is used. A candidate that was ranked as first preference, got the amount of points equal to the total number of candidates on the ballot. Hence, a voter’s first preference for Maria Pozsonec gave her five points. A voter’s second preference got four points and so on. This system thus enables minority members to express their preferences between all candidates, rather than simply their first choice. The

¹²⁵ Idem article 4 passage 9” electoral districts encompassing territories of the municipalities of Koper, Izola, Piran for the election of deputy of the Italian minority”.

¹²⁶ The information for this part is based on information received from an interview the 2nd of June 2003 with Janez Obreza Vicegerent of the Office for Nationalities, See more information about this office at <http://www.sigov.si/vrs/ang/government/office-for-nationalities.html> and about the “general” elections in Slovenia in at http://www.sigov.si/volitve/eng/enrez_ns.htm ;

¹²⁷ For information about different election systems IDEA “The International Handbook of Electoral Systems Design” 1997. p.38.

system differs from the simple First-Past-the-Post System, which is used in Croatia for the national minority constituency. Like the first-past-the-post system a candidate that win most of the expressed votes get elected, and not necessarily the majority of the votes. In 2001 elections Maria Pozsonec got 12 870 points and the second runner up, Jozef Kocon, got 10 591 points, the third got 5 061, fourth 5200 and the last 4251 points. Consequently, Maria Pozsonec did not get a majority of the points but only 38%. Since there was no other candidate that got more votes or points than her, she was elected. In the Italian constituency, Roberto Battelli was elected. Since he was the only candidate, he won. He received 1302 points, which in this case meant 1302 votes since there were no other candidates. In principle a candidate without opponents could get elected on the basis of 30 votes.¹²⁸ In 2001 Mr Battelli got at least 48 % support of the Italian minority electorate.¹²⁹

4.2 Croatia

4.2.1 different groups, different specific representation

Article 19 of CLNM guarantees members of national minorities the right to representation in the Croatian Parliament. Paragraph 2 of this article refers the more specific regulation of the election of special representatives to the Election law.¹³⁰ Today with the amendments of the Election law in April 2003, the formal protection in laws and regulations is providing the minority groups of Croatia a fairly proportional representation in the

¹²⁸ The mandate is reserved – according to provision article 80:3 in the constitution, one candidate shall always be elected, but at least a candidate have to be nominated, minimum number of signatures are 30, so minimum amount of supporters for a candidate could be 30.

¹²⁹ According to the Janez Obreza there are 2708 Italian minority voters registered, which indicated 48% electoral support, According to the 2002 census, this would exceed the amount of registered Autochthonous Italians in Slovenia- indicating that other only” Italian” citizens of Slovenia could get registered on the electoral roll- . There is no specified procedure for indicating who will be allowed to register in the special constituency. It has up until now been to the arbitrary decision of the election commission who will be registered or not. See further information in the Constitutional Court Case U-I-283/94 from 12 December 1998.

¹³⁰ Constitutional Law on the Rights of National Minorities adopted 13 December 2002, Second paragraph of article 19.

Parliament.¹³¹ It is yet not established if this will be the result in practice. The elections of 2004 will be a test to this.

Initially in 1990, thirteen seats were reserved for Serb-ethnic voters and a small number of seats were reserved for other smaller national minorities. This system was substantially amended in 1995. The number of seats reserved for the ethnic Serb population form 13 to 3.¹³² In 1999, a new election law was adopted.¹³³ The new election law created a separate constituency for ethnic minorities, constituency No 12, who elected a total of five members.¹³⁴ The Hungarian, Italian and Serb minorities were granted one reserved mandate each. One mandate was reserved for members of Czech and Slovak minorities combined. The fifth mandate was reserved for members of the Austrian, German, Ruthenian, Ukrainian and Jewish minorities combined. Members of ethnic minorities could vote for either a candidate or party contesting the specific minority election or vote for a list in the constituency of their permanent residency. Seats for national minorities were allocated according to the First-Past-the-Post method.

Today members of national minorities who constitute more than 1.5 % of the total population are guaranteed a minimum of one and a maximum of tree representative seats each in the Parliament, and minority groups that constitute less than 1.5 % of the total population are entitled to elect minimum 4 representatives together.¹³⁵

Article 17 regulates which groups that are entitled of special reserved seats.¹³⁶ The Serb minority elect three deputy seats, the Italian minority group and the Hungarian minority

¹³¹ Law on Elections of Representatives to the Croatian State Parliament adopted 29 October 1999 Official Gazette No 116/99 . Amended with the Law on the Amendments to the Law on the Election of Representatives to the Croatian State Parliament adopted 2 April 2003 Official Gazette No 01/04.

¹³² Constitutional Law on human rights and freedoms and the rights of national and ethnic communities or minorities, article 18 paragraph 1 “ Proportional representation for national minorities comprising more than 8% of the population was suspended.

¹³³ Law on Elections of Representatives to the Croatian State Parliament adopted 29 October 1999 Official Gazette No 116/99

¹³⁴ Idem article 17.

¹³⁵ Constitutional Law on the Rights of National Minorities adopted 13 December 2002, paragraph three and four of article 19.

¹³⁶ Paragraph 2 of the CLNM article 19, make a reference to the General Law on Elections, called “ The law on elections of representatives to the Croatian State Parliament” adopted in 1999 and amended the 2 April 2003. Article 16,17,18 and 19 specify right to special representation to the Croatian Parliament and the electoral formula used for electing these.

group elects one deputy seat each. Members of the Czech and Slovaks minority group jointly elect one seat and one seat is allocated to minority groups that were former citizens of the Federal Republic of Yugoslavia, the Albanian, Bosnian, Montenegrin, Macedonians and Slovenian minority groups. 12 smaller minority groups elect one representative together; these are the Austrian, Bulgarian, German, Polish, Roma, Romanian, Ruthenian, Russian, Turkish, Ukrainian, Vlasi and Jewish national minorities.¹³⁷ All these groups elect the special reserved seats in one constituency that comprises the whole territory of Croatia.¹³⁸

The logic behind the differentiated right to representation is partly based on proportionality and partly on bilateral agreements.¹³⁹ This explains why both the Hungarian and Italian minority groups elect one representative and the Bosnian minority group that have the same amount of members as those groups are only entitled to elect one representative together with five other minority groups.

4.2.2 One-man one vote

The principle of equal suffrage is respected in Croatia regarding voting rights. One minority voter has only one vote in the elections. The voter can place his vote or her vote on one candidate only. However, the minority voter has an additional choice. He or she can choose to vote for a general candidate list or place his or her vote on a minority candidate.¹⁴⁰ As opposed to Slovenia, in Croatia a member of a minority has to choose if it

Law on Elections of Representatives to the Croatian State Parliament adopted 29 October 1999 Official Gazette No 116/99 . Amended with the Law on the Amendments to the Law on the Election of Representatives to the Croatian State Parliament adopted 2 April 2003 Official Gazette No 01/04.

¹³⁸ Amendment to the parliamentary election law in April 2003, article 17 allocates 9 seats to national minorities, which is one more than provided for in the CLNM from December 2002 new three established seats to Serb minority and one seat allocated to new minorities, (Former FRY citizens)- the Albanian, Bosnian, Montenegrin, Macedonian and Slovenian minority group. The “others” group still elects one representative but after the amendments , more groups than before. The “others” group reassembles today the Austrian, Bulgarian, German, Polish, Roma, Romanian, Ruthenian, Russian, Turkish, Ukrainian, Vlasi and Jewish minority groups.

¹³⁹ Croatia has entered into two bilateral agreements regarding the protection of national minorities: the 1995 Agreement between the Republic of Croatia and the Republic of Hungary on the protection of the Hungarian Minority in the republic of Croatia and the Croatian Minority in the Republic of Hungary and the 1997 Agreement between the Republic of Croatia and the Republic of Italy on Minority Rights. Discussions of similar bilateral agreements between Croatia and The Former republic of Yugoslavia commenced in 2002.

¹⁴⁰ Law on Elections of Representatives to the Croatian State Parliament adopted 29 October 1999 Official Gazette No 116/99 , article 17 amended 2 April 2003.

is more important to be represented in accordance with his national identity, or after political ideology. On one hand the minority voters will not have an additionally to the general voting right, which was recommended by ODIHR guidelines for minority participation, but on the other hand it is not contradicting the equal suffrage principle as recommended in General Comment 25 and other international human rights instruments. In parliamentary elections of 2000, an overwhelming majority of voters from the national minorities preferred to cast their ballots for candidates competing in the regular constituency contest.¹⁴¹ This was possible due to numerous reasons, but one probable reason were the hostile environment for those who did. A double voting right might have increased the votes casts for minority lists.

4.2.3. Weight of the votes and Constituencies

Members of minorities elect the special minority representatives in a constituency that comprises the whole territory of Croatia.¹⁴² The constituency is an additional single member constituency to the other 11 constituencies (1 constituency for out-of-country voters and 10 for in-country voters). The minority groups in Croatia is territorially dispersed and not concentrated as in Slovenia. The reasoning behind the “positive discriminatory Gerrymandering” and drawing of this constituency is exactly, that a minority group is not sufficiently large and geographically compact to constitute a majority in an additional single member constituency, as was the case in Slovenia. This give the territorially dispersed minority groups an equal chance on the national level to get represented. On the other hand, the link between the elected member and the minority might be weak.

¹⁴¹ Out of registered voters Serb 278 620 , 25 978 votes were cast for minority lists and 11 473 for general lists; Hungarian 15861 registered voters , 4 412 valid votes cast for minority list and 6625 for regular lists; Italian 18035 registered voters, 6529 valid votes cast for minority lists, and 7397 for regular constituency; Czech and Slovak 12856 registered voters and 3449 votes cast for minority lists, and 6716 for regular candidate list; Austrian, German, Ukrainian, Ruthenian, Jewish 6105 registered voters and 1000 cast for minority list and 3000 for regular list. Figures provided by the data processing centre of the City of Zagreb (GZAOP) and final results published by the Central Election Commission the 19 January 2000. Available at OSCE mission of Croatia.

¹⁴² Law on Elections of representatives to the Croatian State Parliament adopted 29 October 1999. Official gazette No 116/99, article 17.

Members of specific nationality are entitled to vote for the minority representative that will represent their group. This system provide that a person that identified himself as belonging to the Serb nationality, and is registered as such on the voters-list is entitled to vote for candidates with Serb national origin. A person identified to belong to the Roma minority group, and registered as such on the voters register, can vote for a candidate that will represent this group. As opposed to the system in Slovenia but more equal to the system applied in Romania, the method used for the translation of votes into elected seat is the First-past-the-post system.

The election law adopted in 1999 introduced a new electoral system for the general elections in Croatia.¹⁴³ The election takes place in 10 constituencies with 14 members to elect in each constituency. The election formula used for general elections is a List Proportional system with a 5 % threshold within the constituency, using D'Hondt method to transfer votes into seats. Two additional constituencies exist; one is allocated for out of country voters and the other for the national minority voters

In Slovenia one minority group is electing their representative in a separate constituency unique for this minority group. In Croatia, all minority groups elect their representatives in one common special constituency that comprises all minority groups and the whole territory of Croatia. The ratio of deputies to habitants is not as easy to calculate as in Slovenia.

The ratio of deputies to habitants is approximately constant in the general election system with exception for the reserved seats of the minority groups. The 4. 437 460 inhabitants in Croatia elect 14 deputies in 10 constituencies. The ratio give that 30 800 inhabitants elect one deputy seat.¹⁴⁴ The election law states that the number of registered in the constituency shall not vary more than +/- 5%. However, given the large number of voters who switched from the minority list to the regular constituency list in elections of 2000,

¹⁴³ Law on Elections of representatives to the Croatian State Parliament adopted 29 October 1999. Official gazette No 116/99.

¹⁴⁴ 4437460 inhabitants divided on 144 parliamentary seats. See census figures at www.dzs.hr/Eng/census/census2001.htm.

official final results showed greater variations in the size of the constituencies, to a 12.7 % variation.¹⁴⁵

Bigger minority groups are entitled to vote for a reserved seat particular for their group and smaller minority groups are grouped together, and share representation in reserved deputy seats. In total minority groups are reserved nine seats.

4.2.3.1. The minority groups electing one or more representative each

The Serb minority group that is granted three seats in the Parliament, count to 201 631 inhabitants. This confers 67 210 inhabitants to each reserved deputy seat. In comparison to the majority, the majority votes weight twice as much as the vote of a Serb minority. This system is evidently not giving much preferential treatment to this group. The Italian minority group has one reserved seat. They count to 19636 inhabitants. One Italian minority vote weight as much as two majority votes. The Italian minority group is profiting well from the affirmative action. The Serb minority voter on the other hand is not profiting from the affirmative action to the same extent. There is an apparent inequality between groups. The Hungarian minority group amount to 16 595 inhabitants and are accordingly helped by having a reserved seat in the Parliament. Their vote weights as much as two votes of the majority.

4.2.3.2. The groupings that share representatives with other groups

The Czech (10510) and the Slovak (4712) elect one representative together. Three of the majority voters vote weights as much as these two groups votes in common. Since the Czech minority group is more numerous it is probable that a Czech representative will be

¹⁴⁵ Out of registered voters Serb 278 620 , 25 978 votes were cast for minority lists and 11 473 for general lists; Hungarian 15861 registered voters , 4 412 valid votes cast for minority list and 6625 for regular lists; Italian 18035 registered voters, 6529 valid votes cast for minority lists, and 7397 for regular constituency; Czech and Slovak 12856 registered voters and 3449 votes cast for minority lists, and 6716 for regular candidate list; Austrian, German, Ukrainian, Ruthenian, Jewish 6105 regitered voters and 1000 cast for minority list and 3000 for regular list. Figures provided by the data processing centre of the City of Zagreb (GZAOP) and final results published by the Central Election Commission the 19 January 2000. Available at OSCE mission of Croatia.

elected within this group since a simple majority system is applied. Both of these minority groups weight more than a vote from the majority, but the Czech vote weight heavier than the Slovak within the specific group.

The fifth group comprises the old Former Yugoslav Citizens group. These are the Albanians (15082¹⁴⁶), Bosnians (20755), Slovenian (13173), Montenegrin (4926) and Macedonian (4270) minority groups. Together these 58206 inhabitants elect one seat.

The ratio of this alliance together (58206 inhabitants on one deputy seat) compared with the majority (30800 inhabitant on one deputy seat) would give that two votes from this group weight as much as one vote of the majority voters. The conclusion would be that there is no preferential treatment for these groups.

However, if we compare the votes within a grouping of minority groups, the relative weight of the votes will be another. The vote from members of some groups, weight more and accordingly can profit more from the affirmative action than others.

4.2.4. Election formula

Within the special constituency the First-Past-the-Post-system is used. All members of minorities compete within each group or alliance for electing one representative. This give that small minority groups like the Macedonian will have a hard time to compete with the more numerous Bosnian minority group in electing one representative- and accordingly the Macedonian minority voters vote will have less weight than the Bosnian voters votes in the alliance, but also in comparison to the majority voters vote. If the aim of a Macedonian voter is to elect a winning Macedonian representative, he will not be helped by this system. There will be a big amount of wasted votes in this system as opposed to the system used in Slovenia.

The Bosnian minority voter will on the other hand have an easier task to elect a Bosnian representative. This group is in numerous advantages and can probably succeed in electing

¹⁴⁶ The figures in bold signify the amount of inhabitants of this ethnic origin according to the Census in 2001. for further information see note 52.

a representative of Bosnian origin. Nevertheless, this is not completely sure since this also depends on how many candidates a minority group present in the elections. The weight of the voters depend not only on how many members a minority group have within the alliance of minority groups but also on how fragmented the opposition to their specific candidate is within the alliance group.

If the Bosnian minority group can support one candidate, this group will have a higher possibility to collect sufficient amount of votes for the only candidate within the election of this minority group. The special constituency comprise the whole territory of Croatia. Depending on how much support one strong minority candidate can get from minority voters in all the regions of Croatia, this candidate will be successful.

The situation is the same for members of minority groups in “ the others group” where 12 groups compete together. In this group of minority groups, the Roma is the biggest with 9463 members, the second biggest is the German group that have 2902 members. Since the Roma is a very fragmentised group politically, it is likely that they will propose several candidates as opposed to the German that is better politically organised than the Roma. This fact can help the less numerous German group to win representation in the parliament.

4.3 ROMANIA

4.3.1 Specific representation

Like all Romanian citizens, persons belonging to national minorities have the right to vote and be elected in parliamentary elections. They may exercise the right to vote either on general electoral candidate list, like every Romanian citizen, or on their own candidate list that represents this special minority interest. Similar to the system applied in Croatia, a member of a national minority have to choose in-between voting for a minority organisation or a “ general “ party list.

Article 59 of the Romanian Constitution guarantee that organisations of citizens belonging to national minorities, which fail to obtain 5 % threshold of the expressed votes on a national level for representation in Parliament, to have the right to one deputy seat each.¹⁴⁷ As demonstrated above, an instrument by which the States gives additional rights to minorities can infringe this right to equal suffrage in two ways. Either member's of minorities can have an additional voting right, or the vote of minority members can weight heavier in the transmission of votes into seats. The mechanism of positive discrimination protected in Article 59 paragraph 2 of the Romanian Constitution, is a form of the latter one.

4.3.2 One person-one vote principle

Members of the minority enjoy equally one vote as members of the majority. Members of the majority can vote for minority organisations if he or she prefers to. There is no infringement against the equal suffrage principle in this respect. The vote for minority representation weight more than a vote for “general” parties but any Romanian citizen can profit from this if he or she feel tempted. The system is still affirmative since provisions protecting minority organisations, does not apply to general parties and political formations. In this way the Romanian law provide for preferential treatment to members of minorities. It is a fact that in the parliamentary election in 1996 and 2000 many persons belonging to Romanian nationality voted for the Hungarian Democratic Union of Romania (UDMR) as well.¹⁴⁸

As opposed to Croatia, in Romania minority voters tend to support the minority organisations to a greater extent. In the majority of the cases, the electoral support for the 17 minority groups corresponded to the amount of registered voters.

4.3.3 Weight of the votes and constituencies

The general election system applied in Romania is a List proportional system in 42 multi member constituencies. In the Romanian Chamber of Deputies, there are 345 seats. The amount of seats elected in a constituency depends on the amount of population living in

¹⁴⁷ Constitution of Romania adopted 21 November 1991, paragraph 2 of article 59.

¹⁴⁸ Interview with Nora Dinca , Department of Territorial Organisation of the executive presidium Romania 6 June 2003.

the constituency. The biggest constituency is Bucharest with 36 seats, and the five smallest have 4 seats. Each candidate or party list's proportion of the total national vote determines the number of the seats won in each territorial constituency. As opposed to Croatia and Slovenia the election of minority representatives in Romania is not conducted in a special constituency. The minority associations compete for votes in the "general" electoral constituencies. In the current Chamber of Deputies, the minority organisations that occupy seats represent different regions and constituencies. Seven of them have been elected in Bucharest constituency. Three of the minority seats were elected in Constanta constituency (town located by the coast of the Black sea). This constituency elects 14 deputy seats to the Chamber and is the second most populated constituency after Bucharest with 36 deputy seat. The rest of the minority lists were elected in seven different constituencies territorially spread in Romania.

The general candidate lists, parties or political formations must obtain at least five percent of the popular vote in order to get parliamentary representation. First, all votes are counted and seat distributed to all party and candidate list that have passed the five percent threshold. Then the minority organisations that have not obtained at least one deputy seat have the right to one seat each. There is a requirement however; the lists must have received at least five percent of the average number of validly expressed votes on a national level for the election of one general deputy seat. In the elections of the year 2000, the average number of valid expressed votes was 25 400(25464) per "ordinary" deputy seat.¹⁴⁹ Accordingly, a minority organisation had to get at least 1273 valid expressed votes throughout the country in order to be awarded a deputy seat in the Chamber.¹⁵⁰ Citizens of national minority are entitled to be represented by one organisation only in the parliament, and minority organisations can only present their list in one constituency. The election formula applied to allocate this deputy seat is partly a proportional system and

¹⁴⁹ Socialist Democrat Party of Romania got 3 968 464 valid votes, and they were allocated 155 seats, The Party of Greater Romania obtained 2 112 027 expressed votes and received 84 seats, the Democratic Party 762365 votes and 31 seats, Liberal National Party 747263 votes were allocated 30 seats, The Hungarian Democratic Party received 736863 votes and got 27 seats in the Chamber. In average 8326982 divided by 327 seats equals 25464 in average for each deputy seat in the first distribution.

¹⁵⁰ Five percent of 25464 votes equals 1273 votes.

partly a majority system, it is a First List- Past-the- Post- System.¹⁵¹ The candidate on the list that was rewarded most votes in that minority group will be elected. If there is only one minority list per ethnic group, this list will be elected if it has collected the minimum threshold. If there is several minority list presented by the same minority group, d' Hondt formula is applied to transfer the votes into seats. A candidate that among all minority organisations lists for one specific minority group get the highest average numbers, gets elected.

The 18 minority associations that benefited from the positive discriminatory measure were the following; representatives from the Albanian, Armenian, Lipovan-Russian, Ruthene, Roma, Germans, Slovak and Czech, Turkish-Muslim-Tatars , Hellenic, Italian, Jews, Slav, Turkish, Bulgarians, Croats, Poles, Serb, and Ukrainian minority organisations. The members of national minorities are entitled to be represented by one organization only through the positive discriminatory measure.¹⁵²

The Hungarian minority group is occupying 27 deputy seats in the chamber and is in no need of affirmative action. The Hungarian Democratic Union of Romania (UDMR) received 736 863 expressed votes that constituted 6.79 percent of the total of votes expressed on the national level. The Hungarian minority is territorially concentrated in Transylvania and have consequently received electoral support mostly in this area. The Hungarian minority were allocated seats in 13 constituencies and received majority of the seats in 4 out of 42 constituencies.

¹⁵¹ Expression founded by Suksi in relation to the modified First –past-the –post-system that applies on Finnish Åland, a First-list-past-the –post system is used with the D'Hondts method to translate votes into the only seat. See further Suksi 2002 page 30.

¹⁵² Paragraph 2 of Article 59 Romanian Constitution 1991.

5. EQUAL TREATMENT OF MINORITY GROUPS

The intentional differentiation to give some minority members such rights and exclude others, are referred to as affirmative action. This is provided for in International Convention on the elimination of All Forms of Racial Discrimination, article 1 paragraph 4 and article 2 paragraph 2.¹⁵³ Even if such differentiation is acceptable or perhaps obligatory in order to create equality between groups, it must be justified on some grounds that do not amount to discrimination¹⁵⁴. This also follows of article 5 of the same Convention. This article stipulate that States that have ratified the convention should undertake to prohibit discrimination and guarantee the right of everyone without distinction on the grounds of national or ethnic origin, in particular in the right to participate in elections and the right to vote and to stand for elections.¹⁵⁵

¹⁵³ International Convention on the Elimination of All forms of Racial Discrimination (Hereinafter ICERD) Ratified by Romania 15 September 1970, by Croatia 12 October 1992, by Slovenia 6 July 1992. Article 2 paragraph 2 “ State parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose to guaranteeing them full an equal enjoyment of human rights and fundamental freedoms...”Article 1 Paragraph 4 “ Special measures taken for the sole purpose of securing adequate advancement of certain racial of ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided however, that such measures do not, as a consequence, lead to maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they have been achieved.” However as stated in “ Minority Rights: International Standards and Monitoring Procedures Latvian Human Rights Quarterly 5/6 1998 page 18. “Some special measures, such as maintenance of educational institutions, *Political Participation in the State affairs*, autonomy and land right, will require prolonged or permanent measures.”

¹⁵⁴ ICERD Article 1 Paragraph 4. “ That such measures do not, as a consequence, lead to maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they have been achieved.”

¹⁵⁵ ICERD Ratified by Romania 15 September 1970, by Croatia 12 October 1992, by Slovenia 6 July 1992. Article 5 “ In compliance with the fundamental obligations laid down in article 2 of this Convention, State Parties undertake to prohibit and to eliminate racial discrimination and distinction in all forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (c) Political rights, in particular the right to participate in elections- to vote and stand for election-on the basis of equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service.”

All distinctions or classifications do not constitute discrimination. Discrimination has been defined by Tomuschat who have based his classification on developments both within the United Nations and the Council of Europe.¹⁵⁶

“ Discrimination is unjustified when it introduces unreasonable classifications within the specific context of the rights concerned. There are three elements involved: Somebody must be subjected to unreasonable treatment, it must result from the introduction of a classification, or distinction, and this distinction or classification must be unreasonable.”

United Nations Former Special Rapporteur on Minorities, Professor Eide holds that some classifications can in the perspective of members of a group constitute discrimination, even though the society at large finds the differentiation justified in light of other values. He states as well that what is held to be justified affirmative action is not a static concept. This can change with time. What was held to be justified yesterday could amount to discriminatory practices tomorrow.¹⁵⁷

In this chapter, it will be argued that equally vulnerable groups, that have obtained citizenship and that are defined as national minority groups, should have the same right to protection. The differentiation towards members of the majority has in certain situations been proven justified. However, the distinctions that serve as restrictions against certain members of minority groups could be questioned if they are reasonable objective grounds according to the aim of the affirmative action. As proven in the chapters above, Romania is giving equal representation to all minority groups, based on objective grounds. Even if the Roma group could get better support in registration, they can profit on equal terms with the other minority groups. In Slovenia and Croatia, however, this was not the case, this is why these cases will be studied specifically in this chapter.

5.1 Affirmative action not discriminatory action

Article 1 Paragraph 4 of the International Convention on the Elimination of All Forms of Racial Discrimination hold

“ Special concrete measures shall be taken for the sole purpose in order to secure adequate advancement of certain ethnic groups in order to ensure equal enjoyment of human rights

¹⁵⁶ Tomuschat C, “ Equality and Non-Discrimination under International Covenant on Civil and Political Rights”. 1981, Berlin: Walter de Gruyter Verlag, p. 691.

¹⁵⁷ Eide A. Opsahl T. “ Equality and Non-Discrimination.” Norwegian Institute for Human Rights. Oslo 1990. p.11

shall not be deemed as discrimination however such measures shall not lead to separate right for different ethnic groups...”¹⁵⁸

Universal suffrage applied to reserved seats for minorities does not mean that all citizens, regardless member of the majority or minority shall have the right to vote for such a candidate. Logically the universal suffrage in this respect protects all members of minority groups to vote for such a specific reserved seat in the Parliament. Special rights to vote for a minority representative, implicitly discriminates all those that are not allocated the right to special representation. The membership to a minority group and the definition of minority can serve a direct restriction to the right to vote.

5.1.1 Slovenia

According to data of the 2002 census, the total population of the Republic of Slovenia is 1,964,036 of whom 83.1 per cent are Slovenes.

Special political rights have been awarded to two autochthonous national minorities.¹⁵⁹ The definition used in Slovenia refers to traditionally settled minorities in the Republic of Slovenia. These are the Hungarians that count up to 6,243 or 0.3 per cent, and the Italians who constitute 2,258 or 0.11 per cent. The members of the Hungarian ethnic community are settled in the municipalities of Lendava and Murska Sobota along the border with the Republic of Hungary, while the members of the Italian ethnic community live along the border with the Republic of Italy on the territories of the municipalities of Izola, Koper and Piran. The special rights of members of Italian and Hungarian minorities in the Republic of Slovenia have grown to be an integral component of life to all inhabitants in the nationally heterogeneous areas.

¹⁵⁸ International Convention on the Elimination of All Forms of Racial Discrimination Adopted by General Assembly resolution 2106 A (XX) 21 December 1965.

¹⁵⁹ the meaning of the term is close to “indigenous” and is based on the territorial principle of autochthonous settlement. CERD /C/352/Add.1.

According to the census data, 3246 or 1.6 per cent Roma have been registered in the Republic of Slovenia. According to the data of the Social Welfare Service, in the 10 Slovenian municipalities where they are permanently settled, however, their number is reported to be about 8000 thus amounting to 0.4 per cent¹⁶⁰. Special status has been granted to the members of Roma ethnic communities, but not special political rights on the national level.

In addition to autochthonous national minorities, there are major groups of members of other nations from the former Yugoslavia living in the Republic of Slovenia. The largest groups among them are the Serbs (38964), the Croats (35642), the Muslims (10467), the Albanians (6186) the Macedonian (3972), and the Montenegrins (2667). Following the Declaration on Independence of the Republic of Slovenia of 25 June 1991, the major part of these people obtained citizenship of the Republic of Slovenia. However, the 26 of February in 1992, these were erased from permanent resident register and stripped from citizenship.¹⁶¹ These “New” minority groups are not defined as minorities and are not treated as such. To not treat such groups as minority groups are in line with the European and International constitutional tradition.

Slovenia give communities extraordinary minority protection in the constitution compared to the other minority groups in Slovenia. This protection was introduced due to provisions in bilateral agreements and multilateral international human rights instruments. The

¹⁶⁰ Official figures amount to 3246 however Social Welfare Service indicated 8000, European Commission Regular Report on Slovenia's Progress Towards Accession, 1999 p.17.

¹⁶¹ Former citizens of the Federal Republic of Yugoslavia that had permanent residency on the Slovene territory, but with different ethnic origin than Slovene were transferred to the register of foreigners and obtained a status as “foreigner”. These non-Slovenes were by these practices completely deprived from citizen's rights- including the right to vote and be represented. The major part of these non-citizens has regained citizenship. However, according to OSI and International Helsinki Federation of Human Rights, up to 40 000 have lived virtually outside the law in 12 years since independence. Still in 2002 former Yugoslav residents without legal status still faced governmental and societal discrimination.¹⁶¹ In April 2003 a court decision by the Slovene Constitutional Court, held this act and the practices from 1992 unconstitutional. Constitutional Court case U-I-246/02 2003-04-03 “ 1. The Act on the Regulation of the Status of Citizens of Other Successor States to the Former SFRY in the republic of Slovenia is inconsistent with the Constitution, as it does not recognize citizens of other Republics of the former SFRY who were removed from the register of permanent residence on the 26 February 1992, permanent residence from the mentioned date. 2....it is further inconsistent as it does not recognise the acquisition of a permit of permanent residence....8.... The Ministry of the Interior must as an official duty issue them supplementary decisions on the establishment of their permanent residence in the republic of Slovenia from 26 February 1992 onwards. “

position of the Italian minority in Slovenia was arranged after the Second World War by a Special Statute of the Free Trieste Territory, annexed to the London Memorandum on the agreement between the governments of Former Republic of Yugoslavia, Italy and Great Britain. This special Statute ceased to apply in 1977 with the validation of the Agreement between the Slovene Federal Republic of Yugoslavia and the Italian Republic concluded in Osim.¹⁶² In the provisions of the agreement there is nothing to be found which would guarantee to members of the Italian minority the right to direct representation in Parliament. Such protection came later on with the constitutional amendments in 1989. The position of the Hungarian national community in Slovenia is regulated by a bilateral agreement between the Republic of Hungary and the Republic of Slovenia signed in 1992.¹⁶³ This agreement, in conformity of national legislation, shall guarantee the suitable participation of minorities in decision making on local, regional and national levels.¹⁶⁴ The reserved seat for the Hungarian minority was already protected in the Slovene national legislation at that time.

5.1.2 Positive discrimination justified

In a decision of the Slovenian Constitutional Court from 1998, the court argued that even though special measures contradicted the equal suffrage principle, it was not unconstitutional but on the contrary in line with the special rights for these particular minority groups protected in the Constitution.¹⁶⁵

“ The special voting rights of members of the national communities are an expression of the constitutionally guaranteed protection of these communities and their members. Although it is a departure from the principle of equality of voting rights, such “positive

¹⁶² The Treaty was concluded 10 November 1975. The law of the ratification of the Osim Agreement was published in SFRY the 11 March 1977 in Official Gazette SFRY International Contracts no 1/77 (hereinafter Osim agreement).

¹⁶³ The Agreement on guaranteeing special rights of the Slovene national community in Hungary and the Hungarian national community in the Republic of Slovenia, signed on 6.11.1992 and ratified by law 26 March 1993, published in Official Gazette RS, MP 6/93.

¹⁶⁴ Idem article 8.

¹⁶⁵ Danijel Starman of Koper and others, Slovene Constitutional Court decision U-I-283/94 12-02 1998 section B III.

discrimination” is not constitutionally impermissible, but quite the contrary-the Constitution requires of the legislator that he implement such measures in the legislation.”

In this sense the affirmative action is justified on the basis of law since it is provided for in the constitution and protected in law. This was inline with the bilateral agreements that Slovenia had signed with Hungary on one hand and Italy on the other.¹⁶⁶ The Constitutional court also stressed the ratification of the Framework Convention for National Minorities. According to article 15 of FCPNM¹⁶⁷;

...State Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.”

The effective participation is very well provided for these two privileged minority groups. The Constitutional Court argue the fact that only certain minorities enjoy such measures is not discriminatory to other minority members. The special rights are extraordinary protection that exceeds the protection provided for in FCPNM. The Constitutional Court argue that this extraordinary protection was established in bilateral treatments between Hungary and Slovenia on one hand and Italy and Slovenia on the other.

Slovenia made a reservation to the FCPNM stating that national minorities in Slovenia was the autochthonous Italian and Hungarian communities, the FCPNM protected rights applied to them and the Roma community living in Slovenia.¹⁶⁸ By this declaration, the

¹⁶⁶ The Treaty was concluded 10 November 1975. The law of the ratification of the Osim Agreement was published in SFRY the 11 March 1977 in Official Gazette SFRY International Contracts no 1/77 (hereinafter Osim agreement). The Agreement on guaranteeing special rights of the Slovene national community in Hungary and the Hungarian national community in the Republic of Slovenia, signed on 6.11.1992 and ratified by law 26 March 1993, published in Official Gazette RS, MP 6/93.

¹⁶⁷ Framework Convention for the Protection of National Minorities ETS no. 157. Signed by Slovenia 1 February 1995 and ratified 28 of June 1994, entered into force 1 November 1998.

¹⁶⁸ Declaration contained in a Note Verbale from the Permanent Representation of Slovenia, dated 23 March 1998, handed to the Secretary General at the time of deposit of the instrument of ratification, on 25 March 1998. “Considering that the Framework Convention for the Protection of National Minorities does not contain a definition of the notion of national minorities and it is therefore up to the individual Contracting Party to determine the groups which it shall consider as national minorities, the Government of the republic of Slovenia, in accordance with the Constitution and internal legislation of the republic of Slovenia, declares that these are the autochthonous Italian and Hungarian National Minorities. In accordance with the Constitution and internal legislation of the Republic of Slovenia, the provisions of the Framework

rights in the Convention do not extend to other ethnic groups such as new minorities living on the territory. This relate to the former citizens of the Federal Republic of Yugoslavia that live in Slovenia.¹⁶⁹ Slovenia's declaration at the ratification of FCPNM mentioned that the provisions in the Convention should apply to the Roma living in Slovenia as well.

While the Hungarian and Italian minorities are guaranteed representation at the local level and national levels, Roma are entitles to representation only at the local level and only where there are "autochthonous " Roma. The Law on Local Autonomy that would provide for Roma representation. A resent Constitutional Court ruling determined that the relevant provision in the Law on Local Autonomy must be implemented.¹⁷⁰ In a greater number of municipalities had not been fully implemented as of last year spring 2002.¹⁷¹ Following the Court ruling as of September 1 2002 all 20 local municipalities with a large Roma population were expected to have changed their regulations in order to pave the way for the election of a Roma representative within the municipal council.

However, at the end of August, six local municipalities publicly refused to change their regulations and claimed that this kind of affirmative action is discriminatory against the Slovene majority. Some local representatives expressed that Roma do not possess sufficient experience or educations to be local councillors.¹⁷²

Could the distinction or reservation of representatives to national parliament be seen as unjustifiable and unreasonable? When it comes to positive discriminatory measures this would probably not be the case. The Constitutional Court held in relation to this that the

Convention shall also apply to the members of the Roma community, who live in the Republic of Slovenia.

¹⁶⁹ Serbs (38964) Croats (35642) Bosnian (21542) Albanians (6186), Macedonians (3972), Montenegrins (2667) www.stat.si/popis2002/en/SLO-T-07ENG.htm

¹⁷⁰ U-I-345/02 2002-11-14 " The municipal councils of the municipalities determined in Item 1 of the disposition must call for election of members of municipal councils, the representative of the Romany community, if for 2002 regular elections they did not ensure the election of the representatives determined by the charters, pursuant to the provisions of the Local Self Governing Act...Reasoning A , The Government of the Republic of Slovenia challenged the charters of municipalities, stated in the disposition, for they were allegedly inconsistent with article 65 of the constitution and article 39 of the local Slef-governing Act. They did not allegedly ensure the Romany community settled in these municipalities the right to have a representative in municipal councils."

¹⁷¹ "Monitoring minority protection in Slovenia" EU accession monitoring Program. Open Society Institute.p. 627.

¹⁷² Idem p. 628.

FCPNM did not require signatory states to provide for extraordinary protection but only suitable protection for persons covered by the Convention.¹⁷³ It is up to States to decide which groups to protect with this specific representation. It might be considered that if representation by minorities is central to their sense of identity, and that it is crucial to their feeling as a part of the state and the wider community, it should be equally protected for the groups that are recognised as minority groups in the State. Since Roma are recognised as such, they should have equal right to such protection.

The Committee on the Elimination of Racial Discrimination held this in its concluding observations of the 2 of June 2003 under concerns and recommendations Paragraph 9 “With the respect to Article 2 of the Convention, the Committee, while noting that the Constitution of Slovenia provides for representation in Parliament of the Italian and Hungarian minorities, observes that the issue of the representation of other minorities in the Slovenian Parliament has not been addressed. The Committee therefore recommends that the State party consider taking further measures to ensure that all groups of minorities are represented in Parliament and to include in its forthcoming report information concerning any measures taken in this regard.”

5.2.1 Croatia

There are 23 national minority communities in the Republic of Croatia, these are

Serbs (201 631), Bosnians (207559), Italians (19636), Hungarians (16595), Albanians (15 082), Slovenes (13173), Czechs (10510), Roma (9463), Austrians (247), Bulgarians (331), Montenegrins (4926), Slovaks (4712), Macedonians (4270), Germans (2920), Ruthenians (2337), Ukrainians (1977), Russians (906), Poles (567), Jews (576), Romanian (475) , Turks (300), and Vlasi (12) .¹⁷⁴ Today all 23 groups are equally defined in the definition of minorities under the Constitutional Law on National Minorities adopted in December

¹⁷³ Danijel Starman of Koper and others, Slovene Constitutional Court decision U-I-283/94 12-02 1998 section B I.

¹⁷⁴ Census 2001, available at <http://www.dzs.hr/ENG/Census/census2001.htm> .

2002.¹⁷⁵ Together these groups constitute 7.47 per cent of the total population of 4 437 460 inhabitants.

It has been a long process in defining these groups as minority groups. When Croatia was a part of the former Yugoslavia, the status of minorities (then termed "nationalities") in terms of constitutional, legislative and regulatory rights was enjoyed by Czechs, Hungarians, Slovaks, Ruthenians, Italians, Ukrainians and, partly Roma who were sometimes classified as an ethnic group rather than a nationality.¹⁷⁶ Germans and Austrians, after the Second World War, although recognized as national communities in pre-war Yugoslavia, were denied the right to act to preserve their identity (due to their "historical sins")¹⁷⁷, whereas Albanians, although a recognized minority in Yugoslavia,¹⁷⁸ did not enjoy this status in Croatia. Jews, owing to the lack of distinction between the religious and the national, were not granted the constitutionally guaranteed minority rights. The others, Russians, Greeks, Turks, Rumanians, Bulgarians, although defined in census forms as special groups, were not treated as minorities owing to their small number, dispersal and lack of organization.¹⁷⁹

After the disintegration of the former Yugoslavia and the recognition of the Republic of Croatia as an independent State, the minority status in Croatia was also given to members of formerly constituent nations of the former Yugoslavia: Montenegrins, Macedonians, Muslims, Slovenes and Serbs.¹⁸⁰

Some national communities can be described as "settled minorities" in the real sense. These are Italians and Hungarians¹⁸¹. Others can be described as such owing to centuries

¹⁷⁵ Constitutional Law on the rights of National Minorities Official Gazette 01/01 article 4 and article 5.

¹⁷⁶ OSCE Mission in Croatia Background report on the Constitutional law on National Minorities 20 August 2002. p. 2.

¹⁷⁷ Domini M. "National minorities in the republic of Croatia" Central European Review CER, vol. 2 No 19, 2000 available at <http://www.ce-review.org/00/19/domini19.html>

¹⁷⁸ Idem see as well information in World Directory of Minorities Minority Rights Group (1991) Canada St James Press p. 137.

¹⁷⁹ See note 34.

¹⁸⁰ See preamble of Constitution of 1991 and Kanev K. "Balkan and its minorities" in Canadian Human Rights Foundation Newsletter "speaking about rights" vol. XIV, 1999, No 2 Minorities Rights available at <http://www.greekhelsinki.gr/english/articles/>

¹⁸¹ Domini M. "National Minorities in the republic of Croatia" in CER Central Europe Review. Vol. 2 No 19, 2000 see note states on previous page.

of existence in Croatia the greater part of the Serbian community, Czechs, Slovaks, Ukrainians, Slovenes, Ruthenians, Jews.¹⁸² whereas the rest are recently settled groups Muslims, Albanians, Montenegrins, Macedonians.

5.2.2 Affirmative action justified and in accordance with the law

The Constitutional Court of the Republic of Croatia pronounced in a decision the 12 April 2001 the legality of the affirmative action. The Court affirmed that by relying on both the Constitution of Croatia and the FCNM the legality of the application of the principle of positive discrimination that is protected in Article 15 paragraph 3 of the Croat Constitution and the legal provisions that gave special protection for minorities were not in contradiction of the equal suffrage rights.¹⁸³

“ it is evident that the application of the principle of equality does not always provide for sufficient protection. If the principle of equality was immediately applied alone,”... “the special characteristics and specific interest of the national minorities would be neglected, which might in certain cases, lead to discrimination. Therefore, the exclusive individual protection is no longer considered sufficient. In accordance with that, the principle of positive discrimination consisted in Article 15 paragraph 3 of the Constitution, points at the detachment from the strictly individual concept, and the acceptance of the constitutional and legal concept of minority rights as the collective rights of minority communities. “...” Legal regulations which take into consideration the specific conditions of the members of national minorities...are not considered an act of discrimination in relation between the majority population and the ethnic and national communities or minorities on one hand, nor in the mutual relation of those national minorities on the other.”

¹⁸² World Directory of Minorities Minority Rights Group (1991) Canada St James Press p. 135

¹⁸³ Constitutional Court of the republic of Croatia, decision U-I-732/1998 12 December 1998, section B I.

Croatia give different groups different protection of specific representation. While the Hungarian and Italian minority can elect one representative each and get more than proportional representation and accordingly profit well from the affirmative action, Serb are not represented proportionally and profiting from the affirmative action. While Slovenia on one hand is giving very well afforded protection to some traditionally settled communities, Croatia gives all groups the recognition but not the effective representation to the same extent.

6. CONCLUSIONS

6.1. Who has the right to vote and to stand for office to the reserved seats?

All national minority groups in Croatia and Romania enjoy specific political representation. In Slovenia, the Italian and Hungarian autochthonous community enjoy these rights. This is the most explicit of voting rights given to communities or circles of person that belong to an ethnic group.

6.1.1 The right to stand for office

The restrictions to stand for office in Slovenia Romania and Croatia are justifiable according to General Comment 25 to the ICCPR. The age limit is set to 18 years in Croatia and Slovenia, and in Romania to 23 years old. In all countries, citizenship is required and in Slovenia and Croatia, there is an additional requirement to belong to the nationality of the minority group this representative should represent.

The three countries have introduced affirmative measures to facilitate the nomination of the candidate. In Slovenia the requirement for individual candidates require 30 signatures and there is no residency requirement, this requires for the voters 100 signatures with residency requirement in the constituency where the candidate will stand for office. The minority community have the right to propose several candidates and are not limited to a single candidate, even though the number of the candidate list in regular elections cannot exceed the number of delegates elected in the country.

In Croatia the nomination procedure introduces affirmative action for the minority groups. For independent candidates the requirement is 100 signatures as opposed to 500 for the independent candidates for general elections. In Romania legally constituted organisations for minority groups shall be judicial equivalent of other parties, the nomination procedure

follows the internal legal statutes of that party. There is no special affirmative action for minority groups in nomination.

6.1.2 The right to vote for the representative

The direct restriction in Slovenia to eligible voters to be included in the electorate and enjoy specific double suffrage rights is a requirement to belong to the autochthonous group. To be included in this electorate is not based upon self-identification, and neither on any specific law. It is up to the election commission that draft the voters register to decide if a person has the right to be included in the electoral register- and on the basis of this have an additional right to vote. This is a direct restriction for those persons that are denied.

In Croatia no direct formal restrictions exist for a person belonging to a national minority to enjoy the special right to vote. All groups that live on the territory are mentioned in the newly amended election law, even persons identifying themselves as the Vlasi, who count to 12 persons in the census 2001¹⁸⁴, have the “group” right to be represented.¹⁸⁵ The right is based on the self-identification to these groups.¹⁸⁶ A person who identifies himself as such, can at any time enrol in the voters register as nationality to any of these groups, and exercise the right to vote for the representative. However, in Croatia the indirect restrictions are existent by the fact that a minority voter risk intimidation if voting for a minority representative. The intolerance in the war effected areas serve as an effective obstacle for minority voters to be encouraged to vote. Other indirect restrictions that were observed by the OSCE mission, were inaccurate placed polling stations and polling committee members that refused issuing ballots to minority voters. The voter turnout indicated that a majority of minority voters that were registered as such preferred to cast their ballots for regular parties and not for minority representatives. It is obvious that the

¹⁸⁴ See census figures at www.dzs.hr/Eng/census/census2001.htm.

¹⁸⁵ Law on elections of representatives to the Croatian State Parliament Official Gazette No 116/99 enacted 5 November 1999 amended April 2003, article 17.

¹⁸⁶ Constitutional Law on National Minorities adopted 12 December 2002. Article 4 “Every citizen of the Republic of Croatia shall have: the right to express freely that he is a member of a national minority”.

indirect restrictions serve as an effective obstacle for persons that identify themselves as national minority voters and register as such, to vote for a minority representative.

Romania ensures minimal representation of legally constituted organisations to citizens if such organisations do not obtain a seat in either houses through ordinary electoral procedures, provided that they receive at least 5 % of the average number of votes validly expressed for a deputy. ¹⁸⁷There is no special exclusive right allocated to members of minority groups to vote as such, but their right to be represented is ensured. Majority voters vote for national minority candidate list, and vice versa according to election results. In elections 2000, 17 minority groups gained a seat through these measures.

Indirect restrictions are not due to discriminatory practices but the fact that a great amount of Roma members lack identity papers and residency documents to ensure their electoral rights. Other obstacles were owed to complicated ballot design that reduced the possibility for illiterate voters to vote.

The specific right to vote for minority representatives in Slovenia is protected to a high extent. Persons belonging to the autochthonous Italian and Hungarian community have double voting rights and are entitled to two votes. This has been recommended by the OSCE/ODIHR “best practice guide”. This has advantages since members of minority groups do not only identify themselves as minority members. This enables the members of minority groups to effectively enjoy their identity as minority group but as well as part of the “general” political society. As a member of these communities, they can choose to confine their ballots both for the general deputy seats and the special for the minority seat.

Direct obstacles to vote in Slovenia are due to lack of statutory provisions of who is entitled to be recognised as belonging to the autochthonous Italian and Hungarian minority community and gain specific suffrage rights. It is up to the arbitrary decision of the election commission to decide who can vote and who cannot. There are no indirect obstacles for voting.

¹⁸⁷ Constitution of Romania, 1991, article 59 paragraph 2.

6.2. What are the strong and the weak points of the election formula chosen by the states in relation to the minority?

6.2.1. Slovenia

In the respect of the construction of the special electoral system for the Italian and Hungarian minority group, the system in Slovenia is following the guidelines for minority participation of ODIHR and more precisely the Lund recommendations No 9.¹⁸⁸ It is successfully providing for effective representation for them. The constituencies are concentrating the minority groups in special constituencies. This logic of drawing constituencies can have a potential legal and administrative inbuilt problem if one must create a minority district whenever possible.¹⁸⁹ If all ethnic groups (even new minorities) in Slovenia would be rewarded the special representation and corresponding single ethnic constituency, this would lead to 22 additional constituencies. As the system is today limited to only two privileged minority groups, such problem is non-existing.

Voters are given an additional vote as opposed to the systems in Romania and Croatia. The possibility to express the preferences in-between the candidates is also giving the minority voters a possibility to influence who will be elected. This enables voters who have a little hope of being elected to influence, via their second and third preferences, the election of the winning candidate. The system gives the candidate a higher accountability, since they will be dependent of all electorate voters support. This also promotes that the candidate will have more broadly based programme and less extremist or nationalistic.¹⁹⁰ It also

¹⁸⁸ Lund recommendations No 9 “The election system should facilitate minority representation and influence; where minorities are concentrated territorially, single member districts may provide for sufficient minority representation; Some forms of preference voting where voter rank candidates in order of choice, may facilitate minority representation and promote inter-communal co-operation; lower numerical thresholds for representation in legislature may enhance the inclusion of national minorities in governance; and last proportional systems where a party’s political share in the national vote is reflected in its share of legislative seats, may assist in the representation of minorities.”

¹⁸⁹ Grofman.B, Handley.L, Niemi.R.G, “Minority Representation and quest for voting” (1992) Cambridge university Press. P. 116.

¹⁹⁰ IDEA (1997) p. 38.

promotes more voters to go to the election poll since the amount of wasted votes is reduced.

In Slovenia the minority representatives are as well accorded a special material role in the parliament supported by the fact that the Hungarian and Italian deputies have a veto in the issues that specifically deal with minority interest. Article 64 paragraph 6 stipulate: “Laws, regulations and other general acts that concern the exercise of the constitutionally provided rights and the position of the national communities exclusively, may not be adopted without the consent of representatives of these national communities.” Such minority veto is also precisely, what is recommended in the guidelines for minority protection by ODIHR.¹⁹¹

6.2.2. Croatia

The suffrage rights and the weight of the votes are dependent on the ethnic group that a person belongs to. In comparison to some groups, the weight of the majority voters vote weight more (the Croat compared to the Serb and perhaps the Macedonian) and in comparison to other groups the majority voters vote weight less (the Croats compared to Hungarian and Italians and perhaps the Bosnian).

The preferential treatment barely helps minority groups in comparison to the representation they would have through the general election system. In Slovenia, the Hungarian and the Italians minority members elect their proper reserved seat while in Croatia some groups have a symbolic representation rather than an effective one. The smaller groups that elect their representative in common with other cannot profit from the affirmative action. This system might discriminate less against the majority but fail to give adequate support for such minority groups. If the aim of the reserved seats is to protect the identity of a minority group, it can be questioned how well a German representative for instance can protect the identity and promote the interest of a member of the Roma or the Jew minority group. If not increasing the number of reserved seats, an Alternative Vote

¹⁹¹ Guidelines to assist the national minority participation in the electoral process developed by the ODIHR in conjunction with the international Institute for Democracy and Electoral assistance (International IDEA) and the Office of HCNM.3-4 July 2000 Warsaw. p. 16

system could perhaps improve the situation and give the smaller groups some kind of influence over the winning candidate.

The Alternative Vote system enables voter to express their preference between different candidates rather than simply their first preference. Like the First –Past-the-Post system applied now, the Alternative Vote is a form of majority system. If one candidate wins an absolute majority of votes, he will get elected. If not, the candidate that received the lowest amount of first preferences is eliminated from the count. His second or third preferences will be counted assigned to the remaining candidates. This process is repeated until one candidate have absolute majority. It would enable those smaller minority groups voters to influence, at least with their second or third preference the election of a major candidate. It also promotes that the candidates will have to accumulate diverse but related interest within the “grouping” and help the different ethnic groups to interact. Yet, this effect might be reduced since the constituency is comprising the whole territory of Croatia and groups that are separated geographically might have a harder time to identify with a candidate campaigning in another part of the country.

To facilitate a better representative system for minority groups in Croatia the ultimate strategy would be to increase the amount of reserved seats for the national minority groups. Either to give one seat each to all groups like the case of Romania, or increase the number of seats for the bigger groups and give them a more proportional representation.

6.2.3. Romania

The right to preferential treatment for minority groups in Romania is a collective right to the same extent as in Croatia and Slovenia. All groups enjoy this right in the same way as in Croatia, but in Romania all groups elect one representative. The best points of two systems are brought together in the Romanian system. The solutions are to allocate the specific right to legally constituted organisations of minority groups instead of earmarking the right to members of certain specific communities.

The votes that are confined to minority lists could have 20 times more weight as opposed to the votes given to a “general” candidate list, and the preferential treatment effectively provide minority groups very good support. The system provided for in Romania is effectively providing for a proportional representation. The smaller minority groups are

indeed over represented. The 18 minority representatives form together a political group in the parliament called “Minoritati”, with the seats upheld by the Hungarian minority part they together occupy 45 seats of 345 which mean 13 % of deputy seats. The Roma party is the minority group that profit less from this system. The residency requirement for voter eligibility is one obstacle. The others are connected to the fact that a majority of the Roma are not well organised politically, and those who are are fragmented and do not support common part.

6.3. Is the specific representation creating equal representation in-between minority groups?

In Romania the specific representation were not allocated to any pronounced community, but to legally constituted minority organisations. These measures promoted an equal treatment of all minority groups that could be based on objective criteria. However, indirect restrictions were due to the fact of residency requirement for registration to voters register, that had an unfortunate effect for the Roma that are sidelined by this system. Membership to minority groups and enjoyment of the rights allocated to such groups are based on self-identification.

In Slovenia two communities get very privileged political right, while other groups are not protected to the same extent. This was justified and according to the constitution on the ground of bilateral agreements. Croatia is in the same way giving differentiated representative rights, but the difference is that Croatia recognises all group as being entitled, thus including all groups to a certain extent, even though the low voter turnout in the elections indicate that minority members did not regard this as an effective way to be represented.

It is apparent that it is not the minority groups in need of affirmative action that actually receives the support in the end, but those groups that traditionally have well established

positions in the society, often based on bilateral agreements and supported from a friendly neighbouring state. If the aim with the specific representation is to create equal right for all groups, the restriction of the right to some groups must be unjustified.

Might this correspond to what Eide stated that what was considered to be justifiable affirmative action yesterday might be regarded as unjustified tomorrow. If one aspires for equal treatment for equally vulnerable groups - The answer might be yes.

Representation is the key element to participation, enabling the voices of the minority to be heard in official bodies. It strengthens its articulation within national political systems. Representation is recognition of a positive right of the minority- to take part in the state of political processes and to influence state policies. It helps inform decision makers of the concerns of minorities, and leads to better decision-making and implementation.

In this paper I have presented three states and the way in which they have constructed the election systems to elect these reserved seats and who had the right to be included in the electorate and which good and bad points there were with the different election formula, furthermore if the system promoted equal rights for all minority groups. On all these questions the Romanian system of reserving seats were the best answer. Slovenia had a very good election formula, but failed to include all minority groups in the electorate. It is obvious that the Romanian system promoted equally that all groups effectively entered a seat in the parliament. This system could be a model for other countries that will reserve seats in national parliament for minority groups.

Bibliography

TEXTBOOK AND PERIODICALS

De Silva K.M., 1999, "Electoral systems", in Young C., *Ethnic Diversity and public Policy: A comparative policy*, (ed.) London, MacMillian, pp. 36

Domini, M., 2002, "National Minorities in the republic of Croatia", in *Central European Review*, vol. II, no. 19.

Eide, A., & Opsahl, T., 1990, *Equality and Non-Discrimination*, Oslo, Norwegian Institute of Human Rights.

Grofman B., Handley L., Niemi R. G., 1992, *Minority Representation and quest for voting*, Cambridge, Cambridge University Press.

Hinz V.U. & Suksi M., 2002, *Election Elements: On the International Standards of Electoral Participation*, Åbo, Institute for Human Rights, Åbo Akademi University.

International Institute for democracy and electoral assistance, (IDEA)1997, *The International Handbook of Electoral Systems Design*, Stockholm IDEA

Kymlicka W., 1995, *Multicultural Citizenship: A liberal Theory of Minority Rights*, Oxford, Clarendon Press.

Kymlicka, W., 1995, *The Rights of Minority Cultures*, New York, Oxford University Press.

Lijphard A., 1994, *Electoral systems and party systems – a study of twenty-seven democracies, 1945-1990*, Oxford, Oxford University Press.

Myntti K., 2001, *A Commentary to the Lund Recommendations on the Effective Participation of National Minorities in Public Life*, Åbo, Institute for Human Rights, Åbo Akademi University.

Myntti K., 1998, *Minoriteters och urfolks politiska rättigheter*, Rovaniemi, Lapplands University Press.

Rosas A., 1996, "Electoral rights and foreigners", in Horn F., 1996, *Minorities and their right of Political Participation*, 1996, Rovaniemi, Lapland University Press.

Rule, W., & Zimmerman, J., 1994, *Electoral systems in Comparative perspective; Their impact on Women and Minorities*, Westport, Greenwood Press.

Tomuschat, C., 1981, *Equality and Non-Discrimination under the International Covenant on Civil and Political Rights*, Berlin, Walter de Greyer Verlag.

Thornberry P., 1996, *Minorities Indigenous Peoples Participation* in Horn F., 1996, *Minorities and their right of Political Participation*, 1996, Rovaniemi, Lapland University Press.

Suksi, *Finlands Statsrätt* 2002, Åbo, Institutet för mänskliga rättigheter.

Söderfeldt, B., 1972, *Statsvetenskapliga metoder*, Stockholm, Almqvist & Wiksell.

TREATIES AND CONVENTIONS

European Convention on Human Rights and Fundamental Freedoms, (ETS No. 5), entered into force Sept. 3, 1953, as amended by Protocols No 3, 5, and 8 which entered into force on 21 September 1970, 20 December 1971 and 1 January 1990 respectively, 213 U.N.T.S. 222.

Framework Convention for National Minorities, Opened for signature Strasbourg 1995, Entry into force 1998, E.T.S. no. 157.

International Convention on the Elimination of all Forms of Racial Discrimination, opened for signature on 7 March 1966, entered into force 4 January 1969, 660 U.N.T.S. 195.

International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, 999 U.N.T.S. 171.

CASE-LAW AND LEGISLATION

Permanent Court of International Justice

Advisory Opinion on Minority Schools in Albania, P.C.I.J. (1935) Ser. A/B, No. 64.

European Court of Human Rights

Mathieu-Mohin and Clerfayt v. Belgium, judgement of 2 March 1987, Series A, vol. 113.

National case-law

Danijel Satrman of Koper and others, Slovene Constitutional Court, Decision U-I-283/94, 12/02-1998, Section BIII.

Constitutional Court of the Republic of Croatia, Decision U-I-732/1998, 12 December 1998, Section B-I.

Constitutional Court of Slovenia, Decision U-I-283/94, Section BV.

Constitutional Court of Slovenia, Decision U-I-246/02 2003-04-03.

National Legislation

Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia, Official Gazette RS, No. 1/91-I.

Constitutional Amendment of 1998 to the Constitution of 1974, Official Gazette RS No. 32/89.

Constitution of Croatia, 1990,

Constitution of Romania, 1991,

Constitution of Slovenia, 1991,

Constitutional Law on Human Rights and Freedoms of National and Ethnic Communities or Minorities in the Republic of Croatia, Adopted December 1991, amended May 1992, Official Gazette No. 65/91, 27/92, 34/93, 51/00, 105/00.

Constitutional Law on the Rights of National Minorities, adopted 13 December 2002.

Constitutional Law on the Rights of National Minorities, Official Gazette 01/01.

The Elections of the Assembly Act, Official Gazette SRS, No. 42/89, 5/90, 10/90 and 45/90.

Law on Elections of Representatives to the Croatian State Parliament, adopted 29 October 1999, Official Gazette No. 116/99. Amended by law of 2 April 2003, Official Gazette No. 1/4.

Law on the Determination of Constituencies for Elections to the National Assembly, Official Gazette No. 46/92.

Record of Electoral Rights Act, Official Gazette No. 44/92, 60/95, 67/97, 70/00.

Bilateral agreements

Agreement between the Republic of Croatia and the Republic of Hungary on the Protection of the Hungarian Minority in the Republic of Croatia and the Croatian Minority in the Republic of Hungary, 1995.

Agreement between the Republic of Croatia and the Republic of Italy on Minority Rights, 1997.

Agreement on guaranteeing special rights of the Slovene National Community in Hungary and the Hungarian National Community in the Republic of Slovenia, signed 6 November 1992, ratified by law 26 March 1993, Official Gazette RS MP 6/93.

Osim Agreement, Official Gazette SFRY, International Contracts No. 1/77, of 11 March 1977.

DECLARATIONS AND RECOMMENDATIONS

United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Adopted by General Assembly resolution 47/135 of 18 December 1992.

The Lund Recommendations on the Effective Participation of National Minorities in Public Life, Sept. 1999.

International Standards of Elections Document of the Copenhagen Meeting of the Conference on the Human Dimension of CSCE, Copenhagen, 29 June 1990.

General Comment No. 25, “The right to participate in public affairs, voting rights and the right of equal access to public service”.

Reports

IHF Annual Report on Croatia, 2000-05-08.

International Election Observation Mission to the Republic of Croatia, 2000.

OSCE Background Report on the Constitutional Law on Minorities in Croatia, 20 August 2002.

Open Society Institute Annual Report on Minority Protection, 2002, US State Department.
Report on Eastern Europe No. 51/52 of 20 December 1991, “Hungary: Foreign Policy Reorientation a Success”, by Reisch, A.

World Directory of Minorities, Minority Rights Groups, 1991, Canada St. James Press.

Other Documents

Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Romania, adopted 6 April 2001, ACFC-INF-OP-I(2002)00.

Practical Guidelines to Effective Implementation of HCNM Lund Recommendations, Guidelines to Assist National Minority Participation in the Electoral Process, 2002, Office of Democratic Institutions and Human Rights.

Electoral Law and National Minorities, 1999, Strasbourg, European Commission for Democracy through Law.

Study suggests ways to improve the political involvement by Rome, 2003, Radio Free Europe, Sterling Wright.

Minority Rights: International Standards and Monitoring Procedures, Latvia Human Rights Quarterly, 5/6 1998.

OSCE International Standards and Commitments on the Right to Democratic elections: A practical Reference Guide to Democratic Elections Best Practice, 2002.