



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF CROATIA

No.: U-I-3786/2010
U-I-3553/2011
Zagreb, 29 June 2011

The Constitutional Court of the Republic of Croatia, composed of Jasna Omejec, President of the Court, and Judges Mato Arlović, Marko Babić, Snježana Bagić, Slavica Banić, Mario Jelušić, Ivan Matija, Antun Palarić, Aldo Radolović, Duška Šarin and Miroslav Šeparović, deciding on proposals to institute proceedings to review the conformity of a law with the Constitution of the Republic of Croatia (*Narodne novine* nos. 56/90, 135/97, 113/00, 28/01, 76/10), at its session held on 29 June 2011 rendered the following

DECISION

I. Proceedings have been instituted to review the conformity with the Constitution of Article 4 of the Constitutional Act on Amendments to the Constitutional Act on the Rights of National Minorities (*Narodne novine*, no. 80/10), and

- in paragraph 1 the new paragraphs 7 and 8 supplementing Article 33 of the Constitutional Act on the Rights of National Minorities (*Narodne novine*, nos. 155/02, 47/10 – decision and ruling of the Constitutional Court of the Republic of Croatia no.: U-I-1029/2007 and others of 7 April 2010) are hereby repealed.

II. This decision shall be published in *Narodne novine*.

Statement of reasons

I. PROCEEDINGS BEFORE THE CONSTITUTIONAL COURT

1. The Serbian Democratic Forum, represented by Veljko Đakula, president of the Administrative Committee, and the Socialist Party of Croatia – SPC, represented by Milovan Bojčetić, president, submitted proposals for the Constitutional Court to institute proceedings to review the conformity with the Constitution of Article 4 para. 1 of the Constitutional Act on Amendments to the Constitutional Act on the Rights of National Minorities (*Narodne novine*, no. 80/10; hereinafter: C(A)A RNM) in the part in which Article 33 of the Constitutional Act on the Rights of National Minorities (*Narodne novine*, nos. 155/02, 47/10 – decision and ruling of the Constitutional Court of the Republic of Croatia no.: U-I-1029/2007 and others of 7 April 2010; hereinafter: CA RNM) is supplemented by the new paragraphs 7 and 8.

2. In this decision the impugned parts of Article 4 C(A)A RNM shall in short be termed “Article 4 para. 7” and “Article 4 para. 8” C(A)A RNM.

3. On the grounds of Article 42 para. 1 of the Constitutional Act on the Constitutional Court of the Republic of Croatia (*Narodne novine*, nos. 99/99, 29/02 and 49/02 – consolidated wording; hereinafter: the Constitutional Act), the Constitutional Court requested the opinion on the proposals of the Government of the Republic of Croatia.

3.1. The Ministry of Public Administration of the Republic of Croatia was requested to submit the relevant documents from the Associations Register of the Republic of Croatia.

3.2. The Constitutional Court requested expert opinions on the proposals in writing from the heads of the Constitutional Law Departments of the Law Faculties of the Universities in Osijek (Professor Zvonimir Lauc, LL D), Split (Professor Arsen Bačić, LL D), Rijeka (Professor Sanja Barić, LL D) and Zagreb (Professor Branko Smerdel, LL D).

3.3. The Serb National Council – National Coordination of Councils of the Serb National Minority in the Republic of Croatia, seated in Zagreb, was requested to declare itself on the proponents’ objections.

1) The Jurisdiction of the Constitutional Court to Review the Constitutional Act on Amendments to the Constitutional Act on the Rights of National Minorities

4. The CA RNM is by the force of Article 15 para. 2 of the Constitution an “organic act that is passed by a two-thirds majority vote of all the representatives”.

Despite their names, however, neither the CA RNM nor its amendments have the force of the Constitution because they are not passed and amended according to the procedure for passing and amending the Constitution. The fact that some acts are called constitutional “does not change the legal nature of these acts, does not make them legally different from what they are under the Constitution and according to their content, and the Constitutional Court does not review them according to their name but according to their legal nature” (decision of the Constitutional Court no.: U-I-, 774/2000 of 20 December 2000, *Narodne novine*, no. 1/00).

Accordingly, the Constitutional Court has the jurisdiction to review the conformity with the Constitution of the CA RNM, including also all its amendments.

II. THE PROCEEDINGS OF PASSING THE CONSTITUTIONAL ACT ON AMENDMENTS TO THE CONSTITUTIONAL ACT ON THE RIGHTS OF NATIONAL MINORITIES

5. The Government of the Republic of Croatia, in act class: 016-01/10-01/01, entry no.: 5030104-10-1 of 15 June 2010, submitted to the Speaker of the Croatian Parliament the proposal of the Constitutional Act on Amendments to the

Constitutional Act on the Rights of National Minorities with the Final Bill (P.Z. no. 569) (hereinafter: C(A)A RNM Bill).

The Government of the Republic of Croatia referred to Article 15 para. 3 of the Constitution as the constitutional ground for enacting the C(A)A RNM. It provides that “besides the general electoral right, the special right of the members of national minorities to elect their representatives to the Croatian Parliament may be provided by law”.

The C(A)A RNM Bill also contained the Government’s proposal for that act to be passed in emergency procedure. It gave the following reasons for the need for emergency procedure:

“In the proponent’s view the conditions in Article 159 of the Standing Orders of the Croatian Parliament to enact the Constitutional Act in emergency procedure have been met.

The need to additionally regulate the equality and protection of national minorities, and the rights and freedoms of national minority members, in accordance with the provisions of the Constitution of the Republic of Croatia and the provisions of international agreements that regulate the protection of particular freedoms and rights of national minorities and their members are a justified state reason for passing this Constitutional Act in emergency procedure.”

6. On the grounds of the C(A)A RNM Bill submitted, the agenda of the 18th sitting of the Croatian Parliament was supplemented on 16 June 2010 by a new item entitled “Proposal for the Constitutional Act on Amendments to the Constitutional Act on the Rights of National Minorities with the Final Bill, emergency procedure, first and second reading, P.Z. no. 569”. On the same day the Parliament accepted the application of emergency procedure (unanimously, 131 votes “for”).

7. The Committee for the Constitution, Standing Orders and Political System of the Croatian Parliament, at its 53rd session held on 16 June 2010, debated the C(A)A RNM Bill on the grounds of its authority as the competent working body in Article 57 of the Standing Orders of the Croatian Parliament (*Narodne novine*, nos. 71/00, 129/00, 117/01, 6/02 – consolidated wording, 41/02, 91/03, 58/04, 69/07, 39/08 and 86/08). After the debate the Committee proposed to the Croatian Parliament with a majority vote (six votes “for” and five “withheld”) to enact the C(A)A RNM in the wording in which the Croatian Government had proposed it.

7.1. The Committee for Human and National Minority Rights of the Croatian Parliament at its 36th session held on 16 June 2010 examined the C(A)A RNM Bill on the grounds of its authority as the competent working body in Article 71 of the Standing Orders of the Croatian Parliament. After the debate the Committee unanimously proposed to the Croatian Parliament to enact the C(A)A RNM with the amendments the Committee had proposed.

7.2. Points 12.1. and 30 of the statement of reasons of this decision give more details about the procedure of proposing and accepting the amendments to Article 33 CA RNM during the parliamentary debate, with the observation that the working materials of the Croatian Parliament on the harmonisation of the Article’s final content are not sufficiently clear and do not provide a complete insight into the proceedings.

8. The parliamentary debate on the C(A)A RNM Bill was concluded on 16 June 2010. In accordance with Article 227 of the Standing Orders of the Croatian Parliament, a two-thirds majority vote of all the representatives to the Parliament was necessary to enact the C(A)A RNM, that is, at least 102 votes.

On 16 June 2010 the Croatian Parliament enacted the C(A)A RNM with the accepted amendments with a two-thirds majority vote of all the members, (129 votes “for”, three “against” and four “withheld”). The President of the Republic of Croatia promulgated it on 18 June 2010. It was published in *Narodne novine*, no. 80 of 28 June 2010, and it entered into force on 6 July 2010, the eighth day after its publication.

9. The C(A)A RNM amended Article 19, Article 20 para. 7 and Article 22 paras. 2 and 3 CA RNM, and supplemented Article 33 CA RNM by the new paragraphs 5 to 8.

10. The proponents dispute the legislative mechanisms introduced in Article 33 CA RNM by the new paragraphs 7 and 8.

III. THE CONTENTS OF ARTICLE 4 PARAS. 7 AND 8 C(A)A RNM AND THE REASONS FOR ENACTING THEM

11. The impugned provisions of Article 4 C(A)A RNM read as follows:

“Article 4

In Article 33, paragraph 4 shall be followed by the added ... new ... paragraphs 7 and 8 which shall read as follows:

‘(...)

(7) When international agreements so determine, the function of the coordination of a national minority may also be exercised by the roof association of that minority

(8) The Serb National Council shall act as the Coordination of the Councils of the Serb National Minority for the territory of the Republic of Croatia and shall be a legal entity.’

(...)”

The entire Article 33 CA RNM, in the edited wording after the entry into force of the C(A)A RNM, reads as follows:

“Article 33

(1) Two or more national minorities’ councils founded in the same local self-government unit, two or more national minorities’ councils founded in different local self-government units, two or more national minorities’ councils founded in the same regional self-government unit, and two or more national minorities’ councils founded in different regional self-government units may for the purpose of harmonisation and promotion of joint interests found coordinations of national minorities’ councils.

(2) National minorities’ councils shall harmonise their views on matters within the scope of their responsibilities through the coordination of national minorities’ councils.

(3) National minorities’ councils may authorise the coordination of national minorities’ councils to take on their behalf measures from Article 31 of this Constitutional Act.

(4) The national minorities' councils of regional self-government units shall be deemed to have founded a coordination of national minorities' councils for the territory of the Republic of Croatia once the agreement on founding this coordination has been acceded by more than half of the national minorities' councils of regional self-government

(5) The coordination of national minorities' councils for the territory of the Republic of Croatia in paragraph 4 of this Article shall be a non-profit legal entity. It shall acquire the character of a legal entity by enrolment in the register kept by the ministry in charge of general administration. The manner of work and financing of the coordination shall be regulated by law.

(6) The elected national councils of national minorities shall act as the coordination of national minorities' councils.

(7) When international agreements so determine, the function of the coordination of a national minority may also be exercised by the roof association of that minority

(8) The Serb National Council shall act as the Coordination of the Councils of the Serb National Minority for the territory of the Republic of Croatia and shall be a legal entity.

(9) The coordination of national minorities' councils that the national minorities' councils of the units of regional self-government founded for the territory of the Republic of Croatia may make decisions on the insignia and symbols of the national minorities and the manner of marking holidays of the national minorities with the approval of the Committee for National Minorities."

12. The Constitutional Court notes that in the C(A)A RNM Bill, proposed to the Croatian Parliament by the Government of the Republic of Croatia, Article 4 read as follows:

"Article 4

In Article 33, paragraph 4 shall be followed by the added the new paragraphs 5 and 6, which shall read as follows:

'(5) The coordination of national minorities' councils for the territory of the Republic of Croatia in paragraph 4 of this Article is a non-profit legal entity. It acquires the character of a legal entity by enrolment in the register kept by the ministry in charge of general administration. The manner of work and financing of the coordination shall be regulated by law.

(6) The Serb National Council shall act as the Coordination of the Councils of the Serb National Minority for the territory of the Republic of Croatia.'

The present paragraph 5, which shall become paragraph 7, shall be followed by the new paragraph 8 which shall read as follows:

'(8) On the territory of part of the Vukovarsko-srijemska and the Osječko-baranjska Counties, in accordance with the Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium of 12 November 1995 (Erdut Agreement) and the Letter of Intent of the Government of the Republic of Croatia of 13 January 1997, shall act the Joint Council of Municipalities with the character of a legal entity.'"

In the part of the C(A)A RNM Bill entitled "II. Assessment of Conditions, the Basic Issues to be Regulated by the Constitutional Act and the Effects of the Enactment of the Constitutional Act", the Croatian Government gave the following reasons for proposing the amendment to the previous Article 33 CA RNM:

"... Article 33 of the Constitutional Act is to be supplemented by the new paragraphs 5 and 6, with paragraph 5 determining that the coordination of national

minorities' councils for the territory of the Republic of Croatia is a non-profit legal entity which acquires this character by enrolment in the register kept by the ministry in charge of general administration.

The new paragraph 6 of Article 33 of the Constitutional Act provides that the Serb National Council shall act as the Coordination of Councils of the Serb National Minority for the territory of the Republic of Croatia.

The new paragraph 8 of Article 33 of the Constitutional Act provides that on the territory of part of the Vukovarsko-srijemska and Osječko-baranjska Counties the Joint Council of Municipalities with the character of a legal entity shall act in accordance with the Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium of 12 November 1995 (Erdut Agreement) and the Letter of Intent of the Government of the Republic of Croatia of 13 January 1997."

12.1. If the text of Article 4 C(A)A RNM that was accepted in the Croatian Parliament is compared with that which the Government of the Republic of Croatia proposed, it is clear that the C(A)A RNM Bill sponsored by the Government underwent essential alterations in the procedure of enacting the C(A)A RNM in the Croatian Parliament.

The members of the Committee for the Constitution, Standing Orders and Political System of the Croatian Parliament, at its 53rd session held on 16 June 2010, and also some clubs of representatives during the parliamentary debate, stated objections to the Government's proposal for Article 33 CA RNM to be supplemented by the new paragraph 8. In the end this proposed paragraph did not become part of the C(A)A RNM.

On the other hand, in considering the C(A)A RNM Bill, the Committee for Human and National Minority Rights of the Croatian Parliament proposed three amendments to Article 4 C(A)A RNM Final Bill. They can be seen from the "Report of the Committee for Human and National Minority Rights on the Proposal of the Constitutional Act on Amendments to the Constitutional Act on the Rights of National Minorities, with the Final Bill, P. Z. no. 569":

4th AMENDMENT

In Article 4 FB, in the new paragraph 5 of Article 33 of the Constitutional Act, a new sentence shall be added at the end of the text which shall read: 'The manner of work and financing of the coordinations shall be regulated in a separate law.'

Explanation:

The amendment requires that the manner of work and the financing of the coordinations of the national minorities' councils on the level of the Republic of Croatia shall be regulated in a separate law, so that this issue does not remain unclear.

5th AMENDMENT

In Article 4 FB, the new paragraph 5 shall be followed by the new paragraph 6 which shall read as follows:

'(6) The elected national councils of national minorities shall act as the coordination of national minorities' councils.'

Explanation:

The amendment details the status of the elected national councils of national minorities.

6th AMENDMENT

In Article 4 FB, in the new paragraph 6 which shall become paragraph 7 of Article 33 of the Constitutional Act, the words 'The Republic of Croatia' at the end of the text shall be followed by the added words: 'and is a legal entity'.

Explanation:

The amendment details that the Serb National Council is a legal entity.”

The Government of the Republic of Croatia accepted the above amendments (the 4th Amendment in a changed content), so that they became part of the C(A)A RNM.

IV. THE PROPONENTS’ OBJECTIONS

13. The proponents agree that Article 4 C(A)A RNM, which supplements Article 33 CA RNM by the new paragraphs 7 and 8, made the members of the Serb national minority unequal with the other national minorities in the Republic of Croatia, since the other national minorities may freely set up the coordination of their national minority councils for the territory of the Republic of Croatia, while the members of the Serb national minority have this coordination imposed on them, i.e. regulated in the form of the association of citizens called the “Serb National Council”.

The proponents maintain that the impugned provisions are in breach of Articles 15 para. 1 and 43 of the Constitution.

V. THE RELEVANT LAW

1) The Constitution of the Republic of Croatia

14. Relevant for examining the grounds for the proponents’ proposals are parts of Article 1 para. 1 and Article 3, as well as Article 15 para. 1 and Article 43 of the Constitution, which read as follows:

“Article 1

The Republic of Croatia is a ... democratic ... state.
(...)”

“Article 3

... equal rights, ... the rule of law, ... are the highest values of the constitutional order of the Republic of Croatia and the ground for interpretation of the Constitution.”

“Article 15

Members of all national minorities shall have equal rights in the Republic of Croatia.”

“Article 43

Everyone shall be guaranteed the right to freedom of association for the purposes of protection of their interests or promotion of their social, economic, political, national, cultural and other convictions and objectives. For this purpose, everyone may freely form ... associations, join them or leave them, in conformity with law.

The exercise of this right shall be restricted by the prohibition of any violent threat to the democratic constitutional order and independence, unity and territorial integrity of the Republic of Croatia.”

2) The Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe

15. Also relevant for examining the grounds for the proponents' objections is Article 11 of the Convention for the Protection of Human Rights and Fundamental freedoms (*Narodne novine - Međunarodni ugovori*, nos. 18/97, 6/99, 8/99, 14/02 and 1/06; hereinafter: the Convention). It reads as follows:

“Article 11

FREEDOM OF ... ASSOCIATION

1. Everyone has the right to freedom of ... association with others ...
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others...

3) The Framework Convention for the Protection of National Minorities of the Council of Europe

16. Also relevant for examining the grounds of the proponents' proposals is the Framework Convention for the Protection of National Minorities of the Council of Europe (Ratification of the Framework Convention for the Protection of National Minorities of the Council of Europe Act, *Narodne novine - Međunarodni ugovori*, no. 14/97; hereinafter: the Framework Convention). It is part of the internal legal order of the Republic of Croatia, and is above laws in legal force. Article 17 para. 2 of the Framework Convention reads as follows:

“Article 17

(...)

2. The Parties undertake not to interfere with the right of persons belonging to national minorities to participate in the activities of non-governmental organisations, both at the national and international levels.”

VI. THE FINDING OF THE CONSTITUTIONAL COURT

17. The Constitutional Court in the first place notes that the Government of the Republic of Croatia, as the sponsor of the C(A)A RNM, referred to Article 15 para. 3 of the Constitution as the constitutional ground for its enactment (see point 5 of the statement of reasons of this decision). By the nature of things this constitutional provision is not the constitutional ground for the amendments, i.e. for the supplements to Article 33 CA RNM, because the article does not regulate the special electoral right of national minority members to elect their representatives to the Croatian Parliament.

Article 33 CA RNM regulates the prerequisites for the elected national minorities' councils to form coordinations of national minorities' councils.

1) Article 4 para. 8 C(A)A RNM

a) National minorities' councils

18. National minorities' councils are a special institutional form which provides national minority members in the units of local and regional self-government (hereinafter: units of self-government) with direct influence on resolving issues in the scope of the responsibilities of the local representative body and local executive and administrative bodies, and which are relevant to them or affect their position or rights (Articles 31 and 32 CA RNM). They are the expression of the legislator's effort to ensure prerequisites for the general participation of national minorities' members in public affairs on the local level.

The national minorities' councils are non-profit legal entities which acquire legal entity status on enrolment in the special register of the national minorities' councils kept by the ministry in charge of general administration in accordance with the Ordinance on Forms and Manner of Keeping the Register of the Councils of National Minorities (*Narodne novine*, no. 120/03).

By law they have the obligation to bring work programmes, a financial plan and balance sheet and a statute regulating issues of importance for their work. These enactments must be published in the official gazette of the self-government unit for whose territory the national minorities' councils were formed.

Funding for the work of national minorities' councils, including funding for the administrative work for their needs, is provided by the self-government units, and funding for the implementation of certain programmes of the councils may also be provided by the state budget of the Republic of Croatia.

In their general enactments the self-government bodies regulate the manner, deadlines and procedure for exercising the rights of the national minorities' councils in Article 31 CA RNM.

In accordance with the above, the national minorities' councils have the status of legal entities of public law.

19. The number of members of national minorities' councils is defined by law, and they are elected directly, by secret ballot, for a period of four years, by members of the national minority with residence in the self-government unit at the proposal of the associations of that national minority or a specified number of its members.

Accordingly, a national minority council consists of the members of various associations of that minority, registered in the Republic of Croatia, and of individuals/members of the minority, who were elected to the council as candidates on independent lists of candidates by voters/members of the minority.

The Government of the Republic of Croatia announces elections for the national minorities' councils by a special decision which gives the exact date of the elections. The electoral procedure and other issues connected with their election fall under the corresponding provisions of the law that regulates the election of members of the representative bodies of the units of self-government.

19.1. From the day when the CA RNM entered into force to the present, there have been three general elections for national minorities' councils: on 18 May 2003 (by-elections and repeated elections were held on 15 February 2004), 17 June 2007 and 10 July 2011.

The president of the State Electoral Commission of the Republic of Croatia gave the following facts in the introduction to the "Report on the Results of Elections for Members of the Councils and Representatives of National Minorities 2011", held on 10 July 2011,:

"Elections for members of the national minorities' councils and for the representatives of national minorities in the units of local and regional self-government, that is, in counties, towns and municipalities, were held on Sunday, 10 July 2011. (...)

A total of 311 elections were announced for members of national minorities' councils, 70 in counties and in the City of Zagreb (total 71), 127 in towns and 113 in municipalities.

A total of 227 elections were also announced for one national minority representative, 88 in counties and in the City of Zagreb (total 89), 81 in towns and 58 in municipalities.

Fourteen national minorities made use of the possibility of nominating candidates for members of national minorities' councils. There were the following minorities (in alphabetical order): Albanian, Bosniak, Czech, German, Hungarian, Italian, Macedonian, Montenegrin, Roma, Ruthenian, Serb, Slovakian, Slovenian and Ukrainian.

Eighteen national minorities made use of the possibility of nominating candidates for national minority representative. These were the following minorities (in alphabetical order): Albanian, Bosniak, Bulgarian, Czech, German, Hungarian, Italian, Jewish, Macedonian, Montenegrin, Polish, Roma, Russian, Ruthenian, Serb, Slovakian, Slovenian and Ukrainian, while only the Romanian national minority did not make use of this possibility.

Elections for members of national minorities' councils were held in 20 counties (including the City of Zagreb), 62 towns and 83 municipalities. Elections for national minority representatives were held in 19 counties (including the City of Zagreb), 45 towns and 38 municipalities.

There were 6,281 candidates on the electoral lists for members of national minorities' councils (4,617 men, or 73.51%, and 1,664 women, or 26.49%).

There were 219 candidates on the electoral lists for national minority representatives (151 men, or 68.95%, and 68 women, or 31.05%).

Ten members were elected to a municipal national minority council, 15 to a town council, 25 national minority members to a county council.

Some electoral lists had fewer candidates than the number of members to be elected to the council of the municipality, town or county. In such cases a smaller number of members were elected to the council of the national minority than the statutory number. (...)

With reference to the total number of elections announced for members of national minorities' councils, elections were not held in 7 towns and in 15 municipalities because there were no nominated candidates, or 11.76%.

With reference to the elections announced for representatives of national minorities, elections were not held in 2 counties, 10 towns and 15 municipalities because there were no nominated candidates, or 20.93%.

National minority members could vote at 736 polling stations in the Republic of Croatia. (...)

On the county level 348,450 voters had the right to elect members of national minorities' councils (where candidates were nominated), on the town level 166,789 voters and on the municipal level 91,745 voters.

The following number of voters voted at the elections: on the county level 33,365 voters or 10.44%, on the town level 15,760 voters or 9.45% and on the municipal level 14,617 voters or 15.93%.

On the county level 13,870 voters had the right to elect national minority representatives, on the town level 8,840 voters and on the municipal level 4,986 voters in the Republic of Croatia.

The following number of voters voted at the elections: on the county level 1,845 voters or 13.30%, on the town level 1,544 voters or 17.47% and on the municipal level 1,172 voters or 23.51%."

After the first two elections the Croatian Government brought decisions granting the authority to convene the constituting sessions of the national minorities' councils (*Narodne novine*, nos. 97/03, 44/04, 73/07, 82/07), at which it empowered municipal prefects, town mayors and county prefects to convene, within 30 days from the publication of the respective decision, constituting sessions of the national minorities' councils in the municipalities, towns and counties in which the elections had been held. A similar decision is expected after the elections for the national minorities' councils held on 10 July 2011.

b) Coordinations of national minorities' councils

20. Article 33 para. 1 CA RNM provides that two or more national minorities' councils founded in a municipality, town or county may for the purpose of harmonising or promoting joint interests found a coordination of national minorities' councils (hereinafter: coordination). The new paragraph 6 of Article 33 CA RNM specifies that only elected national councils of national minorities may act as a coordination.

The national minorities' councils decide whether to form their coordinations at local and regional levels (i.e. on the levels of municipalities, towns and counties), which the CA RNM stipulates as a legal option but leaves the elected councils the freedom to decide about their formation.

20.1. On the other hand, founding the coordination of a particular national minority for the territory of the Republic of Croatia depends on the number of "county" councils of that minority which accede to the agreement by their own will. If more than half the national minorities' councils of regional self-government accede to the agreement on forming a coordination, then by the force of the CA RNM it shall be deemed that these councils formed a coordination of the councils of that minority for the territory of the Republic of Croatia (Article 33 para. 4 CA RNM). This coordination has the status of a non-profit legal entity and acquires the status of a legal entity on enrolment in the register kept by the ministry in charge of general administration. The manner of work and the financing of the coordination is regulated by law (Article 33 para. 5 CA RNM).

20.2. In accordance with Article 33 para. 4 CA RNM, after the first elections for the national minorities' councils were held in 2003 and 2004, the constituted councils of the Serb national minority from the territories of 13 counties and the Serb National Minority Council of the City of Zagreb (i.e., more than half the Serb national minority

councils of regional self-government) founded the Coordinating Body of the Serb National Minority on the Territory of the Republic of Croatia (Agreement on Founding the Coordinating Body of the Serb National Minority on the Territory of the Republic of Croatia, Zagreb, 24 May 2004).

To the best of the Constitutional Court's knowledge, after the second elections held in 2007 no such agreement was signed among the (newly)constituted Serb national minority councils of regional self-government. Therefore the Constitutional Court does not know whether a sufficient number of these councils expressed interest in a coordination of Serb national minority councils for the territory of the Republic of Croatia, and if they did, which Serb national minority "county" councils made up the coordination in the 2007 - 2011 period.

20.3. It must be examined, in these legislative frameworks, whether there are grounds for the proponents' objections that Article 4 para. 8 C(A)A RNM is in breach of the Constitution. The article reads as follows:

"Article 4

In Article 33, paragraph 4 shall be followed by the added ... new ... paragraph 8 which shall read as follows:

(...)

(8) The Serb National Council shall act as the Coordination of the Councils of the Serb National Minority for the territory of the Republic of Croatia and shall be a legal entity.'

(...)"

c) The Serb National Council – National Coordination of the Councils of the Serb National Minority in the Republic of Croatia

21. The Serb National Council - National Coordination of the Councils of the Serb National Minority in the Republic of Croatia (hereinafter: the SNC) has been a registered association in the legal order of the Republic of Croatia since 1999.

The Associations Register of the Ministry of Public Administration of the Republic of Croatia shows that the SNC was entered in the Associations Register of the Republic of Croatia on 9 April 1999 under entry number 00001366 and with the name Serb National Council. Since 3 December 2009 the seat of the association has been in Zagreb, Ilica 16. Its abbreviated name is SNC and its OIB number is 29873902790.

The association's name was changed to the Serb National Council - National Coordination of the Councils of the Serb National Minority in the Republic of Croatia in the Statutory Decision on Amending the Statute of the Serb National Council, which was brought in Vojnić on 15 July 2006 and confirmed in the decision of the City Office of General Administration of the City of Zagreb class: UP/I-230-02/06-02/796, entry. no.: 251-07-02/2-06-5 of 31 August 2006. Its abbreviated name continues to be SNC.

The association's activities include "debating and taking stands on laws and other regulations that regulate national rights, the basic freedoms of man and citizen and the realisation of civil, personal, economic, social, cultural and other rights and freedoms of the Serbs in the Republic of Croatia and their full equality in the Republic

of Croatia, submitting proposals, opinions, applications and initiatives to the Croatian National Parliament, the President of the Republic, the Government of the Republic of Croatia, the Constitutional Court, the Ombudsman and other bodies and institutions in the Republic of Croatia.”

21.1. The State Electoral Commission of the Republic of Croatia confirmed the legal status of the SNC as an association in its decision class: 013-03/07-09/05, entry no.: 363-07-02 of 31 May 2007, in which it rejected the objection of the Serb Community of the City of Zagreb to the Decision of the City of Zagreb Electoral Commission of 29 May 2007 on accepting the list of candidates put forward by the Serb National Council - National Coordination of the Councils of the Serb National Minority in the Republic of Croatia for the election of members of the Serb National Minority Council of the City of Zagreb. In that decision it stated:

“On examination of the excerpt from the Associations Register of the Republic of Croatia the Commission found that the Serb National Council - National Coordination of the Councils of the Serb National Minority in the Republic of Croatia, seated in Zagreb, Gajeva 7, is entered in the register of associations of the Republic of Croatia under registry number: 00001366 of 9 April 1999.

Considering that the nominator of the accepted candidates has been found to be a national minority association registered in the Republic of Croatia, which is compatible with the provision in Article 24 para. 4 of the Constitutional Act, and with Binding Instruction no. OVM III Candidacy Procedure, which was prescribed by the State Electoral Commission of the Republic of Croatia, on the grounds of Article 57 para. 2 of the Election of Members of the Representative Body of Units of Local and Regional Self-Government (*Narodne novine*, no. 44/05 – consolidated wording, hereinafter: the Act) the objection is hereby rejected as ill founded.”

21.2. The SNC itself confirmed the fact of being, and also the legal will of considering itself, an association by participating in the nomination procedure at the third elections for members of the national minorities’ councils on 10 May 2011.

The Government of the Republic of Croatia brought the Decision on Announcing Elections for National Minorities’ Councils in Units of Local and Regional Self-Government (*Narodne novine*, nos. 56/11, 58/11), which entered into force on 20 May 2011. On the day when these elections were announced, therefore, the impugned Article 4 para. 8. C(A)A RNM was in force. This means that at that time the SNC already had the legal status of the National Coordination of the Councils of the Serb National Minority in the Republic of Croatia (hereinafter: the Coordination), but it took part at those elections in the capacity of an association.

Several objections or appeals were, therefore, lodged with the competent electoral commissions, and also the Constitutional Court, because of the SNC’s nominations at these elections in the capacity of an association.

Thus, for example, the Serb Cultural-Educational Society Prosvjeta lodged an appeal with the Constitutional Court because of the rejection of its objection against the decision of the County Electoral Commission of the Virovitičko-podravaska County to accept the SNC’s nominations for the election of members of the Serb national minority council of the Virovitičko-podravaska County (case no.: U-VIIA/3005/2011).

Similarly, the Community of Serbs in the Republic of Croatia lodged several appeals against the decisions of the competent electoral commissions on accepting the SNC's nominations for the election of members of the Serb national minority councils in the Šibensko-kninska County (case no.: U-VIIA/3006/2011), Zadar County (case no.: U-VIIA/3007/2011), Zagreb County (case no.: U-VIIA/3008/2011), Požeško-slavonska County (case no.: U-VIIA/3009/2011), Karlovačka County (case no.: U-VIIA/3010/2011), Ličko-senjska County (case no.: U-VIIA/3011/2011), Vukovarsko-srijemska County (case no.: U-VIIA/3012/2011), etc.

Several objections of identical content were also lodged with the State Electoral Commission of the Republic of Croatia (see <http://www.izbori.hr/izbori/izborimanjine11.nsf/wi?openform>).

All the objections of the various Serb minority associations focused on the fact that the SNC is not an association of citizens/members of the Serb national minority, but is the "National Coordination of the Councils of the Serb National Minority in the Republic of Croatia".

During the candidacy procedure, the competent electoral commissions were undivided in rejecting the above objections with the following explanation (on the example of the State Electoral Commission of the Republic of Croatia, class: 013-07/11-19/05, entry no.: 507-11-02 of 6 June 2011):

"Article 24 para. 4 of the Electoral Act provides that associations of national minorities or at least 20 members of a national minority from the territory of a municipality, or 30 from the territory of a town and 50 from the territory of a county may nominate candidates for council members, or candidates for representatives of national minorities.

After examining the Excerpt from the Associations Register of the Republic of Croatia it was found that the Serb National Council - National Coordination of the Councils of the Serb National Minority in the Republic of Croatia, seated in Zagreb, Gajeva 7, is entered in the Associations Register of the Republic of Croatia under registry number: 00001366 of 9 April 1999. Consequently, the Serb National Council - National Coordination of the Councils of the Serb National Minority in the Republic of Croatia has not ceased to be an association.

Pursuant to the above, the nominator is authorised to submit nominations in accordance with Article 24 para. 4 of the Constitutional Act, and with Binding Instruction no. VM III Candidacy Procedure Prescribed by the NEC. Therefore, on the grounds of Article 57 para. 2 of the Election of Members of the Representative Bodies of Units of Local and Regional Self-Government (*Narodne novine*, no. 44/05 – consolidated wording) the objection is hereby rejected as ill-founded."

The Constitutional Court also confirmed this finding of the competent electoral commissions.

This confirmed that even after the entry into force of the impugned Article 4 para. 8 C(A)A RNM (Article 33 para. 8 CA RNM) the SNC has the legal status of an association in the Republic of Croatia.

22. Undoubtedly the SNC, as an association, falls within the guarantee of the freedom of association provided for in Article 43 of the Constitution and Article 11 of the Convention. In its case-law the European Court confirmed the importance of

national minority associations for the freedom of association in a democratic society. In the case of *Gorzelik and others v. Poland* (judgment, Grand Chamber, 17 February 2004, application no. 44158/98) the European Court stated:

“1. While in the context of Article 11 the Court has often referred to the essential role played by political parties in ensuring pluralism and democracy, associations formed for other purposes, including those protecting cultural or spiritual heritage, pursuing various socio-economic aims, proclaiming or teaching religion, seeking an ethnic identity or asserting a minority consciousness, are also important to the proper functioning of democracy. For pluralism is also built on the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious beliefs, artistic, literary and socio-economic ideas and concepts. The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion. It is only natural that, where a civil society functions in a healthy manner, the participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively.

2. The Court recognises that freedom of association is particularly important for persons belonging to minorities, including national and ethnic minorities, and that, as laid down in the preamble to the Council of Europe Framework Convention, ‘a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity’. Indeed, forming an association in order to express and promote its identity may be instrumental in helping a minority to preserve and uphold its rights.”

The Constitutional Court accepts the above views, as well. The Constitutional Court considers the activities of the SNC, as an association of the Serb national minority which has acted without interruption in the Republic of Croatia since 1999, as immensely important for promoting the identity of this national minority in the Republic of Croatia.

22.1. The Constitutional Court must finally note that Article 1 of the SNC Statute (consolidated wording of 31 May 2008) states that the SNC “acts as the minority self-government of Serbs on the territory of the Republic of Croatia”. With reference to this it must be recalled that on 13 December 2002, during the debate on the amendments to the CA RNM Final Bill (second reading, P.Z. 536), the Government of the Republic of Croatia accepted the “agreement reached, and expressed through the signed amendment document, by the representatives of parliamentary parties in which the term *minority self-government* was changed into *national minorities’ council* ...” (speech of the Deputy Prime Minister, in: *Debate Towards an Act: Final Bill of the Constitutional Act on the Rights of National Minorities*, Life: IV, Sitting: 26, no. 61, p. 66.).

Not entering into the reasons why the SNC continues to represent itself as “minority self-government”, the fact remains that the CA RNM from 2002 introduced the term “national minorities’ council” instead of the above term. Although it is not clear, under these circumstances, what the SNC deems “minority self-government” within the meaning of Article 1 of the SNC Statute, the fact remains that this term must not be taken to mean a Serb national minority council because the SNC undoubtedly does not have the legal status of this council in the legal order of the Republic of Croatia.

22.2. Furthermore, the Constitutional Court can also not enter into the reasons why, in 2006, the SNC added to in its name the addition “National Coordination of the Councils of the Serb National Minority in the Republic of Croatia”. The Court can also not enter into the reasons why, in 2006, the SNC introduced in several provisions of its Statute (especially Articles 9 and 10) the formulations in Article 33 CA RNM that refer to coordinations.

In connection with the above, it is sufficient for the needs of this proceeding of constitutional review to establish that the name and statute of this association (since 2006) should not lead to the conclusion that the SNC had the status of a coordination in Article 33 CA RNM in the period before the entry into force of the impugned Article 4 para. 8 C(A)A RNM, i.e. before 6 July 2010.

Similarly, the name or the statute of this association (since 2006) should not lead to the conclusion that the SNC “acquired” a kind of right to the legalisation of the status of the coordination of the Serb national minority councils for the territory of the Republic of Croatia, as was done in the C(A)A RNM in 2010.

23. It was, therefore, not until the impugned Article 4 para. 8 C(A)A RNM from 2010 was passed that the SNC was granted the legal status of the Coordination.

In connection with this the Constitutional Court notes that Article 4 para. 8 C(A)A RNM does not give the full name of the SNC, under which it has been registered as an association since 2006 (i.e. “Serb National Council - National Coordination of the Councils of the Serb National Minority in the Republic of Croatia” – see point 21 of the statement of reason of this decision). Although the second part of its name has been left out, there can be no doubt that Article 4 para. 8 C(A)A RNM grants the status of the Coordination to this association.

In this way the SNC, as an association, was placed under a special legislative (public law) regime and was by law given the status of a non-profit legal entity with the right to registration is a special register kept by the ministry in charge of the affairs of general administration.

Because of the SNC’s activities as the Coordination, the manner of its work and its financing are also regulated by law. The SNC, as Coordination, by the force of law harmonises and promotes the common interests of the councils of the Serb national minority and coordinates the harmonisation of stands on issues within the responsibility of the Serb national minority councils on the national level. The SNC may make decisions on national minority insignia and symbols and the manner of marking minority holidays on the approval of the Committee for National Minorities. The SNC may, on the authority of the Serb national minority councils, undertake the measures in Article 31 CA RNM on their behalf, that is:

- propose to the bodies of self-government units measures to improve the position of the national minority nation-wide or in a specific area, including proposals of by-laws that regulate issues relevant for the national minority to the bodies that enact them;
- propose candidates for duties in government administration bodies and bodies of self-government units;

- be informed of any issue to be discussed by the committees of the self-government unit's representative bodies, of relevance to the national minority:
- give its views and make proposals concerning local and regional radio and TV broadcasts intended for national minorities or addressing minority issues.

Under the C(A)A RNM, therefore, the SNC is a legal entity of public law.

24. The Constitutional Court recalls the legal stand taken by the European Court that legal entities of public law cannot be deemed associations within the meaning of Article 11 of the Convention. In the case of *Slavic University in Bulgaria and others v. Bulgaria* (decision on the inadmissibility of the application, 18 November 2004, application no. 60781/00) the European Court stated:

“According to the Court's case-law, a public law institution founded by the legislature is not an association within the meaning of Article 11 of the Convention (...).

In the *Chassagnou and Others* judgment the Court held that the term ‘association’ in Article 11 of the Convention possesses an autonomous meaning and the classification in national law had only relative value (*Chassagnou and Others v. France* [GC], ... , § 100, ...). In examining whether a specific organisation is an association within the meaning of Article 11 the Court must have regard to the reality of the situation and take into account various factors such as (1) whether it owes its existence to the will of parliament, (2) whether it is set up in accordance with the law on private associations, (3) whether it remains integrated within the structures of the State, (4) whether it enjoys prerogatives outside the orbit of ordinary law, such as administrative, rule-making or disciplinary, and (5) whether it employs processes of a public authority, like professional associations (*Chassagnou and Others*, ..., § 101).”

25. In the light of the above, the Constitutional Court holds that legal entities of public law cannot be deemed associations within the meaning of Article 43 para. 1 of the Constitution. Therefore, to assess whether the proponents' objections are well founded it is important to establish the general legal position of the SNC in the Republic of Croatia after the entry into force of the C(A)A RNM of 2010.

26. The Constitutional Court finds there is no doubt that the impugned legislative mechanism gave the SNC a dual, mutually confronted, legal subjectivity. On the one hand it is an association that falls under the guarantee of the freedom of association, on the other a legislatively founded legal entity of public law that does not fall under the guarantee of the freedom of association and which could, by the force of its statutory powers, restrict this freedom.

Therefore, the impugned statutory measure could from this aspect also be seen as impermissible interference in the rights and freedoms inherent in the SNC as an association, without this interference being founded on the reasons given in Article 43 para. 2 of the Constitution and Article 11 para. 2 of the Convention.

The measure is also doubtful from the aspect of Article 17 para. 2 of the Framework Convention, which explicitly provides that the State may not interfere in the right of persons belonging to national minorities to participate in the activities of non-governmental organisations, both on the state and on the international level.

27. The Constitutional Court notes that members of the Serb national minority themselves disputed the constitutionality of this statutory solution, holding that it places the Serb national minority in an unequal position in comparison with all the others, on which the C(A)A RNM “does not impose” a legal entity (“association of citizens”) that will at the same time also act as the coordination of their elected councils.

The relevant provisions of Article 33 CA RNM indicate that recognising the status of the Coordination for the SNC is an exception from the general legislative regime that holds for founding coordinations. They read as follows:

“Article 33

(...)

(4) The national minorities’ councils of regional self-government units shall be deemed to have founded a coordination of national minorities’ councils for the territory of the Republic of Croatia once the agreement on founding this coordination has been acceded by more than half of the national minorities’ councils of regional self-government.

(5) The coordination of national minorities’ councils for the territory of the Republic of Croatia in paragraph 4 of this Article shall be a non-profit legal entity. It shall acquire the character of a legal entity by enrolment in the register kept by the ministry in charge of general administration ...

(...)

(8) The Serb National Council shall act as the Coordination of the Councils of the Serb National Minority for the territory of the Republic of Croatia and shall be a legal entity.”

In accordance with the above, excepting the Serb national minority from the general statutory regulation of coordinations has several aspects: first, instead of a coordination, as a legal entity of public law which acquires this character after legally prescribed prerequisites have been met (i.e. the prior agreement of more than half the “county” councils), the coordination of the Serb national minority is not bound by these legislative prerequisites because a specific association of the Serb national minority, which has acted since 1999, is granted the status of the coordination by law; second, this association does not acquire the character of a legal entity of public law by enrolment into the register kept by the ministry in charge of the affairs of general administration, but is recognised as a public law entity by the law itself: third, this association acts as the coordination by the force of law, so within the Serb national minority the coordination is not the expression of an agreement (i.e. the accord of legal wills) of the majority of the elected councils of the Serb national minority.

27.1. The Constitutional Court notes that exceptions from the general legal regime are permitted if they have an objective and reasonable justification.

Since the proponents in this proceeding of constitutional review disputed excepting the Serb national minority from the general legal mechanism for forming coordinations of national minorities’ councils for the territory of the Republic of Croatia, i.e. disputed legally conferring the status of the coordination on an association, the Constitutional Court must determine whether the sponsor of the C(A)A RNM gave reasons indicating that the disputed solution has an objective and reasonable justification.

With reference to this, the Constitutional Court notes that the C(A)A RNM Bill does not show why the Serb national minority is excepted from the regime to which all the other national minorities in the Republic of Croatia are subjected concerning the constitution of coordinations of national minorities' councils for the territory of the Republic of Croatia. Nor does it show why a specific association of the Serb national minority got the status of the coordination by law.

27.2. In the lack of any explanation furnished by the sponsor, the Constitutional Court starts from the fact that the Serb national minority differs from all the other national minorities in the Republic of Croatia in the number of its members. The Constitutional Court, however, does not see in what way this greater number of members of the Serb national minority in comparison with the number of members of the other national minorities could be a justified reason for different treatment in this issue.

27.3. With respect to the issue of conferring by law the status of coordination within the meaning of Article 33 CA RNM on a specific association of the Serb national minority (the SNC), the Constitutional Court notes that the SNC itself links its existence and activities with the Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium (the so-called Erdut Agreement, 12 November 1995), and especially with the "Letter of the Government of the Republic of Croatia on the Completion the Peaceful Reintegration of the Region under Transitional Government, Republic of Croatia" (hereinafter: Letter of Intent), which was delivered in the form of an annex to the President of the Security Council of the United Nations on 13 January 1997 by the permanent representative of Croatia at the United Nations (S/1997/27, 13 January 1997). The SNC gave these data in the preamble and in Article 1 of its first Statute of 9 March 1999. These data are no longer mentioned in the consolidated wording of the Statue of 21 April 2007, or in its later amendments, i.e. in the consolidated wordings of the SNC Statute (the Constitutional Court could not exactly establish how and when the preamble and Article 1 of the SNC Statue from 1999 were changed). However, the SNC's official web page (www.snv.hr/snv/o-nama/) still says:

"The Serb National Council (SNC) is an elected political, consulting and coordinating body acting as the self government of Serbs in the Republic of Croatia concerning the issues of their inalienable human, civil and national rights, as well the issues of their identity, participation and integration in the Croatian society.

The Serb National Council was founded by virtue of the Erdut Agreement, which guarantees stronger local minority self government to Serbs, particularly by virtue of item 9 of 'The Letter of the Government of the Republic of Croatia on the Completion of the Peaceful Reintegration of the Areas under Transitory Government' - as the council of the Serb ethnic community in Croatia, i.e. as an institution of the minority ethnic self-government of Serbs in Croatia, and finally by virtue of the Constitutional Law on the Rights of National Minorities in the Republic of Croatia.

The Council was founded on the basis of the centuries-long tradition of Serb self government, which goes back to the times of first church/popular parliaments, through legislative and political acts regulating the position of the Serbs in Croatia during the 18th and 19th centuries, to the documents of the State Antifascist Council. The founding meeting of the Council was held on July 19, 1997, in Zagreb on the incentive of the Alliance of Serb Organisations and its members: Serb Cultural Association Prosvjeta, Serbian Democratic Forum, Community of Serbs from Rijeka,

Community of Serbs from Istria as well as the Joint Council of Municipalities of Eastern Slavonia, Baranja and Western Srijem.

Apart from the founding initiators, founding members were also Serb Independent Democratic Party, Baranja Democratic Forum, Association of Serb Refugees and Expellees from Croatia, representatives of some church municipalities of the Serbian Orthodox Church, Members of Parliament of Serb nationality and distinguished individuals.”

The above shows that the SNC considers that it was founded at the “constituting meeting of the Council held on 19 July 1997 in Zagreb”. Reiterating that a factual event does not become a legal fact simply because it took place (the SNC was registered in 1999), the Constitutional Court deems it necessary to note that all the members of the “Alliance of Serb Organisations”, which according to the SNC participated at the founding meeting of the SNC in 1997, are independent associations and legal entities of their own. At the elections for members of the national minority councils they have always appeared as the SNC’s direct electoral opponents since 2003 (see points 21.1. and 21.2. as well as 28. and 28.1. of the statement of reasons of this decision). What is more, it is one of these associations that proposed instituting this proceeding of constitutional review (Serbian Democratic Forum).

The subject of this constitutional proceeding is not to examine the legal basis of the SNC’s reference to the Erdut Agreement and to point 9 of the Letter of Intent as the legal grounds for its foundation with the status of an association. The Constitutional Court must answer another question: can the above documents be interpreted as legal grounds binding the Croatian legislator to recognise the SNC’s status of the Coordination of the Serb National Minority Councils for the territory of the Republic of Croatia within the meaning of Article 33 CA RNM, in the manner done in the impugned Article 4 para. 8 C(A)A RNM?

The Constitutional Court notes that the Erdut Agreement makes no mention of any institutional form or organisation of members of the Serb national minority for the territory of the Republic of Croatia. As for the Letter of Intent, point 9 reads as follows:

“9. The members of the Serb ethnic community may establish a Council of the Serb Ethnic Community. The Council may apply to the President of the Republic and the Croatian Government, proposing and promoting the solution of issues of common interest for the national minority.”

The above activities of the “Council of the Serb Ethnic Community” in point 9 of the Letter of Intent clearly show that it can be compared to almost any registered association of members of the Serb national minority in the Republic of Croatia. What is more important, however, is that the “Council of the Serb Ethnic Community” within the meaning of point 9 of the Letter of Intent has nothing in common with the statutory purpose of founding coordinations of national minorities’ councils for the territory of the Republic of Croatia within the meaning of Article 33 CA RNM. The legal grounds for their foundation lie exclusively in national legislation.

From this aspect, the limited territorial and personal validity of the Letter of Intent is also important in constitutional law. It referred to “parts of the Osječko-baranjska and Vukovarsko-srijemska Counties that are at this moment under the Transitory

Government” (para. 2). The rights it granted were primarily and as a rule linked to “all the members of the Serb ethnic community on the territory under the Transitory government” (para. 10), therefore, not also to Serbs from other parts of the Republic of Croatia, which even the name of the Letter of Intent shows (“Letter of the Government of the Republic of Croatia on the Completion of the Peaceful Reintegration of the Region under Temporary Government”).

Therefore the Constitutional Court finds that the disputed Article 4 para. 8 C(A)A RNM cannot even be explained as a potential obligation of the Croatian legislator derived from an interpretation of point 9 of the Letter of Intent.

Irrespective of this, the Constitutional Court notes that after the CA RNM (2002) entered into force any reference to the acts mentioned above, through which parts of Croatian state territory were reintegrated in the constitutional order of the Republic of Croatia, became superfluous. The explanation of Article 2 in the Final Bill of the Constitutional Act on the Rights of National Minorities (no. 536) class: 016-01/02-01/01, entry no.: 61-01-07 of 22 November 2002, explicitly says the following: “In the part in which the exercise of certain rights and freedoms are linked with ‘acquired rights’, this provision covers the rights that the Republic of Croatia accepted in the letter of the Government of the Republic of Croatia to the Security Council of the United Nations, of 13 January 1977 (correct: 1997 - note), for the completion of the peaceful reintegration of the region under transitional government, Republic of Croatia”.

27.4. Pursuant to all the above, the C(A)A RNM Bill gives no explanation either of the purpose for or of the reason why an exception was made for the Serb national minority from the general legislative regulation of the coordination of national minorities’ councils. Furthermore, there is no legal link between Article 4 para. 8 C(A)A RNM and the documents relevant for the completion of the peaceful reintegration of the eastern parts of state territory in the constitutional order of the Republic of Croatia from 1997, which might indicate a possible objective that the disputed legislative measure was passed to achieve. Finally, even the nature of the matter does not allow a completely unambiguous conclusion to be drawn about what objective the impugned legislative measure was intended to achieve.

Thus the Constitutional Court in this proceeding examined the effects of the impugned legislative measure in the light of the highest values of the constitutional order of the Republic of Croatia as a democratic state founded on the rule of law.

28. Ten members of the Serb national minority are elected to a Serb national minority council of a municipality, 15 to a national minority council of a town, and 25 members to a national minority council of a county or the City of Zagreb.

At elections for the Serb national minority council the SNC nominates its members for these councils as an association. Other associations of the Serb national minority registered in the Republic of Croatia do likewise, or at least 20 members of the Serb national minority from the territory of the municipality, 30 from the territory of the town and 50 from the territory of the county.

Persons authorised to represent particular associations of the Serb national minority, including also the SNC, sign the proposed lists of candidates. The order of the candidates on the lists are also determined by the associations.

On the grounds of a decision of the Government of the Republic of Croatia announcing the elections, the council members are elected directly, by secret ballot for a period of four years, by members of the Serb national minority. The elections are implemented by the corresponding application of the provisions of the law that regulates the election of members of the representative bodies of the units of self-government.

28.1. This means that the SNC, as an association, is only one of several participants in the elections for the national minorities' councils, and that its opponents at these elections are other associations of the Serb national minority, or groups of voters of the Serb national minority who are putting forth independent lists (see points 21.1. and 21.2. of the statement of reasons of this decision).

In this sense the national minorities' councils are a kind of representative of national minorities at local levels. Their work is based on the idea of pluralism because it is the result of the views of the elected council members who belong to various associations of the same national minority or to different groups of voters/members of that minority. This rule also holds for the Serb national minority.

At the same time, however, the SNC – only one of the participants at the elections for the councils of the Serb national minority – was by the impugned Article 4 para. 8 C(A)A RNM also set up as the coordination of all these councils for the territory of the Republic of Croatia. This means that the president of the SNC as an association is at the same time also the president of the Coordination as a legislatively founded legal entity of public law, through which all the elected councils of the Serb national minority on the territory of the Republic of Croatia must “harmonise their views on matters within the scope of their responsibilities” (Article 33 para. 2 CA RNM). What is more, the SNC as Coordination may by authority of the councils (which are also composed of the elected members of the SNC, including also the president of the SNC, but now as an association) undertake on behalf of the councils measures in Article 31 CA RNM (see point 23 of the statement of reasons of this decision).

28.2. The Constitutional Court in principle agrees with the view of A. Bačić, who in his expert opinion delivered to the Constitutional Court maintains that Article 4 para. 8 C(A)A RNM is “not in conformity with the Constitution because its *expressis verbis* stating of the name of a specific political association among several that exist within the body of the (Serb) national minority contravenes the principle of equality before the law (Article 14 para. 2 of the Constitution), the principle of the equality of all the national minorities (Article 15 para. 1) and the general character of the highest legal acts.”

It is also necessary, however, to recall the views about the equality and values of pluralism in a democratic society (see point 22 of the statement of reasons of this decision), which must also hold among different associations of the same national minority. Only in this way can a pluralistic and truly democratic society be built and

the appropriate conditions created for national minorities to express, preserve and develop their own identity and keep their rights.

The equal legal position of all the registered associations of one national minority, and also the equal chances they must be ensured in a democratic society to express their programmes and views, belong to the highest constitutional values within the meaning of Article 3 of the Constitution.

The Constitutional Court also recalls that one of the fundamental demands in the process of the accession of the Republic of Croatia to membership in the European Union is the advancement of national minority protection and rights. There is also an identical requirement within the framework of the Council of Europe, whose member the Republic of Croatia has been since 1996. These requirements are completely in tune with the basic values of the constitutional order of the Republic of Croatia laid down in the Constitution. Thus the realisation of constitutional, but also of European legal values, is under the supervision of the Constitutional Court by virtue of its constitutional tasks and powers. In this sense constitutional supervision over specific mechanisms covers the entire national legislation, including also that enacted in the procedure of harmonisation with the *acquis communautaire* of the European Union and that which is of special interest for the Council of Europe and the European Union although it is not part of the *acquis*.

29. In conclusion, the legal situation brought about with the entry into force of Article 4 para. 8 C(A)A RNM is not in accordance with the values of equality and pluralism in a democratic society based on the rule of law (Article 1 taken with Articles 3 and 14 of the Constitution). It seems that the cause lies in the impermissible degree of legalised preference for one of several associations of the Serb national minority in the Republic of Croatia, which at the same time – with relation to the Serb national minority – infringed the legal purpose for even introducing the coordination of the national minorities' councils in the CA RNM.

The above facts also show that confusing the position of the SNC as an association and the position of the SNC as a legal entity of public law introduced an unacceptable degree of legal inconsistency in this legal sphere, which contravenes the rule of law (Article 3 of the Constitution).

2) Article 4 paragraph 7 C(A)A RNM

30. The proponents also dispute the conformity of Article 4 para. 7 C(A)A RNM with Article 15 para. 1 of the Constitution. The impugned provision reads as follows:

“Article 4

In Article 33, paragraph 4 shall be followed by the added ... new
paragraph ... 7 ... which shall read as follows:

‘(...)

(7) When international agreements so determine, the function of the coordination of a national minority may also be exercised by the roof association of that minority.”

The Constitutional Court starts by noting that the C(A)A RNM Bill introduced by the Government of the Republic of Croatia did not contain the above statutory provision,

nor did the amendments to Article 4 of the C(A)A RNM Final Bill of the Committee for Human and National Minority Rights of the Croatian Parliament (see point 12.1. of the statement of reasons of this decision).

Point 22 (pp. 48 and 49) of the Minutes from the Sitting of the Croatian Parliament, at which the C(A)A RNM Final Bill was debated and voted for, held on 16 June 2010, entitled: “Final Bill of the Constitutional Act on Amendments to the Constitutional Act of the Rights of National Minorities, urgent procedure, first and second reading, P.Z. no. 569”, says:

“The sponsor’s representative accepted the amendments submitted by the Committee for Human and National Minority Rights to Article 1 para. 2, Article 1 para. 3, Article 3 para. 3, Article 4 para. 5 /in a changed form/ and Article 4 para. 6, Furio Radin, PhD, to Article 4 new paras. 6 and 7, and the MPs’ Club of the Croatian People’s Party and the Croatian Pensioners’ Party to Article 4.

After the explanation given by the sponsor the Committee for Human and National Minority Rights renounced the amendments to Article 4 and the new paragraph 6.”

The Constitutional Court finds it impossible to establish the exact circumstances and reasons that led to the acceptance of the amendment contained in the impugned Article 4 para. 7 C(A)A RNM, either from the cited excerpt from the minutes or from the sound recording of the debate (see Internal Television of the Croatian Parliament).

31. The impugned legislative provision clearly shows that its contents are outside the framework of the material regulated in Article 33 C(A)A RNM. There is no doubt that it does not regulate relations connected with the coordination of the national minorities’ councils.

It regulates the function of the “coordination of a national minority”, which “may also be exercised by the roof association of that minority”.

The Constitutional Court finds that the normative wording connected to performing the function of the “coordination of a national minority” is unclear and indeterminate, because it does not indicate any institutional or other form of coordination that could be the subject of statutory regulation. The coordination mentioned in the impugned legislative provision (“coordination of a national minority”) is in fact not possible. Thus such an unclear and indeterminate norm does not satisfy the requirement for legal determination and certainty.

Furthermore, the normative expression the “roof association of that minority” is also unclear and indeterminate because it assumes that there can be several associations of a national minority and only one roof association of that national minority in the legal order of the Republic of Croatia. This normative expression could in practice have great implications on the freedom of association guaranteed in Article 43 para. 1 of the Constitution. It opens up the possibility of disputes between different associations of one national minority about which of them should be considered the “roof association” of that minority in the meaning of the impugned legislative provision. This is also indicated in the fact that some associations of the Serb national minority explicitly define themselves as “roof associations” in their statutes

(for example the Statute of the National Council of the Serbs – consolidated wording of 27 July 2002, validated by the decision of the City Office for General Administration of the City of Zagreb class: UP/I-230-02/02-02/888, entry no.: 251-02-02/2-02-2 of 14 October 2002). Thus the Constitutional Court cannot find that this legislative norm is acceptable under constitutional law.

32. Starting from the indeterminacy and unclearness and the uncertain legal effects of the provision that regulates the function of the “coordination of a national minority” that may be exercised by the “roof association of that minority”, the Constitutional Court repealed Article 4 para. 7 C(A)A RNM because it is not in conformity with the requirements placed before legislation by the rule of law, a highest value of the constitutional order of the Republic of Croatia enshrined in Article 3 of the Constitution.

In this sense the Constitutional Court reiterates its accepted stand that a statute which allows uncertainty as to the final effect of its provisions cannot be deemed a statute grounded on the principle of the rule of law nor a statute that embodies the principle of legal certainty. Therefore every legislative norm contained in a statute shall not by the mere fact of its existence be considered “law” in the meaning of the Constitution and Convention. The standards of the Convention, which must be met for the word “law” in the phrase “prescribed by law” (French *‘prévues par la loi’*) to be considered law, are much stricter. They were set by the European Court, and the Constitutional Court accepted them in its case-law (see points 19.4. and 19.5. of the statement of reasons of the decision and ruling nos.: U-I-659/1994, U-I-146/1996, U-I-228/1996, U-I-508/1996, U-I-589/1999 of 15 March 2000, *Narodne novine*, no. 31/00).

33. Finally the Constitutional Court notes that the first part of the sentence of Article 4 para. 7 C(A)A RNM reads: “When this is determined by international agreements ...” The Constitutional Court recalls that the legal order of the Republic of Croatia rests on a monistic relationship between the norms of national and international law. Thus every international agreement, if it complies with the prerequisites in Article 139 of the Constitution, is part of the internal legal order and is above laws by legal force. Accordingly, if international agreements of the kind mentioned in the repealed provision of the C(A)A RNM will be included in the legal order of the Republic of Croatia, and if they provide that the “function of the coordination of the national minority may also be exercised by the roof association of that minority”, then such international agreements will be part of the internal legal order of the Republic of Croatia and will in legal force be above the CA RNM and outside the constitutional supervision of the Constitutional Court.

34. Pursuant to the above, the Constitutional Court on the grounds of Article 55 paras. 1 and 2 of the Constitutional Act decided as in point I of the pronouncement.

35. The publication of this decision is grounded on Article 29 of the Constitutional Act (point II of the pronouncement).

PRESIDENT OF THE COURT

Jasna Omejec, LL D