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NATIONAL MINORITIES IN LEGISLATION OF BOSNIA AND HERZEGOVINA

NACIONALNE MANJINE U ZAKONODAVSTVU BOSNE I
HERCEGOVINE

***Abstract:** There are 17 recognized national minorities living and working in Bosnia and Herzegovina. At least, they have been enumerated, identified and sanctioned as such by the Law on the Protection of Rights of National Minorities adopted by the Parliamentary Assembly of Bosnia and Herzegovina in 2003. Apart from that law, the rights of national minorities and its members have also been regulated by the whole set of many different laws, from the election, criminal, education and other identity-related laws to the laws addressing the specific areas and/or life issues, all adopted at the level of the state, the entities, the cantons, and the Brcko District of BiH. This paper analyses the content, the significance, and the legal and socio-political implications of certain provisions of the Law on the Protection of Rights of National Minorities from the sociological and political views and methods, as well as the relation and the impact of its norms on social sphere and individual existence (in politics, education, culture, the media, employment etc.) of minority members within a multi-specific and asymmetric state as post-Dayton Bosnia and Herzegovina. The *causa finalis* of this tractatus's narrative is to give a better understanding of human rights of minorities, their etiology and determination.*

***Key words:** national minority, law, law on protection of rights of national minorities, social status of national minority members, post-Dayton Bosnia and Herzegovina, identity, human rights.*

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Sažetak: U Bosni i Hercegovini postoji 17 priznatih nacionalnih manjina, koje prepoznaje Zakon o zaštiti prava pripadnika nacionalnih manjina Bosne i Hercegovine usvojenog u Parlamentarnoj skupštini BiH 2003. godine. Pored ovog zakona, prava pripadnika nacionalnih manjina su regulisana čitavim nizom zakona koji tretiraju parlamentarne izbore, kriminal, obrazovanje i dr., usvojenih na različitim nivoima vlasti, od kantona, entiteta do same države. Cilj ovog rada je da analizira sadržaj i značaj, kao i socio-političke implikacije pojedinih odredbi Zakona o zaštiti prava pripadnika nacionalnih manjina BiH iz sociološke i politikološke perspektive, kao i odnos i uticaj njihovih normi na društvenu sferu i individualnu egzistenciju (u politici, obrazovanju, kulturi, medijima, zapošljavanju, itd.) pripadnika manjina u okviru specifične i asimetrične države kakva je postdejtonska Bosna i Hercegovina. Rad dakle ima ambiciju da obezbijedi bolje razumijevanje ljudskih prava nacionalnih manjina u BiH.

Ključne riječi: nacionalne manjine, zakon, Zakon o zaštiti prava pripadnika nacionalnih manjina, socijalni status pripadnika nacionalnih manjina, postdejtonska Bosna i Hercegovina, identitet, ljudska prava.

In order to get a complete insight into a complex normative status and treatment of national minorities – primarily in legal documents in post-Dayton Bosnia and Herzegovina - besides analysis of their postulation in numerous constitutions within BiH (state level, entities, cantons, but also the Statute of District of Brcko), it is necessary to turn (over) and expand the perspective, if not in some other way then at least by widening its bordering edges and putting between them one more topic important for **holistic understanding, from the sociology-political standpoint and perspective**, of the position of minority communities of national determination in divided BiH society and non-functional state unrecognized from within, and that is the analysis of laws in such a state, which laws treat the phenomenon of social groups of national origin and provenience, and minority capacities. In other words, determination and treating of national minorities in laws of BiH, laws of the entities, the cantons and the Brcko District is complementary to their positioning and norming in constitutions of the aforesaid levels of authorities in post-Dayton BiH. Only in that way can we wrap-up **the narration about normative dimension and content of the**

position of national minorities² in BiH society at the turn of the 21st century. For that reason, the attention in this text shall be focused on analyzing a number of laws in BiH that treat national minorities, and also the ‘others’ in some of them. Those are the following laws, adopted in BiH legislating bodies in the last one and a half decade, during the historical and statehood-political existence of post-Dayton BiH: Laws on protection of rights of national minorities at the level of BiH and the entities, Law on prohibiting the discrimination, Election laws, Criminal laws of BiH and the entities, Framework and separate laws on primary and secondary education, laws on public RTV services in BiH, entities’ laws on culture – including laws on the use of language and alphabet, laws on local self-management, laws on labor, employment, etc. Of course, for the sake of brevity, not all of them will be the subject of this analysis, but only some of them.³

From the normative point of view, from the whole set of precisely and fully named laws, or only implied the aforementioned laws, **the most important is the Law on the Protection of Rights of the National Minorities**. This law, in the context of this analysis, **was the first law in Bosnia and Herzegovina or one of its entities to explicitly use the term national minority**, clearly distinguishing it from the term ‘others’, that is, from categories or syntagmatic expressions such as ‘ethnic group’, ‘ethnic community’, nationality, ‘minority nation’, etc. Solely for that reason, if there were no other reasons and justifications – and there are – this law should be paid great attention and meticulously analyzed.

1. The law that regulates (promotes and protects) the rights of national minorities, Bosnia and Herzegovina got after at least two years of ‘splitting the hair’ procedure. That is how long the complex and reversible procedure of its adoption took, from the outlining of initial concept and elaborating the need and significance of adopting such a law⁴, to its definitive accepting by the authorized political representatives of peoples’ (voters’) will. The word here is about the **Law on protection of rights of national minorities**,

² Treating national minorities and norming their legal status and social position in constitutions in BiH, and we listed those constitutions, we elaborated wider in another article, so we have omitted here that part.

³ Here we shall focus only on so-called systemic laws that norm the fundamental determinants in relation to legal and social status of national minorities, such as legislation on rights of representatives on national minorities and electoral legislation, while the actualization of all other, particularly so-called identity laws, including the set of education laws, will have to wait for some other occasion for elaboration.

⁴ The first, working draft of that law, was prepared in the Ministry of Human Rights and Refugees BiH, and it appeared in the ‘selected’ public in mid-2001, followed by a long-term public and less public discussion on it.

which, in the legal terms, **came into power on the 14th May 2003⁵, and in its entirety explicitly refers to the rights of national minorities in Bosnia and Herzegovina**, in both the entities. Needless to say, prior to its adoption there was a multifold and multivalued activity of numerous social, political and non-governmental subjects and factors. All of it was taking place in a particular social ambient characterized, on the one hand, by **strong involvement and arbitrating of the so-called international community, especially Office of the High Representative in BiH (OHR), in the internal political processes and relations in BiH-particularly in ‘mediation’ and moderation of relations between the entities**, and, on the other hand, by **establishment and start of functioning of institutions and bodies of authorities of the state**, mutually agreed between the warring parties in Dayton and ‘sealed’ in Paris in 1995. With its specifics, meaning and significance, and implication to future socio-political and all other processes, relations and contents of public life in post-Dayton BiH, the following two facts of the then mosaic of five year post-Dayton, legal-political, cultural-spiritual, media-informative configuration stand out: **first**, in the mid 2000 the BiH Constitutional Court, as we explained in the previous sub-chapter, brought several, in (non)legal terms, so-called Partial decisions that, inter alia, proclaimed / ruled **the constitutive character of all the three nations on the entire territory of BiH**. The consequence of this was the creation of a **new situation** in BiH, compared to the previous one, primarily as a consequence of implementation of the said Decisions of the BiH Constitutional Court – abstracting temporarily and only for the purpose of this elaboration the manner of bringing that decision and even more the intention, motivation and justification prior to its bringing, i.e. its imposing – which resulted in imperative change to the entities’ constitutions, which *de iure* happened in 2002; and **second, the deadline was expiring for Bosnia and Herzegovina authorities who were obliged to submit the first, initial, Report on implementation of the Framework Convention in Bosnia and Herzegovina⁶ to the authorized body of the**

⁵ As seen in the preamble of the law, it was brought in a way that it was adopted by both houses of BiH parliament, though, at different times (which will be further mentioned in this elaboration): House of the Representatives and the House of Peoples. In other words, we are mentioning them here only for the sake of readers who are not enough acquainted with legal finesses, equilibristic and causality (and most of them are not) – in this case the legislator is the Parliamentary Assembly of BiH, and the proposer was the BiH Council of Ministers, i.e. the Ministry of Human Rights and Refugees. The law came into force on the eighth day after publishing in ‘BiH Official Gazette’, as foreseen in its last article, Art. 27.

⁶ The full, official title of that document is: *Извјештај Босне и Херцеговине о законодавним и другим мјерама на провођењу начела утврђених у Оквирној*

Framework Convention for protection of national minorities of the CoE (Ministerial Committee of CoE and Advisory Committee), which was ratified in the beginning of 2000 after it was incorporated into the Constitution.

The whole report was supposed to refer to the rights and position of national minorities in BiH and measures and activities BiH is undertaking in the aim of promoting and protecting human rights of national minorities. At that point in time, BiH authorities – and it was the same in the entities – not only did nothing regarding their obligations by signing and incorporating the Framework convention for protection of minorities in its legal system, the highest legal act-the Constitution, and they should have informed the Ministerial Committee of the CoE and Advisory Committee of the Framework convention⁷, but, officially, the authorities did not know what were the national minorities, who were they, what were they doing in BiH, why their human rights mattered, why was the CoE interested in it, and finally, how to go around that obligation, without large negative consequences for the authorities (particular highly positioned functionaries) at the same time.

Such was the atmosphere, the axiological ‘coordinating system’, in which the Law on protection of rights of national minorities was prepared and brought. The public discussion on this law, especially on certain regulation which dealt with the right of national minorities to political representation and participation in the authorities in all the levels in BiH, last a long time, several months, and showed, on the one hand, rather high theoretical and legal inconsistency and wide range of positions in thinking about the problems of legal, political, ethnical and other aspects of identity elements and status of national minorities in BiH, and, on the other hand, insufficient organizing of national minorities themselves, save for the Roma (who had several associations, organizations etc.), Jews, Chech, Hungarians, Slovenians and Albanians⁸, to articulate and present their interests, needs and projections. Nevertheless, the law ‘played an important role in securing

конвенцији за заштиту националних мањина, but in more frequent use is the abbreviated, colloquial title, which we also used in the text.

⁷ “Implementation of the Framework Convention for protection of national minorities is assessed by the committee of ministers of the CoE, with help of the Advisory committee of the Framework convention. Composition and procedures of the Advisory committee were regulated by resolution (97) 10, adopted by the CoE Council of ministers in 1997. “Quoted from: *Људска права у Босни и Херцеговини 2008*, Сарајево: Центар за људска права Универзитета у Сарајеву, 2009, page 308.

⁸ It is best seen from the number and activities of its NGOs, which was earlier repeated and elaborated throughout the text.

the legal frame for protection of national minorities and raising the awareness about the rights of national minorities'.⁹ During the public debate it became apparent that **some solutions of the western legal and political tradition and practice were not applicable in BiH circumstances**, that it cannot be mechanically 'planted' to this area, but rather that own solutions, more appropriate to the present milieu and needs should be looked for. This particularly referred to the criteria and 'technique' of representation of national minorities in the authorities, state bodies and public services, therefore, as can be seen in the text of the law before amending, these issues were left out, as a legacy to some other regulations and instances to deal with. Thus, in the final originally adopted text of the said law, there were no regulations on how to elect representatives of national minorities to municipal, cantonal or entity parliaments, there were no norms about their participation in the bodies of executive or judicial power, or how they can be employed in administration services, public corporations etc. For the sake of the truth, some of listed and unresolved problems were, as the lawyers would say, **'a matter' of electoral legislation** i.e. rules and regulations to regulate election principles, participation in the electoral process, distribution of mandates, forming of the authorities, etc.¹⁰

Complexity of the adoption procedure and even more the complexity of the social structure and its tissue that the said law was supposed to articulate and manage, is confirmed by the fact that the Draft law was the subject of legal expertise, valorization, judgment of its harmonization with European standards in that field, by the so-called **Venice Commission (Commission for Democratization through law**, expert-advisory body for constitutional-legal issues of the Council of Europe, which formally represents the highest legal authority in European associations)¹¹. Expert 'vivisection' of the proposed text of legal project on the rights of national minorities resulted in **two significant changes** compared to the original version of the law: two important categories were added to the name of the law, regulations on **'protection'** and **'representatives'**, so that the adopted name of the law leaves no dilemma vis-à-vis the 'address' i.e. the subject whose rights (of representatives, individuals who identify with one of the

⁹ Human Rights in Bosnia and Herzegovina, 2008, page 304.

¹⁰ Finally, in the 'dusk' of 2001, the proposed law was sent into the parliamentary procedure, and after a 'long march through institutions', as Rudi Duce put it well commenting on the failed student unrest in 1968, almost a year and a half later, it came out as a ready 'product' and became a positive legal act.

¹¹ The draft law submitted to the Venice Commission in February 2002, and its opinion was sent back to the Parliamentary Assembly in mid-June of the same year.

national minorities in BiH) are in question and what is being done with them (they are being protected, it is about their protection). Besides this, the regulations containing definition of a national minority was also incorporated into the law / of course, only in the sense of i.e for the purposes of the said law, but the definition we consider a quality one and applicable outside the narrow legal discourse and domain, including sociology, political science and other social sciences, so we will be coming back to it /, **while national minorities were individually identified and listed, thus they were *de iure* recognized.** That regulation, contained in Article 3 of the Law, **made that law significantly different from all other laws similar in their ‘subject matter’,** not only in countries of geo-political surrounding, but also in the countries of developed parliamentary democracy and affirmed human rights and basic freedoms. However, this distinguishing characteristic was necessary, considering the outlined social ambient and legal-political and axiological ‘coordinating system’ and landscape in post-Dayton BiH. That means that defining national minorities in the given, specific legal project, does not damage anyone, and least the minorities themselves, at the same time giving a certain contribution to theoretical reasoning on one important social fact.

In other words, the legislator obviously kept in mind the fact that the **Law shall be implemented in a Bosnia-Herzegovina ambient,** starting from its history and history of its constitutive nations and national minorities that live therein, their traditions, customs, language experiences and practices, confessional differences, and so on, which is why that legal project on rights of national minorities ‘travelled’ a bit longer through the institutions of BiH legislator¹².

The consequence of that fact was **certain national homogenization and awakening of minority communities** and their representatives, creation of new NGOs and revitalization of old(er) associations, thus giving them the subjects, agents, for shaping the public opinion, exerting pressure on political and state structures in BiH and the entities, lobbying with international institutions and organizations, all in the aim of final legal verification of their status and legalization of institutes and means of active participation in the social life of a town where they live and act. This was achieved by the said law: **non-constitutive nations in BiH were finally**

¹² Finally, House of Representatives of the BiH PA adopted the amended proposal of the law on 20 June 2002, but the debate on the law ‘got stuck’ in the House of Peoples and it could not be resolved in that convocation, so they had to wait for the new one in the House of Peoples, and then, on 1 April 2003, the Law was definitely adopted in the identical text as almost a year before by the House of Representatives.

recognized as national minorities by law. Realization of rights of (individual) representatives of those minorities, and the minority as a collective is, from sociology point of view, a matter of **chronic** social processes and political relations over a longer time period, rather than **acute** events, such as the very adoption of the law. At the same time it was a cause and a consequence of a change of social awareness on the significance of rights of national minorities and the need of their implementation, i.e. eliminating discrimination that affects the citizens/individuals belonging to minority ethnic communities. Naturally, the contents of legal norms influence the manner of its implementation, more precisely: the flow, process and effects of implementation were also normed by the law.

The law on protection of rights of national minorities is, potentially, powerful and strong ‘weapon’ in the hands of national minorities. It depends, to a large degree, on them, their representatives, NGOs, associations and institutions, not only the contents and quality of implementation of that law, but also the destiny of national minorities, their rights and freedoms, as well as equality in relation to other citizens of BiH, primarily those that belong to constitutive peoples.

But, in order for all this not to depend solely or primarily on the level and quality of organizing of national minorities, (cap)abilities of their representatives and/or benevolence of international institutions and organizations (not only current and present ones, but also those that will be there ‘until the end of time’), the legislator took the effort to leave the large burden up to the authorities in BiH level, entities, cantons, municipalities, in the form of obligations and liabilities, with regard to implementation of the law, as well as for the fulfillment of all other norms that regulate and sanction the rights of national minority representatives as individuals, and minorities themselves as a collective. In doing so, **the legislator, in writing the norms, largely followed and used the ‘pattern’ and standards already given in the CoE Framework Convention for protection of national minorities**¹³. Also, the legislator followed the European standards when dealing with the contents of particular articles of the law, primarily those that regulate obligations and liabilities of the authorities. Besides, it

¹³ As it is known, BiH accepted and ratified the Council of Europe Framework convention for protection of rights of national minorities, in other words, it is a part of BiH legal system since the day of signing the General Framework Agreement on Peace in BiH (short: Dayton peace agreement, or DPA), that is, when it was incorporated into the BiH Constitution as one of the international instruments on human rights that will be applied in BiH. Thus, absurdly, it became valid in BiH before it came into force in Council of Europe, where the condition was that it is accepted and ratified by certain number (12) of countries-members of CoE. We wrote about it earlier in other works.

was not regulated by a chance (Article 2 of the law) that protection of rights of representatives of national minorities is a part of international protection of human rights and freedoms. Hence, even if someone would want to, and it is now clear that there are no conditions and alibies for that – at least while some trends of world’s politics and ‘system of values’ are in place, - national minorities and protection of their rights cannot be treated separately, away from main trends in the world and immanent behavior patterns. In that way BiH accepted the standards that are, at least de iure if not de facto, a part of legal-political everyday routine in Europe. The law on protection of rights of national minorities prefers and prescribes, as an obligation of authorities in BiH, entities, cantons, cities and municipalities, further **affirmation ex officio, institutional protection of individual and collective rights of representatives of national minorities**, their further **national and civil emancipation, integration** to all normal and legal social processes and trends, without discrimination, and **historical coexistence** with representatives and communities of constitutive, majority peoples in BiH, and **not assimilation**. Moreover, assimilation is prohibited by law, except in situation when the representative of a national minority him/herself asks so, that is, when he/she does not ask others to treat him/her as a representative of a national minority, which is more common case in the practice. The goal of emancipation and affirmation of national identity and protection of rights of representatives of national minorities, including Roma, is not that minority groups, as collectives, get so emancipated and raised to some ontological-eth(n)ical pedestal as some higher reality and value, thus becoming something else compared to what they were (are), to lose the identity and performance of national minority, to get ‘drowned’ into and take over properties and potentials of majority peoples, but on the contrary: **national minorities to stay what they are – minorities**. But in all that their rights, position, characteristics, interests and needs should be legally recognized and regulated, first by a law or laws, followed by constitution – in this concrete case amendments to BiH Constitution; to be guaranteed all human rights and to secure their implementation at highest criteria, all for the sake of one single goal that a democratic society should strive to, and those are developing and cherishing equality, (before the law, starting positions, social chances, etc.), tolerance and similar ideals and values. All the while it is important to keep in mind at all times the simple fact that representatives of minorities have the right and transparent possibility to decide, at any moment, whether to be or not to be representatives of national minorities, whether to ask to be treated as such, or not, i.e. no one should force them to be national minority, ‘others’ or assimilated representatives of a majority nation. In doing so, due to their

position and desire, that is, expressed determination that they are a minority and they should be accepted and treated as such by others, they should bear no consequences or be brought into an unfavorable position. It was the standard and the achievement inaugurated and guaranteed by the Framework Convention¹⁴.

However, considering all that is found in the text, as a norm, we could say that the **Law surpasses the imperatives of the Framework Convention**, that it, it prescribes and guarantees greater rights, wider freedoms and privileges to national minorities, while the authorities, at the same time, are imposed more obligations and liabilities for realization of given rights¹⁵. Concretely, it means that certain regulations of the Framework Convention for protection of national minorities might have been implemented in BiH, Republika Srpska and/or Federation BiH, in the period from interpolation of the Framework Convention into the Constitution of BiH in December 1995 till adopting of the Law on protection national minorities in 2003, without it being illegal. Au contraire. It is also a way of protecting the rights of national minorities living there. Here are some more evidence in support to our thesis on **benevolence of the Law in relation to the Framework Convention vis-à-vis scope and content of rights guaranteed to national minorities** in more expressed obligation of the authorities towards respecting of rights of national minorities and a necessity of undertaking adequate measures in the aim of implementing and protecting those rights. Take, as an example only, Articles 7 and 8 of the said Convention that say that members (countries that signed the Convention) shall ‘...secure respecting the rights of each representative of a national minority for freedom of rallying, freedom of association, freedom of expression and thought, conscience and confession.’¹⁶, that is: “Members are obliged to recognize to each representative of a national minority the right to freely express his/her faith or religious beliefs and to establish religious institutions, organizations and associations.”¹⁷, and it is easy to see that all imperatives from the above norm are not yet fulfilled in BiH, and that there are things to do while

¹⁴ It is explicitly normed in Article 3 of the Framework convention.

¹⁵ Similar assessment is given in the text *Rights of national minorities*: „Венецијанска комисија је, између осталог, истакла да одређена права споменута у тексту нацрта Закона о заштити права припадника националних мањина гарантују и више од стандарда постављених међународним актима за заштиту националних мањина.“, in: *Људска права у Босни и Херцеговини 2008, quoted edition, page 305*

¹⁶ Framework convention for protection of national minorities, quoted from: *Права мањина – одабрани међународни документи*, наведено издање, page 171.

¹⁷ *Ibid*, page 173.

national minorities are not being discriminated, even in positive sense, and certainly not endangering the vital national interests of constitutive peoples. However, the authority(ies) behind the Framework Convention..., and today we know it is more than 30 states members of Council of Europe, believe(s) that regulations of that international document from the human rights corps should be implemented *bona fide*, and countries ‘members shall encourage the spirit of tolerance and inter-cultural dialogue and shall undertake efficient measures for improvement of mutual respect and understanding and cooperation between all the people who live on their territory, regardless of their ethnic, language or religious identity...’¹⁸. For the sake of the truth, the framework character of this convention, and it means its particular conciliate spirit and volatility, are best demonstrated in Article 3 which defines that ‘Each representative of a national minority has the right to freely chose to be or not to be treated as such...’¹⁹, or more explicitly, i.e. flexible: ‘In the areas *traditionally* or *significantly* populated by representatives of national minorities, *should those representatives ask so and when that request corresponds to the real need*, the members *shall try to provide as much as possible...*’²⁰ (italic used by the author) etc.

To sum up, the Framework Convention gives a number of principles, imperatives, mechanisms and obligations that countries or their parts/entities should follow, apply and fulfill in order to promote and protect rights of national minorities. The Convention is based on and lies on the principles, and member states re obliged to implement those principles, to ‘process’ them in the national legislation, such as: non-discrimination; prohibition of forced assimilation; promotion of real equality; freedom of opinion, expression, conscience, religion, rallying and association; freedom to use the information media; right to use own language – including for public purposes, e.g. administration bodies, courts, financial institutions, etc.; education, including the right to form private education institutions in minority language(s); education in own language; right to preserve and develop national culture, tradition, faith and customs; cross-border contacts and international cooperation; obligation of the state to display bi-lingual toponyms, etc.

Naturally, laws in entity level and other regulations in other, lower instances of authorities in BiH, have already or will additionally, and in more detail, concretize the norms relating to rights of minority communities and ways of their fulfillment. Anyhow, after the adoption of this law and

¹⁸ Ibid, page 171.

¹⁹ Ibid, page 169.

²⁰ It is about Article 10, quoted paper, page 173. Italics put by the author.

after bringing harmonized laws in BiH entities, the authorities in BiH can no longer be pardoned for not-doing or insufficient doing in the aim of protecting the rights of representatives of national minorities. Considering the content of legal norms, the said authorities have serious obligations in the following areas: education, culture, language, work of art, customs, tradition, protection of monuments of culture and heritage, information, freedom of religion, freedom of rallying, association, displaying / wearing own signs and symbols; producing and erecting names of settlements, streets, institutions, organizations and other topographic marks in places populated by a respectable number of minority people' representatives; founding e.g. private schools and other institutions for advanced training in minority language(s); providing official communication in languages of national minority communities in the sphere of legal, administrative, banking, social care and other public affairs and services; forming the information media in minority languages, i.e. columns and shows in public information services; election and participation of representatives of national minorities into the structures and bodies of administration, power, public services, state companies, etc. Of course, previously said is not all on which authorities of BiH must engage, not only for the sake of implementation of this law, but even more due to the relation towards the national minorities, promotion and protection of rights of their representatives according to European standards, which they accepted unforced, on their own. It is clear, if these authorities would not have other obligations vis-à-vis bringing and implementing laws in some other areas and contents of existence – which they do, imperatives regarding serious work only on this particular law are a challenge, big and serious enough for them, and at the same time a 'testing' for the indication of social status of national minorities in BiH. Due to all aforementioned, there is a need to once again, additionally, explicitly list all the rights of national minorities inaugurated and protected by the Law on protection of rights of representatives of national minorities, just because from such an overview it is possible to see what social status of minority groups of national determination is normed and announced, projected and desired, and then, even superficially, to point out other particularities of this law, along with some deficiencies or disputable dimensions of meaning. That would give additional arguments to the thesis that rights of national minorities are normatively, and especially legally, widely and comprehensively postulated, which is a precondition to normal, non-discriminatory social position of that social group. As mentioned earlier, the law that inaugurates, guarantees and protects rights, first and foremost to representatives of national minorities, but also to minorities as a collective, does it by norming and postulating a

wide spectrum of human rights to BiH citizens who declare as representatives of national minorities. This primarily relates to **free expression and protection of those elements and dimensions that substantiate the identity of national minorities**, and those are contents that concern a set of phenomena from the domain of **culture and autonomy**: language and guaranteed usage of it, private and public, in all public places, such as kindergartens, schools, hospitals and other health institutions, judicial institutions, social care institutions, police services, administration and similar, then **informing on own language and alphabet**, through printed or electronic media, education and other training on mother tongue, printing books on minority languages and their distribution, establishing libraries to preserve and use the literary heritage, staging theatre plays in minority languages, official correspondence with various state institutions and other public institutions, etc.

Also, the law norms and guarantees, that is, prescribes and orders the state, in all levels of its organization in post-Dayton BiH, to identify and **protect the overall cultural heritage**, tradition, material and non-material, cultural-historical artifacts and goods of national minorities, to establish or support founding of museums, archives, galleries, cinema archives, theatres, cultural centers, institutes or departments in already existing ones for protection of cultural and historical heritage, to support cultural-artistic societies, drama clubs, folklore clubs, rallies and similar forms of amateur or semi-professional associating of art work for the sake of presenting it, etc. The said law is equally lavish when it comes to minority rights in the sphere of **education**. It prescribes obligations to state bodies, in the level of education competent authorities, that is entities and cantons and their education structures, to organize lecturing in minority language(s), truth, in special, or as someone would say in impossible conditions (the word here is about the needed number of students – representatives of national minorities in each class), obligation to school authorities to provide appropriate teachers and teaching staff for minority children, and naturally financial means for their additional training, to secure adequate textbooks and space, and to incorporate into the curriculum contents from history, culture, tradition and heritage of national minorities living in BiH.²¹ For the sake of

²¹ As an example, from the text of the legal norm obliging the state and education authorities to prescribe, provide and realize the right to national minorities for undisturbed use of their mother tongue, it turns out that in anyone municipality in which representatives of one of 17 national minorities from Article 3 of the law live and have children of school age, the competent authorities must create conditions for minority children to attend classes in their mother tongue, in full, or partially – only some subjects, mainly those for acquiring knowledge and affirmation of own national identity and values, such as mother tongue,

truth, implementation of this part of the law, i.e. norms relating to education, depend on some other laws, be it on BiH level or entities' level, even canton level, which are yet to be discussed. For **preservation, cherishing and strengthening of identity of national minorities**, important articles of the law are those that enforce the norm on right of national minorities to **information on mother tongue**, as well as obligation of authorities to establish and support the work of public institutions that issue newspapers, that is, other media of communication (radio, TV, film, internet, and similar) in minority language, that is, to create new columns, shows, special editions, that will write about and show the life and heritage of representatives of minority national collectives in BiH, that is, promote, affirm non-discrimination and non-stigmatizing of certain national minorities, i.e. demonstrate in practice avoiding of stereotypes on certain minority collectives of national origin (e.g. Roma, Albanians, etc.).

Informing the representatives of national minorities, along with citizens that declare as representatives of constitutive peoples, or do not declare at all, is contributed by the obligation of realizing the norm on obligation of authorities to **display names of villages, cities, streets, public institutions** (schools, health centers, kindergartens and similar), squares, sports societies and teams, toponyms and traffic signs, etc. **in the minority language(s)**. This, of course, applies for those destinations populated by national minorities. The law also norms the obligation to authorities to guarantee and protect the right of national minorities to freely – though in

national history, literature, culture, music, fine arts, etc. If it is not possible in regular classes, then conditions have to be provided for additional / supplementary classes. The authorities are also obliged to provide, i.e. pay for, competent teacher who will perform classes in the minority language and teach children on topics they and/or their parents declare interest to be taught. Of course, ministerial bodies have to provide adequate textbooks in the minority language, and if such do not exist in Bosnia, they need to be imported from abroad, from mother country of the concerned national minority, and paid for of course. In schools attended by the minority children, diplomas have to be printed, if minority representatives should ask so, in minority language(s). It also derives from the text and norms of the law, that in municipalities populated with minority communities the authorities are obliged to create conditions for national minorities to use their native language in a bank, post office, hospital, kindergarten, retired persons home, when subpoenaed by the prosecution, when they are under investigation or a court proceeding, for fulfilling any form for any purpose, etc. That means that the authorities have to provide, 'hire' and pay official interpreters who understand and speak the language of a particular representative of national minority who is a subject of a treatment or a service, that is, to pay for translation of necessary documents from domicile language, i.e. language of a constitutive nation, into the minority language. Therefore, it cannot be said that the scope of minority rights guaranteed by the Law is small. Quite the contrary! What was realized in that sense is another matter.

line with other laws and together with symbols and signs of the state, entity, canton and municipalities, **use, display in public their national symbols, insignia, emblems and similar, such as flags, coat of arms** and other signs of national minority as a whole, or, of some minority organization, institution or forum. **Freedom of confession** is also an important constituent of national identity and the law obliges the state bodies to secure undisturbed consuming of that right, including the right to church organization and its equality and functioning, especially if it is about those national minorities whose representatives confess some minority religion, as was the case we presented in chapter two, with portions of Ukrainian, Polish, Russin and Slovakian national minority. When we add to all this the fact on **rights of representatives of national minorities to undisturbed communication and comprehensive cooperation with their compatriots in other states, e.g. their mother states**, then the mosaic on the corps of national minority rights from the sphere of national identity, and normed in the Law on rights of national minorities, is completed. Moreover, it would be in a far greater scope and quality then demanded by Framework Convention to the member states of CoE. Even if measured by legal norms. Implementation of those imperatives is already something else. This will be mentioned more in the text to follow.

We have already mentioned some of weak points of the Law on protection of national minorities. It particularly applies to the area of political rights and participation of representatives of national minorities in the institutions and bodies of the authorities. Some critics of this law, usually authors of legal profile, assign as deficiency general nature of certain regulations and imprecise formulating of norms, which are, thus, difficult to implement²². Of course, **in sociological point of view**, those are not the decisive properties of the law that make it slow and difficult to implement, or, more precisely, its implementation with all the social and

²²As, for example, the constitutional law theorist Prof. M. Dmicic points out: ‘... its characteristic is that it is often done in a too general way, by simply listing those rights, so in some cases there isn’t even the minimum legal determination on how are those rights going to be realized and legally protected. In some cases, imprecision is present to a degree that certain regulations come down to a political proclamation, which means very little in the legal sense.’ See: Миле Дмичић, *Националне мањине у уставном и правном систему Босне и Херцеговине*, «Градишки зборник», number 7, Градишка, 2005, page 16. However, the author of the article did not point to any concrete legal regulation or norm, so he can also be criticized for ambiguity and imprecision. In fact, we believe that such his attitude is merely a consequence of uncritical and mere repeating of previously formulated assessment of N. Milicevic on the same issue. See: Неђо Милићевић, *Стање и проблеми националних мањина у Босни и Херцеговини*, у: *Перспективе мултикултурализма у државама Западног Балкана*, Београд, 2004.

political consequences that the process – and not the act – leaves in the tissue of BiH post-Dayton society, does not depend foremost on the imprecision of certain norms and their inapplicability per se, as much as on **(under)development of legal consciousness and the culture of respecting the law and other legal acts in the actual BiH society and state.** In other words, no matter how strong efforts the legislator makes to define the social position of national minorities in accordance with needs and interests of the society and the state, to shape it to own needs and characteristics, which is why some norms secure relatively high level of protection of human rights to national minorities, even more than the Framework Convention itself, realization of most such norms is not over yet, i.e it was slow, accompanied by obstructions and seeking excuses-even amnesty for not doing, there was disorientation, financial insufficiencies and other aberrations that are not typical for implementation of laws in normal, legal states. That is why in this moment, in year 2012, we can reliably say that **implementation of the Law on protection of rights of representatives of national minorities in BiH, in major part of that obligation and process, did not follow the expected, planned, that is, opportune dynamics and intensity.** Arguments for such an assessment are contained in the following facts. Namely, not only that basic, fundamental articles of this law are not implemented yet, that is norms contained within, which refer to issues of preserving own national identity, starting with usage of own language in official communication, to education – even supplementary and/or elective in that language – studying and practicing national literature, history, culture tradition, customs, beliefs (if different from the religion of domicile population, i.e. representatives of constitutive peoples), protection of cultural heritage, establishing new or revitalizing old cultural institutions, such as museums, archives, culture clubs, libraries, galleries, video clubs²³,

²³ *If things would have been opposite to our claims, then for a few years back most, if not all, villages, settlements, streets, blocks, schools, public companies, information houses, cultural institutions, foundations, etc, would have to display names in language(s) of national minorities, just as public institutions in the field of culture, art and similar in their activity would have to have programs and content on means of expression of national minorities or from their fundus, i.e. entity, cantonal and municipal authorities would have to finance from their budgets not only forming the NGOs for recognizing and articulating identity of national minorities, but also associations and subjects from teh sphere of culture, publishing, information, preservation of monuments, relations with their compatriots from mother-state etc. There should have been expenses dealing with*

to initiating and publishing informative media on minority languages, on electronic means of information or dedicated columns in printed media. However, **those norms cannot be achieved ‘at once’, fulfilled and became reality with only one move of a particular body, adoption of some bylaw or simply by declaring the willingness of any social-political, administrative, historical or educational-cultural and spiritual-religious subject or factor, on the contrary: in order for these norms to become facts, a longer period of time is required**, because it is about **serious and complex social-political, legal-administrative and economical-financial contents and processes**, and concrete measures for which articulation and finalization is needed, in military jargon: ordered, coordinated acting of all participants and complex network of relations and events. Also, there was no radical improvement of material-financial position of NGOs and civil associations established by national minorities lately, who work and represent interests and needs of those collectives, while tendency of growth of number of NGOs of that profile in the last years is very noticeable, present²⁴ and, no doubt, will continue in the near future. For the sake of truth, governments of entities, cantons, and many municipalities, all together, provided more money for their work, especially for cultural activities, but it is not enough given their increase in number and widening their field of activities.²⁵ These facts, however, indicate change in social awareness and some political values and dimensions with present social-political and historical actors and subjects, which resulted in change

realization of Law guaranteed right to freedom of religion, as well as for other purposes, from direct relevance for autochthony, self-importance and survival of national minorities.

²⁴ We elaborated that in detail in other paper in which we portrayed particular national minorities and listed concrete NGOs and associations formed by them to represent them, from what we can conclude their material-financial position.

²⁵ With regard to this phenomenon, and without necessary wider theoretical scientific elaboration, first and foremost sociological, political and then ethnological and psychological, it should be said that every man as an individual, citizen, is guaranteed the right – which was reconfirmed in the Framework Convention for protection of national minorities of the CoE, but also in the Law on protection of national minorities that is the subject of our interest here, along with a number of other international documents before these – to freely and solely express and decide his/her affiliation regarding national identity, that is, that others (individuals, groups, state bodies, political subjects, media, social and other institutions, education and culture organizations, religious communities, etc.) treat an individual as a representative of a national minority, or not, that is, that individual to be put under the institutes and mechanisms of protection that, as their right, stands available both according to the Framework convention and this law.

of quality of relations and reception of meaning and significance of the national minority phenomenon. Truth is that **revolution of said social awareness and noticing the existence of minority national communities** – among those layers and structures of public opinion and political establishment who ‘forgot’ that national minorities, under the term ‘nationality’ existed in BiH before the war – **is not always of autochthonic origin, but often was a consequence of an intervention and force from outside** (international community), but, at the end of the day, it was irrelevant for representatives of national minorities from pragmatic point of view.

It is understood, besides the listed deficiencies, the law contains some other dimensions, norms and consequences that **a priori make its implementation difficult**.

It is not necessary to extensively list them in order to argue the previous assessment and justify the need for reform of particular regulations, i.e. to change and amend those norms that were evaluated as inapplicable and non-corresponding to social-political environment, spiritual situation of present moment, as well as needs and possibilities of adoption of those norms and their enlivenment in post-Dayton BiH. Even more so since some of them are implicitly announced and most of them will be discussed in further text. In other words, ‘regardless of the fact... that the Law was harmonized with the framework Convention for protection of national minorities, some obvious difficulties arose in its implementation...’²⁶ Hence the process of its revision. In less than a decade of its existence, **the authorized legislator in BiH twice changed the Law on protection of national minorities.**²⁷ Although changes and amendments of the said law are not large in scope, and they did not attract much attention for other reasons as well, sometimes a ‘blind eye’ was turned on them, these changes are not harmless at all. From the point of needs, interests and further improvement of social position of national minorities as a collective, they are essential. The reform of the said legislation came after the initiative of civilian sector, primarily as a consequence of constant efforts and lobbying among NGOs of certain national minorities. Changes and amendments mainly related to a group of articles and norms that, together with innovated Election law of BiH – which will be separately elaborated – enable bigger and more efficient

²⁶ Слободан Наградић, *Националне мањине у БиХ нису више terra incognita*, in: *Легалитет национал-них мањина*, Fridrich Ebert Stiftung, Сарајево, 2010, page 15.

²⁷ First time amendments to the Law on protection of national minorities were made in 2005, and the BiH parliament changed that law for the second time in 2008.

participation of representatives of national minorities in election process and legislative bodies at local self-governance level.

On the other hand, complementary to previous reflections and argumentation on the causes, needs, possibilities and consequences of changes and amendments to the law, which only confirms the assessment on a number and complexity of challenges in implementation of the Law, we should point to the certain fact and elaborate its etiology, semantics and legal-political and social repercussions to the position of national minorities as a whole, and the fact refers to it that **all levels of authority in BiH, from entity, cantonal to city / municipal level failed to timely, in legally prescribed timeframe, realize the norm/imperative from Article 26 of the Law, which stipulate that all levels of BiH authorities and explicitly, entities, should harmonize their laws and other regulations with the Law on BiH level.** The said norm may be labeled as absurd, since at the moment it was declared none of the two entities had its law, so it could not be harmonized with the state level one. Therefore, there was nothing to implement changes and amendments to, but it was up to entities to bring their own laws, which will be completely new regulations. Since that was the case with the entities, which were ‘closely’ and more directly subordinated to and in direct coordination with common institutions of BiH, and it would be a formal-logical conclusion that they were more responsible and willing to execute the obligations, then it is not difficult to assume, even ‘justify’ the absence of legislative activity a propos implementation of the said law on cantonal and municipal level in BiH. In other words, for a long time in BiH, that is its entities, cantons, district and municipalities, there was almost nothing new done, by all means not enough, on harmonizing the regulations by lower levels of authority and administration, which means, that laws in entities, cantons and municipal and Brcko district statutes were not timely adjusted, innovated adequately to requirements sanctioned in the Law. It is therefore clear that rights of national minorities in those administrative unites and levels of power, in many segments were relatively deprived, marginalized, their institutional protection was not secured, just like it is often case today that certain local bodies and their employees are still not acting ‘ex officio’ when it comes to some right of a representatives of national minority(ies) who live in the given canton or unit of local administration. Looked at it from that perspective and measured only by that criteria and etalon, one could conclude – thinking linearly and in a non-dialectic manner, partially and incompletely in terms of the overall picture, complexity and depth of meaning and implication of the status of minority issues in BiH today – that nothing was done in BiH in that respect compared to the period immediately after the war, until adoption of the law in 2003,

that is, in post-Dayton BiH you advance by going backwards. However, such an opinion could not ‘stand’ the findings and insights of our elaboration, not to mention of some non-biased scientific expertise and valorization, if one would be made without ‘order’, for their own purpose, by some, e.g. international experts commission.

2. Nevertheless, despite some rationally hardly explicable and politically unjustifiable reasons for years of delay, **the entities finally adopted their laws on rights of national minorities. The first to do so was Republika Srpska**²⁸, giving its law the same title as the BiH parliament: Law on protection of rights of representatives of national minorities. That law, considering the fact that it implemented the **spirit and practice of ‘Resava school’**²⁹, is fully harmonized with the same law at the state level, with several concrete innovations worth mentioning. “One of such regulations is précising financial fines for legal persons that do not respect the regulations of the law.”³⁰ Strictly legally speaking, it is uncommon that a law that is subject of our interest here – Law on protection of rights of representatives of national minorities of Republika Srpska – norms the contents and the amount of a fine, whereas it is not sanctioned in e.g. criminal laws, in one of at least three such laws existing in BiH, not even in those adopted and amended after the bringing of the said law in Republika Srpska. In other words, unlike the law at BiH level, the RS law threatened the financial fine to all ‘legal persons’, and those are authority bodies, public services, management and editors of public radio and TV stations, etc., for disrespecting the same law³¹, especially the norms protecting the elements of identity of national minorities. Another novelty of the RS Law, compared to the state one, is introduction of the body named **Alliance of national minorities** as a subject important in the process and space of political representation and participation in power of the

²⁸ The law was adopted by the RS National Assembly in December 2004, one and a half year after the Law on protection of national minorities was adopted at BiH level.

²⁹ ‘Resava school’ refers to medieval tradition of hand-copying of religious books, whereas the most famous one was in Resava monastery (interpreter’s remark).

³⁰ *Људска права у Босни и Херцеговини 2008, quoted edition, page 306.*

³¹ The word here is about Article 19 of the Law on protection of national minorities of RS, prescribing the fine in the span of 2000 KM to 10000 KM for a violation committed by a legal person, if: ‘in its program schedule does not foresee special shows for national minorities (article 13 of the law); does not enable the use of minority languages in accordance with article 15 of this law. For violations of paragraph 1 of this article, a responsible person of the legal person shall be punished...’, *Закон о заштити права припадника националних мањина Републике Српске*, Republika Srpska Official Gazette 2/04.

representatives of national minorities³², but that norm is too much of a principal character to be directly implemented in the legal-political system of Republika Srpska. All other solutions are almost identical to those in the BiH level law.

In the Federation of BiH, the situation vis-à-vis legislative regulating of the social position of national minorities is significantly different, that is, for a long time it was different, compared to Republika Srpska. Despite a number of attempts of legislative bodies in that BiH entity, the Federation got its law, regulating most of the issues relating to national minorities, only in 2008, full five years after the BiH level. It is not simple to answer to the question whether that entity ‘could not or did not want’³³ to bring its law earlier, which is why it was forced to apply the regulations of the state law of 2003 within its jurisdiction. It is understood, due to the specific structure of the Federation, which is organized in ten cantons, the Federation delegated a portion of responsibility for implementation of the law to that level of authority, prescribing it, just like the BiH law, to bring its own law and harmonize it with the federal one. Of 10 cantons, till 2012, **only one, Tuzla canton, brought its law on protection of national minorities**. Just like the RS law, the FBiH law also envisages establishment of the Council of national minorities, and places it as an important factor of representation of national minorities in the structure of authorities. With a few more particularities, the Federation BiH Law on protection of rights of national minorities contains one important difference in the definition of a national minority. Namely, in that law national minorities are determined *via negationis*, as a ‘part of population-citizens of BiH who do not declare as members of one three constitutive nations...’³⁴, which partially concretized the definition of national minorities and shaped it according to the circumstances in FBiH i.e. BiH.

Regardless to few cosmetic innovations and leaving out certain articles from BiH law, **our analysis shows that laws on protection of rights of national minorities in BiH entities did not go into further concretization, adaptation and adequacy according to historical conditions and legal-political existence of RS and FBiH, and particularly not into some radical and deeper widening of scope of rights of minority national communities, compared to what was prior postulated in the state law**. As we saw, the entity laws unnecessarily and

³² This is explicitly, though not concretely, mentioned in Article 16 of the law.

³³ С. Наградиф, *Националне мањине у БиХ нису више terra incognita, quoted edition*, pages 7-8.

³⁴ Article 3 of the Federation BiH Law on the Protection of National Minorities

without criticism follow, not only the very form and/or structure of BiH law, but in most part its content, basic norms and intentions.³⁵ It is interesting to note that neither the RS law nor the Federation BiH law were changed thus far, despite the fact that the state law was, as we mentioned, amended twice so far.

At the end of this this part of analysis, that is, evoking and presenting the normative dimension of situating the rights of national minorities in BiH, we should point to the fact of awareness on its significance and meaning, and that is that certain guidelines on it may and should be looked for in a number of concrete laws, such as e.g. BiH Election law, Law on prohibition of discrimination, Framework law on primary and secondary education in BiH, Law on primary school, Law on secondary school, Law on official use of language and alphabet in Republika Srpska, and in a certain number of federal laws and laws at cantonal level in FBiH, which is only additional evidence that there existed and still exists a legitimate basis for acting towards protecting the rights of national minorities in BiH, even without adopting a separate laws on protection of rights of national minorities. Here, we will outline only in basic lines, very superficially, the basic contents, sense and reach of postulating the rights of national minorities in that legislation.

3. We emphasized already several times in this elaboration the **significance of election legislation for political position of national minorities and participation of its representatives in institutions of power**, and implied the need of deeper awareness of that dimension of our subject. BiH has its election law since 2001, and since then the election of representatives in all institutions and bodies of legislative and executive power in BiH, in all levels, is executed in accordance with norms of that law. Prior to that election process in BiH and its entities was regulated by provisional rules and regulations that were designed and imposed by the OSCE Mission in BiH, and realized by Provisional Election Commission, composed of local legal-political subjects and international representatives, noting that entities had their own election laws until the adoption of BiH election law. It is understood that these laws did not treat or norm the issue and scope of participation of national minorities in BiH structures of power³⁶, so in accordance with them, representatives of minority national

³⁵ Compare: С. Наградић, *ibid*, page 16

³⁶ Expression 'authority(ies) in BiH' refers to all bodies of power in BiH, irrespective of their level of organization and activity, including entities, cantons, district, cities and municipalities, while the term 'BiH authority' refers only to the authorities at the level of BiH, and those are (joint) institutions of BiH.

collectives could not be elected to institutions and bodies of power in entities, cantons and BiH level. Moreover, representatives of national minorities, and minorities as collectives, were not actualized nor treated in any way in the legislation of that time, as we shown herein. Electoral legislation and practice simply ignored them. Only after adopting of the Law on protection of rights of representatives of national minorities in 2003, there started the consideration about changes and amendments of BiH Election law at the time, aiming to interpolate in it regulations of other law, at the same time more general and more concrete, special law, followed with norming and operationalizing of rights of national minorities to participating in political life of a community and in bodies of power³⁷, as it was guaranteed in the said Law on protection of rights of national minorities.

For the first time rights of national minorities to political representation and institutional participation in the bodies of power in BiH and its electoral legislation were normed through changes and amendments of the BiH Election law in the first half of 2004. However, then adopted Law on changes and amendments to the Election law of BiH did not produce any concrete positive results, as it was brought late, considering specific conditions of calling the elections in post-Dayton BiH.³⁸ Namely, the prescribed and normed obligations of the authorities on direct inclusion of representatives of national minorities into the election process and constituting bodies of power afterwards, could not have been implemented due to the delay in publishing the amended electoral legislation in the ‘BiH Official Gazette’. For that reason, also that year the elections for units of local self-governance or municipalities, including, naturally, those populated by national minorities and identified and ‘legalized’ in the Law on protection of rights of national minorities, were held under the legal norms that did not foresee participation of national

³⁷ The mentioned BiH Election law, for relatively short time of existing, e.g. 2001 to 2012, suffered a number of changes and amendments: It was reformed 17 times, in some years several times, which is a record among laws in post-Dayton BiH, and God only knows how many times it will be changed prior to general parliamentary elections planned for 2014.

³⁸ Unlike many other modern democratic states, elections in BiH are scheduled at least 150 days before holding (before E-day). Considering the fact that Election law foresees that elections in post-Dayton BiH are held on the first Sunday in October. That means the elections are scheduled usually in the first week of May, in order to respect the regulation on 150 days from the day of scheduling to the day of holding the elections, while within that period no changes of election legislation is allowed. That was the case in May 2004, and since the Law on changes and amendments of the BiH Election law was brought at the end of April, it could not be timely published in BiH Official Gazette, i.e. before scheduling the local elections that year, so the elections were held according to the old law where participation of national minorities at local levels of power was not regulated.

minorities in the structure of power at the local level. **That deficiency, along with some improvements of the BiH Election law vis-à-vis rights of national minorities, was removed four years later.** Meanwhile, the **Law on protection of rights of national minorities itself was changed and amended twice**, for the purpose, inter alia, of specifying the quality, scope and manner of participation of national minorities in political life and institutions and authorities' bodies, thus "creating conditions for new, qualitative step in the sphere of political equality of representatives of national minorities, i.e. their representing in, for the time being, legislative bodies of local authorities – municipal assemblies / city halls – that is, parliaments of local self-governance units in BiH."³⁹

Шта нормира реформисано изборно законодавство у БиХ а-про-пос права при-падника националних мањина на политичку репрезентацију и партиципацију у институцијама власти у њој?

The first thing to notice and explain about it is the fact that contents, quality and scope of changes and rights prescribed in the election law referring to national minorities, in relation to their participation in power in 2004 and 2008, mutually differ significantly. While the first (2004) changes and amendments of the said law gave an obligation to municipalities where each of them, provided there were national minorities on their territory, was obliged to implement the said legal norm by changing its Statute, harmonizing it with the law and guaranteeing at least one councilor's seat for national minorities, by selecting one candidate from authorized candidates' lists who publicly declared as a representative of a national minority, **the subsequent intervention in BiH Election law (2008) précised the criteria for election of minority councilors to municipal assemblies, i.e. abolished the obligation to innovate the municipal Statutes for all the municipalities that had less than 3% of representatives of national minorities in the overall population on their territory.**⁴⁰ The threshold was thus increased to 3% and only those

³⁹ Слободан Наградић, „Локални избори у БиХ – нова шанса еманципације Рома у БиХ“, *Црно-бијели свијет*, бр. 2 (2008) Сарајево. , subsequently printed in a book *Политичке идеје и акција*, Бања Лука: Књижевна заједница „Васо Пелагић“, 2010, page 217.

⁴⁰ „... Some municipalities, meanwhile, applied regulations of their earlier innovated Statutes, after adopting the changes to the Election law, thus avoiding the obligation to implement the Election law in the version more favorable for national minorities. Nevertheless, regardless to that 'loophole' and a kind of legal joggling (S. Nagradic, *ibid*, page 220), it turned out that there is a respectable number of municipalities in BiH which, based on such a restrictive law, got one or two councilors, authentic representatives of national minorities, and among those municipalities were also those that meanwhile missed to change their Statutes.

municipalities that had more than 3% of inhabitants – representatives of national minorities changed their Statutes and after the 2008 elections got councilors-representatives of national minorities in their municipal assemblies.⁴¹ In other words, compared to the law that was changed in 2004, **changes of the BiH Election law of 2008 were less in favor of national minorities** since the threshold, i.e. the percentage of representatives of national minorities who live in the area of a municipality and are entitled to one representative in the local parliament was raised to three (3%), that is, over three percent“.⁴² However, regardless to all deficiencies of electoral legislation in post-Dayton Bosnia vis-à-vis rights of national minorities, and almost the same regulations are in entities’ election laws so there is no need to separately analyze them, for positioning of national minorities and understanding their current social position in post-Dayton BiH, it is important to know the social processes, political relations and events, as well as all those happenings, directions, opinions, marks etc., which, from sociological perspective are called-perhaps not exact enough-the spiritual situation of time, **shaped, prepared through great efforts and established into a fact that BiH society and state, no matter how incomplete it may be, disputed from within, asymmetric in so many ways, even if paying attention, normatively, about the equality of national minorities, about prevention of discrimination of minorities, about increasing their social inclusion, what all together should end in improved social position of national minorities in it.** Of course, there is the other side of the medal, where one can read out the real situation, real life of national minorities, now and here, and something needs to be said about it.

This, what needs to be talked about, particularly concerns the results and effects of local elections, organized and implemented twice in the analyzed time period (2008 and 2012) according to the norms of BiH election law of 2008, and their implementation, considering that actual electoral legislation, for the time being, does not stipulate an obligation for authorities to provide participation of representatives of national minorities in all the levels in BiH. At the same time it means that no election law in BiH norms the obligation, i.e. does not regulate the content and manner of political representation and participation of national minorities in cantonal, entity and BiH parliament(s). That issue was obviously left for some other

⁴¹ If the norms of amended BiH election law of 2004 remained in power, national minorities would have at least one representative in municipal assemblies in over 70 municipalities in BiH. Implementing the norms of the 2008 law, national minorities in BiH got councilors in 32 municipalities.

⁴² Слободан Наградих, *Локални избори у БиХ – нова шанса за еманципацију Рома*, op. cit., page 220.

time, until the legal-political status of national minorities is constitutionally arranged, as we mentioned earlier here. For, until it is solved, even at a normative level, we cannot talk about complete legal solution of the problem of political representation of national minorities and their participation in election process in all levels and subsequent constitution of power, despite all that was done in that respect by the actual authorities in post-Dayton BiH, and we could see that, given the circumstances, it is not a little.

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