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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**SECRETARIAT MEMORANDUM
ON PROGRESS
IN CO-OPERATION WITH CROATIA**

**in particular with regard to the revision
of the suspended provisions
of the Croatian Constitutional Law of 1991
on the Protection of Human Rights
and Rights of Minorities**

In the framework of the procedure for the accession of Croatia to the Council of Europe, the Venice Commission recommended:

1. that the suspended provisions of the 1991 Constitutional Law on Human Rights and Rights of Minorities be revised as soon as possible in order to ensure that persons belonging to minorities are guaranteed rights in the field of local autonomy in accordance with the European Charter of Local Self-Government and Recommendation 1201 (1993);
2. in order to subject the protection of minorities to a certain degree of international supervision, that an enlargement of the Constitutional Court be provided for such as to allow it, when deciding upon cases concerning the rights of minorities, to comprise international advisers.

On its accession to the Council of Europe, Croatia undertook to carry these recommendations into effect (see Assembly Opinion No. 195 (1996) on Croatia's request for membership of the Council of Europe, para. 9.vii).

Furthermore, under Committee of Ministers Resolution (96) 31, such membership is subject to the requirement to co-operate with the Council of Europe, *inter alia* in applying the Constitutional Law on Human Rights and Freedoms and the Rights of National and Ethnic Communities or Minorities.

1. Revision of the Constitutional Law

The suspended provisions of the 1991 Law conferred specific rights of representation and participation in public institutions (parliament, government and supreme judicial bodies) to all minorities representing 8% of the population; these provisions were designed mainly to protect the largest minorities in Croatia by granting them effective representation at different levels of the legislative, executive and judicial institutions. Although there are 16 minorities present in Croatia, only the Serb minority was affected by these provisions. All provisions relating to the rights of minorities amounting to at least 8% of the population have been suspended. This also applies to provisions granting special status to districts with a Serb majority. The reason put forward for this suspension is that, following population movements, there are no longer units where the Serb minority would be a majority and that, consequently, the prerequisite for the implementation of the provisions at stake was not met. The Venice Commission expressed the view that the relevant provisions of the Constitutional Law of 1991 should be revised with a view to ensuring an effective participation of minorities in public life.

In October 1996, the Government of the Republic of Croatia established a commission entrusted with the task to examine and to propose the revision of the Constitutional Law and the Venice Commission appointed some of its members¹ to participate in the work of the above-mentioned commission. The members of the Venice Commission met the Croat Commission for the Revision of the Constitutional Law in Zagreb in March and May 1997. Following these meetings

- a consultative body (now called «Council of National Minorities») was set up, where representatives of minorities sit and discuss with Government representatives and officials questions concerning minority protection policy. Mrs Zoricic Tabakovic, chair of

¹ Messrs Gérard Batliner (Liechtenstein), Jan Helgesen (Norway), Godert Maas Geesteranus (The Netherlands), Franz Matscher (Austria), Ergun Özbudun (Turkey) and Mrs Hanna Suchocka (Poland)

the Council participated in the 36th Plenary meeting of the Venice Commission (Venice, 11-12 December 1998)

- the Venice Commission addressed to the Croatian authorities, in June 1997, a memorandum containing the orientations and conclusions concerning the revision of the Constitutional Law (see Venice Commission 2nd Report on its co-operation with Croatia).
- the Croatian authorities agreed to elaborate a draft Law on the Revision of the Constitutional Law which would be the basis for the further work on revision.

On 29 April 1999, the Parliamentary Assembly, by its Resolution 1185 (1999) on the honouring of obligations and commitments by Croatia «regrett(ed) that little progress (had) been made by Croatia in honouring commitments and obligations related to the fundamental principles of the Council of Europe (democracy, rule of law and human rights)» and called on the Croatian authorities, *inter alia*, to «adopt a constitutional law revising the suspended provisions of the 1991 constitutional law ... in compliance with the recommendations of the Venice Commission and taking into account new realities, by the end of October 1999 at the latest ».

Following an invitation by Mrs ZoricicTabakovic, Messrs G. Maas Geesteranus and F. Matscher participated in a meeting of the Council of national minorities in Zagreb, on 5 May 1999 (see Document CDL (99) 34). During the meeting the urgency of the revision was underlined and reference was made to the Memorandum addressed by the Venice Commission to the Croatian Parliament in 1997 indicating the main topics to be dealt with in the framework of the revision. These include the status of the Council of National Minorities and other minority institutions, the representation of minorities in the legislative bodies and the Government and guarantees for educational and cultural autonomy. It was generally accepted that the points set out in the Commission's Memorandum could form the basis for the revision. It was further stressed that early involvement of the Commission in the preparation of the revision would make co-operation easier and more effective. In this respect, the need was underlined to submit to the Commission as soon as possible any draft amendments to the Constitutional law of 1991, including provisions on the electoral rights of persons belonging to minorities. The Director of the Governmental Office for Minorities indicated that work on the revision was going on, but no draft had been finalised so far. As soon as finalised, the draft would be sent to the Venice Commission and to the Council of National Minorities for consideration.

However, no draft material has been forwarded to the Commission until beginning of October 1999.

2. Participation of international advisers in the work of the Constitutional Court

In accordance with the commitments undertaken by Croatia, international advisers appointed by the Committee of Ministers of the Council of Europe participate in the work of the Constitutional Court of Croatia in cases concerning rights of minorities. The Constitutional Court invited the advisers to participate in five cases concerning legislation on property, access of persons belonging to minorities to civil service and minority language education. The advisers have participated in the preparatory meetings and in hearings and deliberations. Decisions in these cases are expected to be given in the near future.

In its Resolution 1185 (1999) concerning honouring of obligations and commitments by Croatia, the Parliamentary Assembly welcomed the co-operation between the Venice Commission and the Constitutional Court.