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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

DRAFT SECOND REPORT

**ON THE STATE OF PROGRESS
OF CO-OPERATION BETWEEN
THE VENICE COMMISSION
AND THE REPUBLIC OF CROATIA**

**prepared by the Secretariat
under the authority
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Introduction

At the Commission's 33rd plenary meeting, Mrs Lydie Err, representative of the Parliamentary Assembly requested from the Commission information on the state of progress of co-operation between the Commission and the Croatian authorities.

The Commission had already addressed to the Parliamentary Assembly, in April 1997, a report (CDL-INF (97) 3) on the implementation of the recommendations included in the Commission's report on the implementation of the Constitutional Law on Human Rights and Liberties and the Rights of Ethnic or National Communities or Minorities in the Republic of Croatia (CDL (96) 26).

The present report concerns consequently only the progress and co-operation in the course of 1997 and in the first months of 1998. <It was adopted at the Commission's 34th plenary meeting (Venice, 6-7 March 1998) on the basis of a draft prepared by Mr Maas Geesteranus.>

Chapter 1 - The recommendations of the Venice Commission

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

"- that the suspended provisions of the 1991 Constitutional Law on Human Rights and Rights of Minorities¹ 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);

- 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 judges. Such a proposal may be considered to be an adequate confidence-building measure;

- that a large information campaign for the promotion of the legal and procedural possibilities of protection of human rights and the rights of minorities be launched, in particular through the Croatian Human Rights Institute and with the help of the Council of Europe."

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).

¹ *The Venice Commission had focused on the question of the suspension of several provisions of the Constitutional Law of 1991. This suspension, which is still in force, concerns above all the provisions on the special status granted to districts where members of ethnic and national communities represent the majority of the population. The suspension applies also to the rights of representation and participation in public institutions by communities and minorities which make up more than 8% of the population in accordance with the census of 1991 and the legal protection of the rights embodied therein. Only the Serb minority was affected by these provisions.*

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.

Chapter 2 - Implementation of the recommendations

2.1 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, particularly the Serb minority, 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 the 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 Commission expressed the view (which it now reiterates) 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.

On 10 October 1996, the Government of the Republic of Croatia took the decision to create a commission entrusted with the task to examine and to propose the revision of the Constitutional Law under the presidency of Mr Vladimir Šeks, Vice-President of the House of Representatives. The Venice Commission at its 29th plenary meeting (Venice, 15-16 November 1996) took note of these developments and appointed Messrs Gérard Batliner (Liechtenstein), Jan Helgesen (Norway), Godert Maas Geesteranus (The Netherlands), Franz Matscher (Austria), Ergun Özbudun (Turkey) and Mrs Hanna Suchocka (Poland) 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 on 26 March 1997. After an exchange of views on the strategy and the scope of the revision envisaged, it was agreed to obtain the positions of representatives of minorities. To this end, a questionnaire was sent to the minorities' associations and a meeting of the Venice Commission's members with representatives of these minorities took place in Zagreb on 19 May 1997.

On 20 May 1997, the members of the Venice Commission and the Croat Commission for the Revision of the Constitutional Law of 1991 met to assess the elements and information collected at the hearing of the representatives of minorities and to establish a schedule for the future steps to be taken. Mrs Mintas-Hodak, Deputy Prime Minister, participated in this meeting.

At this meeting it was agreed:

- that the setting up of a "Forum of Minorities" (Council of National Minorities), where representatives of minorities would sit, should be envisaged. This Forum would be a consultative body holding regularly meetings with representatives of the Government to discuss questions concerning minority protection policy. An informal meeting of this Forum should take place without delay and this could continue to function *via facti* pending its institutionalisation;
- that the Venice Commission should address to the Croatian authorities a memorandum containing the orientations and conclusions of the meetings held in March and May 1997;
- that the Croatian authorities would elaborate a draft Law on the Revision of the Constitutional Law which would be the basis for the further work on revision.

At its 31st plenary meeting (Venice 20-21 June 1997), the Commission adopted the following memorandum which it addressed to the Croatian authorities:

"The present Memorandum was adopted by the Venice Commission at its 31st Plenary Meeting (20-21 June 1997) following a proposal by the Commission's Group of Rapporteurs on the Revision of the Croatian Constitutional Law on the protection of Human Rights and Rights of ethnic or national communities or minorities, composed of Messrs Özbudun, Scholsem, Maas Geesteranus, Matscher and Ms Suchocka.

The Memorandum summarises the conclusions and proposals of the Group of Rapporteurs following their meetings with the Croat Commission for the Revision of the Constitutional Law, chaired by Mr Šeks, Vice-President of the Sabor, on 26 March and 19-20 May 1997 in Zagreb and with representatives of minorities.

1. *The "Forum of Minorities"*

The meetings revealed the need for regular consultation of the authorities with the representatives of minorities or communities. Such a consultation can easily be achieved within the framework of an institution (the "Forum of Minorities"), comprising representatives of the minorities, which could meet regularly and act as an informal consultative body for the authorities in the field of minority policies.

The Commission welcomes the initiative of the Croat authorities to convoke already at this early stage and on an ad hoc basis this "Forum". It further finds that the existence and functioning of this body should be provided by law, for instance, by the Revised Constitutional Law.

2. *Inclusion of elements of the "Letter of intent of the Government of the Republic of Croatia on the peaceful reintegration of the region under transitional administration" in the Revised Constitutional Law*

The authorities of the Republic of Croatia should consider including in the Revised Constitutional Law the guarantees of political representation and educational and cultural autonomy which are included in the "Letter of intent". The Commission is of the opinion that the Revised Constitutional Law should

- *set out the principle of representation of the Serb ethnic community notably from the region under transitional administration in State bodies and bodies of local self Government acting in the region;*
 - *set out the framework for the functioning and competence of the "Joint Council of Municipalities" and of the "Council of the Serb Ethnic Community", in accordance with the principles enshrined in the European Charter of local Self-Government, the Framework Convention for the protection of national minorities and Recommendation 1201 (1993) of the Parliamentary Assembly of the Council of Europe;*
 - *guarantee educational and cultural autonomy;*
 - *set out the principle of proportionate representation of the Serb ethnic community and other national minorities in the Parliament;*
3. *Constitutional support for the participation of international advisers in the work of the Constitutional Court*

In substitution for the Provisional Court of Human Rights provided for in Article 60 of the Constitutional Law of 1991 on Human Rights and Rights of National or Ethnic Communities or Minorities, the Commission has suggested that international advisers participate, on a transitional basis, in the work of the Constitutional Court when dealing with minority rights. This suggestion was successfully followed by the Constitutional Court. The Commission would welcome it if the current praxis could find a legal support, for instance, in the Revised Constitutional Law."

At the Commission's 32nd plenary meeting (Venice, 17-18 October 1997), Ambassador Matek, Permanent Representative of Croatia to the Council of Europe, informed the Commission on the revision of the Constitutional Law and in particular on the setting up of the Council of National Minorities.

At its 33rd plenary meeting (Venice, 12-13 December 1997), the Commission received the information that most of the associations of minorities had appointed their representatives to the Council of National Minorities.

By a letter of 4 February 1998, Mr Šeks, president of the Croatian commission entrusted with the task of revision of the Constitutional Law in question, informed the Commission that the Council of National Minorities had been formally established on 23 January 1998 in Zagreb, in accordance with the recommendation of the Commission. The Council, entirely independent, will be an instrument for the expression of minorities as a whole but also for each national minority separately. It will address to the Parliament and the Government proposals and recommendations concerning minority issues.

The Commission took note with satisfaction of the setting up of the Council of National Minorities. This institution of dialogue and consultation is capable to contribute to mutually acceptable solutions to the delicate problems that protection of minorities usually raises. The Commission is satisfied with the particular efficiency shown by the Croatian authorities in this

matter.

It was also noted with satisfaction that Croatia ratified on 11 October 1997 the Framework Convention for the Protection of National Minorities and the European Charter of Local Self-Government and on 5 November 1997 the European Charter of Regional and Minority Languages and the European Convention on Human Rights. Having regard to the place of those instruments in the hierarchy of norms in Croatian law, these international treaties have particular relevance for the work of the Croat legislator. The above-mentioned ratifications and their impact on the protection of minorities in Croatia should be carefully assessed by the Croatian commission entrusted with the revision of the Constitutional Law.

The Commission also took note of the constitutional reform of 12 December 1997 whereby, among others, the list of minorities expressly mentioned in the preamble of the Constitution was amended in such a way as to delete the mention of "Muslims" and "Slovenes" and to include "the Germans, Austrians, Ukrainians and Ruthenians". The Commission has not been able to assess and has not yet received any information on the possible effects of this amendment on the work of the Croatian commission for the revision of the Constitutional Law and on the composition and the activities of the Council of National Minorities.

The Commission further notes that no significant progress has been made as regards the revision of the suspended provisions of the Constitutional Law and the inclusion of elements from the "Letter of intent of the Government of the Republic of Croatia on the peaceful reintegration of territories placed under transitional administration" in the revised Law. The Commission reiterates its position that the relevant provisions of the Constitutional Law of 1991 should be amended to ensure minorities an effective participation in public life. The Commission had already noted the importance of this revision and the undoubted disincentive resulting from the suspension of certain provisions of the Constitutional Law, in particular for displaced persons and refugees belonging to minorities. Any prolongation of the suspension of the constitutional guarantees which by the same token would prolong uncertainty regarding the legal system to be applied in the long term to minorities, would put the latter at a disadvantage. The Commission recalls that in its report adopted on 17-18 May 1996 (CDL (96) 26), it had expressed the wish that the revision of the Constitutional Law be carried out as soon as possible. It notes today that work on the revision is not as advanced as one would have wished.

2.2 Participation of international advisers in the work of the Constitutional Court

In its recommendations, the Venice Commission had suggested that when taking decisions on matters relating to minority rights, the Constitutional Court could sit with an enlarged membership comprising, on a provisional basis, a number of international advisers.² After several meetings with the representatives of the Croatian competent authorities, the Commission concluded at its 28th plenary meeting (Venice, 13-14 September 1996):

² *In its initial recommendation, the Commission had suggested the participation of international judges. However, following meetings with representatives of the Croatian authorities, including the Constitutional Court, the Commission concluded that it was preferable to appoint international advisers rather than international judges to participate in the work of the Constitutional Court. Such an enlargement could be possible under the Court's Rules of Procedure without any constitutional amendment.*

- that the participation of international advisers in the work of the Constitutional Court should be implemented through the designation by the Committee of Ministers of the Council of Europe of two advisers and two or three substitutes, chosen from a list proposed by the President of the Croatian Constitutional Court and the President of the Venice Commission; that the said advisers should be authorised to participate in the deliberations of the Constitutional Court, without the right to vote; that the Court decision should mention their participation; and that their opinions should be published;
- that the necessary steps should be taken to organise the proposed participation of international advisers in the near future;
- that the participation by international advisers should be regarded as a provisional measure; in principle, it should last until ratification by Croatia of the European Convention on Human Rights, but should not extend beyond 1999; the possibility should be considered of extending the advisers' term of office on the expiry of the aforementioned period.

On 22 October 1996, in accordance with Rule 1, paragraph 1, sub-paragraph 4 of its Rules of Procedure, the Constitutional Court took the decision approving participation of international advisers in the proceedings of the Court. Moreover, the Committee of Ministers of the Council of Europe at its 592nd meeting (12-14 May 1997) nominated the international advisers to the Constitutional Court of Croatia. Following a proposal by the Venice Commission, the Ministers' delegates appointed Messrs Malinverni and Marques Guedes as counsellors and Messrs Oraá, Russell and Simon as substitutes. The advisers met the Constitutional Court in Zagreb on 23 June 1997 and agreed on the procedure to be followed for their participation.

On 25 September 1997 the Constitutional Court gave a judgement on the applications introduced by the Ombudsman of the Republic of Croatia, the Serbian Democratic Forum, a member of Parliament of the Republic of Croatia, the Civil Committee for Human Rights and the Civil Committee "Return Home" whereby the invalidation of the Law on the Expropriation and Provisional Administration of Some Property of 27 September 1995 was sought. This Law places under provisional public administration abandoned property which is situated in the territories of the Republic of Croatia which had been occupied by separatist forces and were liberated by the Croatian army in 1995; those properties belonging to persons who left the Republic of Croatia after August 1990 and live in "the occupied areas or in the Federal Republic of Yugoslavia or in the occupied areas of Bosnia and Herzegovina"; and properties situated in Croatia and belonging to citizens of the Federal Republic of Yugoslavia. It is obvious that this Law directly concerns the right to property of several persons of Serb ethnic origin and affects to some extent the conditions of return of refugees and displaced persons. In its judgement, the Constitutional Court declared incompatible with the Constitution some of the provisions of this Law and rejected the remaining of the applications. The Constitutional Court did not ask the international advisers to participate. In accordance with indications given by the President of the Court, the participation of the advisers was not provided for in the decision of the Constitutional Court regulating the participation of international advisers. Admittedly, this decision only provides for the participation of the advisers in the framework of the procedure on constitutional appeals (in accordance with Article 28 of the Constitutional Law on the Constitutional Court), while the case mentioned above related to a request for abstract control of the constitutionality of legal norms (Article 125 of the Constitution of Croatia). The President of the Court has

nevertheless indicated that the Court did not oppose to the participation of the advisers in procedures concerning the abstract control of constitutionality; the Court had indeed the power to ask for the participation of international experts each time it considered this to be necessary.

The Commission recalls that the transitional mechanism of international advisers was set up as an adequate confidence-building measure replacing the provisional Court of Human Rights.³ The international advisers ought to participate in all procedures concerning cases whereby the rights of minorities or persons belonging to minorities are at stake. The Commission regrets that the decision which regulates the participation of the advisers does not allow the functioning of this mechanism in the framework of the abstract control of constitutionality of legal norms but notes that the Court can, on the basis of its own Rules of Procedure, ask for the participation of the advisers where necessary.

The Commission also noted that on 5 November 1997 Croatia ratified the European Convention on Human Rights and that, consequently, the validity of the decision authorising the participation of international advisers in the work of the Court will expire. It recalls nevertheless that, as agreed with the Croatian authorities, the necessity or opportunity to prolong the mandate of the international advisers should be considered at the time of the expiry of the mandate in the light of the experience acquired. The Commission considers today that the participation of international advisers as a transitory confidence-building measure has not lost its utility.

The Commission is therefore satisfied that the Constitutional Court decided to call for the participation of the international advisers in three cases brought before it which concern rights of persons belonging to minorities. It considers that the implementation of the mechanism of the international advisers is an important step in the co-operation of the Republic of Croatia with the Council of Europe.

³ *Jurisdictional body provided for by the Constitutional Law on Human Rights and Rights of Minorities which has never been set up.*

2.3 Information campaign possibilities for protecting human rights and minority rights in Croatia

The Commission has prepared with the co-operation of the Directorate of Human Rights of the Council of Europe a brochure describing the legal means for securing the protection of human rights and minority rights in Croatia. Moreover, a conference was organised in Strasbourg with the co-operation of the Venice Commission on the integration of Eastern Slavonia in Croatia and the legal protection of individuals.

The Commission considers this to be an on-going activity.

Conclusions

The setting up of the Council of National Minorities and the ratification of several fundamental instruments of the Council of Europe places the protection of minorities in Croatia in a new framework. The Venice Commission can only express its satisfaction with these achievements, which show the willingness of the Republic of Croatia to ensure, within its jurisdiction, an effective protection of rights of persons belonging to minorities.

On the other hand, while it is beyond any doubt that the work already performed is satisfactory to a large extent, co-operation should continue in the near future. As regards its own field of activities, the Commission trusts that:

- the commission for the revision of the Constitutional Law will continue its work on the revision of the suspended provisions, as soon as possible;
- the participation of international advisers in the work of the Constitutional Court will be immediately implemented.

In this respect, the Commission counts on the efficiency and unstinting spirit of co-operation so often shown by both the Croatian commission for the revision of the Constitutional Law and the Constitutional Court of the Republic of Croatia.