

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

REVISION

OF THE CROATIAN CONSTITUTIONAL LAW OF 1991

ON HUMAN RIGHTS

AND RIGHTS OF NATIONAL MINORITIES

PRELIMINARY REPORT

ON THE DRAFT PROPOSAL

OF AMENDMENTS

TO THE CONSTITUTIONAL LAW OF 1991

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On 28 April 2000, the Parliament of the Republic of Croatia considered at first reading a "Draft Proposal of the Constitutional Law on Amendments to the Constitutional Law on Human Rights and Rights of Ethnic or National Communities or Minorities" (CDL(00) ..)

Having been asked by the Parliamentary Assembly to follow the developments in the revision of the said Constitutional Law of 1991 and its implementation, the Venice Commission considered the same draft in order to submit to the Croatian authorities its comments and observations.

It is recalled in this respect that, in the framework of the procedure for the accession of Croatia to the Council of Europe, the Venice Commission recommended 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).

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.

The Constitutional Law of 1991, its suspension and work on its revision

The 1991 Constitutional Law conferred *inter alia* specific rights of representation and participation in public institutions (parliament, government and supreme judicial bodies) to all minorities representing more than 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 concerned by these provisions. Minorities representing less than 8% of the population were granted five seats to the Parliament of the Republic of Croatia.

By Constitutional Law adopted on 20 September 1995 all provisions relating to the special 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 members 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 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, annexed to the present Memorandum).
- 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 12 December 1997 the Parliament of the Republic of Croatia adopted amendments to the Constitution 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 had not been able to assess 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. (CDL-INF (98) 7). However, it became clear later, when the electoral law was adopted, that this amendment had negative effects on the representation of the minority groups whose mention in the Preamble was deleted (see below)

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 Zoricic Tabakovic, 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 Commissions Memorandum could form the basis for the revision. It was stressed further 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 April 2000.

Moreover, some of the suspended provisions concerning electoral rights of minorities, including the Serb minority, were in fact reviewed by the adoption, on 29 October 1999 of the new Croatian electoral legislation. The draft election law provides for the representation in the House of Representatives of indigenous ("autochthonous") national minorities. Minorities have the right to elect five representatives in a national minority constituency in accordance with the following scheme: Italians, Hungarians and Serbs shall elect one representative each; Czechs and Slovaks shall also elect one representative; Ukrainians, Ruthenians, Jews, Germans and Austrians shall elect one representative. In order to achieve that all above mentioned minorities be represented, the representatives of Czechs and Slovaks, as well as the representatives of Ukrainians, Ruthenians, Jews, Germans and Austrians shall rotate. As a result of the above enactment the guaranteed representation of Serbs in Parliament was reduced from three to one. The amendment to the Preamble of the Constitution had also the effect of guaranteeing a representation by rotation to Germans, Austrians, Ukrainians and Ruthenians, whereas no representation whatsoever was guaranteed for Slovenes and Bosniacs ("Muslims").

The draft proposal of the Constitutional Law on Amendments to the Constitutional Law of 1991

The draft makes the following substantial proposals:

First, it provides that all (presently suspended) provisions concerning special status districts shall be abolished.

Moreover, the draft provides that other specific rights of minorities representing more than 8% of the population, i.e. rights to be proportionally represented in the Parliament and in the Government and in high judicial bodies are re-introduced. However their effective implementation shall only start after the proclamation of the results of a census to be held in the Republic of Croatia (date non specified).

Rights of minorities who do not represent more than 8% of the population are not affected.

Pursuant to the draft, a new list of national minorities is included in Article 3 of the Constitutional Law of 1991 including again the Slovene and the Bosniac minority, as well as the Albanian minority.

Finally, the Committee for Legislation is tasked with "determining and issuing a cleared text of the Constitutional Law".

Assessment of the draft constitutional law

1. Article 1 of the draft law amends Article 3 of the Constitutional Law on Human Rights and Rights of Minorities. This provision no longer guarantees "equality of national and ethnic groups or minorities" but "equality of the members of the Albanian, Austrian, Bosniac, Czech, Hungarian, German, Roma, Ruthenian, Slovak, Slovenian, Serb, Italian, Ukrainian, Jewish and other ethnic and national communities or minorities".

This shows the will of the Croat constitution maker to depart from the concept of protecting minority rights as group rights and focus on protection of individual rights of persons belonging to minorities. However, Articles 4 and 5 of the Constitutional Law guaranteeing to minorities the right to self-organisation, to develop their relations with their "parent countries" in order to promote their national cultural development and the right to cultural autonomy remain unchanged.

The wording "equality of the members of the minorities" shows that the Law does no longer make any distinction between minorities on the ground of their numerical importance or on their "autochthonous" nature (cf. Preamble to the Constitution). Also the list of minorities is now given in a strict alphabetical order, with the exception of the Jewish minority which is put at the end of the list (possibly, because it is not necessarily regarded as a national but rather as a religious minority). To the contrary, the Serbs appear in the beginning of the list in the Constitution.

The discrepancies between the list in the Constitution and the list in the draft Constitutional Law should not in principle raise any difficulty as both are regarded as indicative. However, the conclusion the legislator has drawn from the list of "autochthonous" minorities in the Constitution, namely that only these minorities have the right to be represented in the Parliament, will no longer be justified under the proposed amendment to Article 3 of the Constitutional Law.

2. Articles 2, 3 and 5-8 of the draft abolish all provisions concerning special status of districts where minority members represent the majority of the population (Articles 13, and 21 to 58 of the Constitutional Law of 1991), namely the districts of Glina and Knin which Serb majority according to the 1981 census. The explanatory report states that the special status districts are abolished "since in the present conditions in the Republic of Croatia a need for such a form of minority protection no longer exists".

This proposal conflicts with the proposals made by the Venice Commission at various stages of its work on the implementation and the revision of the Constitutional Law of 1991. In its report on the implementation of the Constitutional Law (CDL(96) 26), adopted at the Commissions 27th Plenary Meeting, Venice 17-18 May 1996) the Commission has already considered the argument that the special status would be totally inadequate because of the change in the demographic conditions of the region. In its report the Commission expressed concern about the discouraging psychological effect that the suspension would certainly have on minorities and displaced populations which would like to remain in or return to Croatia. Moreover, in the Commissions view, the Constitutional Law of 1991 without its special status provisions could not be said to constitute an adequate response to the situation after 1995. Rather than a suspension a revision of these provisions was required. This remains valid a fortiori for the proposed abolition of the special status provisions.

3. The Draft does not make any proposal for revision of the constitutional law.

The Commission had proposed in its Memorandum addressed to the Croatian authorities that the existence and functioning of the "Council of National Minorities", a consultative body comprising representatives of minorities and advising the authorities in the field of minority policies, should be provided by the Revised Constitutional Law.

As to the special status provisions the Commission has made proposals in this respect on two occasions:

First, in its above-mentioned report on the implementation of the Constitutional Law of 1991, the Commission found the following:

"Although recent events are capable of justifying a revision of certain provisions of the Constitutional Law of 1991 - in particular those concerning the special status of districts mainly populated by persons belonging to minorities - the Rapporteurs stress that this revision should not lead to the abolition of any special status but should rather institute a regime of local self-government adapted to the new situation. In this respect, it is of course for the national legislature to determine the principal characteristics of that regime. However the new provisions should, in line with Recommendation 1201 (1993) and with the European Charter of Local Autonomy, guarantee that concentrated minorities will enjoy the right to regulate and manage an important part of public affairs."

As regards in particular the situation of the Serb minority, the Commission indicated in its Memorandum on the revision addressed to the Croatian authorities in June 1997:

"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" (Letter of the Government of the Republic of Croatia dated

13 January 1997 on the completion of peaceful reintegration of the region under transitional administration (Danube region) in the Republic of Croatia)"

The Commission indicated in the said Memorandum that the Revised Constitutional Law should set out the principle of representation of the Serb ethnic community notably from the Danube region in State bodies and bodies of local self Government acting in the region. It should also set out the framework for the functioning and competence of the "Joint Council of Municipalities" 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. Finally, the Revised Law should enshrine the principle of representation of the Serb ethnic community in the Parliament;

4. By virtue of Article 12 of the draft, Article 18 of the Constitutional Law is reactivated. This would allow minorities representing more than 8% of the population to be proportionally represented in the Parliament and in Government and High judicial bodies. However, in practice, this re-activation is again suspended by virtue of Article 11 until the proclamation of the results of the (future) census.

It has to be recalled that the Commission was of the opinion that some rights should "be granted to concentrated minorities making up a substantial number of the population irrespective of the total percentage that such a minority represents at national level" (CDL (96) 26, para 22) From this point of view, the census may be irrelevant.

To sum up, the proposed Draft does not "revise" the suspended provisions but clearly abolishes all special regime for important minorities in Croatia. Admittedly, it re-activates provisions concerning proportional representation of minorities making more than 8% of the population but this is again suspended until the results of a census to be held in the future.

The Rapporteurs are duly informed that the proposed Draft constitutional law is followed by other legislation concerning minorities (Law on the official use of languages and Law on minority language education) which would guarantee a high level of cultural rights to linguistic minorities. They will proceed to a careful consideration of these drafts to identify the impact of these laws to the constitutional situation of minorities in Croatia before submitting their final report to the Commission. However, at this stage, the Rapporteurs find that no rules are proposed to be adopted at the constitutional level to regulate or to set the frame of an effective participation of minorities in public life (electoral rights of minority group members, representation of minorities in Parliament and possibly in specific functions of the executive, competencies of bodies representing minorities at the local and national level). In this respect, the Draft constitutional law, as such, does not seem to offer an adequate response to the political needs of minorities in Croatia.

Finally, the Rapporteurs recall that the Commission expressed repeatedly its availability to co-operate with the competent Croatian authorities already during the drafting of the revised suspended provisions of the Constitutional Law of 1991. They regret that despite the commitment of the Croat authorities consultation has not taken place at an earlier stage.