



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 members<sup>1</sup> 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

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<sup>1</sup> 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 36<sup>th</sup> 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 2<sup>nd</sup> 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 December 1999.

Regrettably, one has to conclude that no significant progress was made in this respect since the Commission forwarded its memorandum on the revision to the authorities of the Republic of Croatia (June 1997), despite the relevant commitment of Croatia and the declarations of Croat officials.

Moreover, some of the suspended provisions concerning electoral rights of 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; Chechs 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 representaives of Chechs 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 has been reduced from three to one.

It is also recalled that in its second report on co-operation with Croatia (CDL-INF (98) 7 the Commission had examined 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 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.

One must now conclude that the amendment has the effect of guaranteeing a representation by rotation to Germans, Austrians, Ukrainians and Ruthenians, whereas no representation whatsoever is guaranteed for Slovenes and Bosniacs ("Muslims").

## **2. 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.

In accordance with the commitments undertaken by Croatia, international advisers appointed by the Committee of Ministers of the Council of Europe participated 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.

On 8 November 1999, the Court gave its decision in the cases concerning minority language education, repealing the challenged acts who were found unconstitutional for lack of sufficient clarity. In their provisional opinion the international advisers expressed the view that the challenged acts were unconstitutional. The repealed acts shall cease to be in effect as from 30 June 2000. According to the information received by the Court's registry, the remaining cases in which the advisers were involved are to be decided by the new court, in accordance with the new law on the constitutional court.

On 24 September 1999, the Sabor adopted unanimously a new Law on the Constitutional Law of the Republic of Croatia.

The new law amends the conditions and deadlines for the initiation of constitutional proceedings and the procedure for the protection of fundamental rights and freedoms. Moreover, the new law includes new provisions concerning the election and the status of judges; expressly provides that

judgments of the Constitutional Court are binding and that all state authorities are bound to implement them; provides that the court shall deal with a case of alleged unconstitutionality of laws or regulations within one year from the introduction of the case; regulates the relations between the Court and other State authorities; effects of the constitutional court decisions; and electoral disputes' proceedings. The new law finally provides that pending proceedings will be dealt with in accordance with the provisions of the new law.

The new law does not make any reference to the international advisors to the Constitutional Court. It is recalled that in its Memorandum the Venice Commission had expressed the wish that the advisers' mechanism should "find a legal support, for instance, in the Revised Constitutional Law".

As from 7 December 1999, seven newly elected judges sit in the Constitutional Court.

The Venice Commission has regarded the participation by international advisers in the work of the Constitutional Court 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 of extending the advisers mechanism on the expiry of the aforementioned period was however left open.

Having regard to the fact that most of the cases dealt with by the advisers are still pending and that the court's composition and functioning has changed it may difficult for the advisers and the Commission to assess the concrete results of the advisers operation at this stage.