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Peter Semneby, Head of the OSCE Mission to Croatia, comments on the Draft Constitutional Law on the Rights of Minorities, and expresses satisfaction with the proposed measures

Serbs Who Will Return Should Also Be Considered while Compiling Voters' Lists

By Igor Alborghetti

We asked Head of the Mission of the Organisation for Security and Co-operation in Europe, Peter Semneby, to comment on the Draft Constitutional Law on the Rights of Minorities, which should be passed by the Parliament by the end of this month. Semneby also expressed his view of the problem of return of Serb refugees to Croatia. This concerns the issues according to which the OSCE measures the democratic maturity of Croatia and its readiness to join the Euro-Atlantic integration.

- **Are you satisfied with the level of rights offered to minorities by the proposed Constitutional Law on the Rights of Minorities and Ethnic Communities, which should be passed at the extraordinary session of the Parliament?**

Having analysed the offered Draft Law and after discussions with representatives of minorities and non-governmental associations, we can say that the Draft offers a good basis for the Constitutional Law. We consider that the Croatian Government has done a good job in its preparation. It is important now that political parties and the Parliament take over their part of responsibility and adopt it in a fair manner.

Positive Discrimination

- **A part of the Croatian political parties, particularly the opposition, cannot accept the positive discrimination of minorities, i.e., the right of minority members to vote twice at the elections: once for a party list and the second time for their minority representative. The Government, therefore, removed positive discrimination for minorities from the proposed law at the last moment. What do you think about that move?**

Already in 2000, the Government programme contained the commitment to positive discrimination for minorities in the electoral legislation. Some form of positive discrimination of minorities is needed, but there are different ways of guaranteeing it.

- **How do you assess the request of the Yugoslav Minister Svilanovic and of Serb organisations in Croatia for the inclusion into the voters' lists of those Serb refugees who are situated outside of Croatia, and are not encompassed by the last year's census?**

What we consider as important is that the level of representation of minorities in the Croatian state and local representative bodies is not frozen at the level which would be dictated by the results of the last year's census, therefore, that the results of the last year's census are not the ones which will dictate the level of minorities' representation in the next ten years. The Constitutional Law should contain the provisions which will provide for the adjustment, i.e., which will also take into account those who will be returning in the next years. One should bear in mind that we are still trying to overcome the consequences of the dramatic displacement of the population.

- **Are you of the opinion that the young countries in the area of the former Yugoslavia acted wisely when, after the large population displacements caused by war, they applied the UN methodology to census-taking, according to which only those citizens who have not been absent from a country for more than one year are listed among the population of the country?**

I believe that the methodology itself is not so important. What is more important is to bear in mind the limitations of any census methodology in such a situation. When the right to political representation is concerned and when laws that regulate it are passed, one should constantly bear in mind the fact that a large part of the population was actually excluded from the census. It is important to understand that the results of the last year's census are only a snapshot of a static situation that existed in the spring of 2001, and it was not a normal one, with regard to the consequences of the population displacement and with regard to the fact that the conditions for the return of those who want to return were still not ensured at that time.

Census Correction

- **What do you think about the request of Serb representatives in Croatia for the correction of census results in such a manner that those Serb refugees, who have still not returned to Croatia, are also added to the population?**

I think the most important thing is for the Croatian authorities to be aware of the limitations of the existing numbers and not to use those numbers for wrong purposes. It is important to understand that numerous citizens of Serb ethnicity are living outside Croatia as refugees and that they need to be provided with a possibility to return and with minority rights upon return, regardless of whether they were included in the 2001 census or not.

Repossession of Property

- **The Croatian Government promised that Serb refugees will have all the houses, currently used by Croat refugees, returned until the end of 2002. Are you satisfied with the speed at which the Croatian Government is returning property to Serb returnees?**

Our position is that it is indeed possible to undertake more resolute efforts to return property to them. The good thing is that the Government took upon itself the task of returning houses and other property to the real owners and that it is no longer in the hands of local Housing Commissions. However, it needs to be said that the rights of the owners of that property are still at a disadvantage in relation to the rights of the temporary occupants. A comprehensive programme of property repossession should also include the agricultural land which returnees cannot receive into possession. And, not less important, a solution needs to be found also for those refugees who used to live in apartments over which they had occupancy/tenancy rights. Such a solution should be valid for the entire territory of Croatia, not only for the areas of special state concern. The priority in the return of occupancy/tenancy rights should be given to those who wish to return to Croatia.

- **Although the Government promised to return houses to Serb returnees until the end of 2002, Minister Radimir Cacic recently stated that property will be returned until mid 2003. Are you familiar with the reasons why the Government already moved the promised deadline?**

The Croatian Government undertook the obligation to finish the administrative procedures related to property repossession until the end of 2002. Physical repossession of property will require a bit more time. It seems to me that the Government's plan to return all property until the end of this year is very ambitious and perhaps not entirely realistic. I think that more engagement on the part of the Government would accelerate that process.

- **Do you think that Croatia has to return occupancy/tenancy rights to all Serb refugees, regardless of whether they intend to return to Croatia or not?**

What we stand for is the right for redress for those refugees who lost occupancy/tenancy rights. There are many Serb refugees from Croatia who would like to return, but, since they had occupancy/tenancy rights, they have nowhere to return to. This is also a human rights issue – because the right to abode represents a fundamental human right.