

Interview with Peter Semneby, Head of the OSCE Mission to Croatia

SEMNEBY: CROATIA CAN'T JOIN THE EU BEFORE THE RETURN OF SERBS

By Zeljka Matkovic

We spoke with Peter Semneby, Head of the diplomatic OSCE Mission to Croatia, after Croatia received in Brussels a positive avis and a confirmation from the European Commission that it is ready for negotiations about its accession to the EU. Members of the European Commission also contacted Semneby on several occasions in the process of drafting the avis, that is, experts and diplomats from the OSCE Mission.

The Organization for Security and Co-operation in Europe (the OSCE) is present in Croatia for already eight years, and its interest is focused on minority rights, refugee return and repossession of their property, on the judiciary and the treatment of war crimes before domestic courts, on freedom of the media and legislation.

As the Head of the OSCE Mission to what extent have you participated in the drafting of the avis and what were your basic suggestions to the members of the European Commission?

- First of all, I would like to express how satisfied I am with the fact that Croatia received such a positive avis, which is a great recognition for your country. I would also like to congratulate all those who participated in the accomplishment of that goal: to the former and current government, journalists, the diplomacy... The greatest significance of the avis is in its confirmation of the fact that Croatia belongs to Europe and that, figuratively speaking, it represents an opening of the road which will lead Croatia in the future towards the union of European countries. Furthermore, the avis is extremely important in the political sense. The Croatian society is basically still young and feels very vulnerable, and it has not been strong enough to face some problems stemming from its difficult and complex history. However, a positive avis will give citizens a feeling of security and bright prospects which is a precondition for easier resolution of those problems.

Could you be more precise what problems would those be and whether you have spoken about them with the representatives of the European Commission?

- We are speaking with the Commission about all issues which fall within the competence of our Mission and for the monitoring of which we have been given a mandate. These are minority rights, with the emphasis on the return of refugees and their property, reform of the judiciary, treatment of war crimes before domestic courts and the reform of media legislations. During the last several months we intensively co-operated with the members of the European Union. We presented the Commission with reports on the results in individual segments of our mission and most of those reports you can find on our website.

The avis is, in principle, positive in relation to economic issues, but Brussels is warning that we need to deal in a more specific manner with human rights, primarily with refugee

return, which you in the OSCE have been dealing with already for years. How do you assess the Government's activities so far in the resolution of that problem?

- The refugee return issue is currently among the most important ones and there is still a lot to do in order to reach the desired solution. The minimum which needs to be provided for a relatively normal life of returnees is a safe environment which will be waiting for them in order for them not to fear for their property and personal safety. In most places, this condition has been fulfilled, but incidents that occurred in the Zadar hinterland in the last months unfortunately indicate that even the most basic, fundamental preconditions for the return, such as a safe environment, have not yet been created. The second, but equally important, precondition for return is adequate housing which also has not been fully fulfilled. Admittedly, there is some progress in the resolution of the housing issue, but on the other hand, more than three thousand houses are still being occupied by the so called "temporary occupants" and numerous reconstruction requests have also not been processed yet. However, the biggest problem is that we notice almost no progress in the resolution of the housing issue, that is, a remedy for those refugees and expellees who once lived in the socially-owned apartments - occupancy/tenancy rights holders, and want to return. There are also other obstacles that need to be dealt with, such as arbitrary arrests of returnees on dubious war crimes charges and more subtle forms of harassment in some municipalities.

How many occupancy/tenancy rights cases are there?

- We do not have the exact data but we are aware of 24 thousand court decisions to cancel occupancy/tenancy rights in the areas which were during the war controlled by the Croatian Government. These are the apartments which were taken from people, who were mostly members of the Serb minority, after their absence was established. Data on the number of complaints was presented by the Croatian Government and one has to bear in mind that this is not the case of 24 thousand persons but families. Naturally, not all wish to return but nevertheless, this is a very serious problem. Therefore, the OSCE, in co-operation with the European Commission and the UNHCR, initiated negotiations with the former Government and they adopted a programme which would enable the return to this category of refugees by offering them social housing. The problem is that the implementation of this programme has not even started yet. The refugee return issue cannot be completed until this issue has been resolved as well.

Is there anyway any example of a positive approach towards the return?

- We noticed changes in the rhetoric of local politicians which is very important as the political rhetoric defines the tone of a general social mood. People, who in the former years, and our Mission has been here since 1996, used to say unacceptable things, nowadays say relatively nice and decent things about minorities, which we consider to be a positive breakthrough. Apart from those two basic conditions for return which I mentioned, a general atmosphere in the place of return of refugees is also very important. It is up to local politicians to create a somewhat stimulating and friendly environment because even if the property of a returnee is physically secure, neighbours can find a whole range of other methods to make the life of returnees difficult. The adoption of the Law on National Minorities is also a positive issue but the problem is that in many parts the Law has not been implemented yet. An important factor is also the agreement between the HDZ and representatives of the national minorities in the Parliament since with that agreement, for the first time, representatives of national minorities became a part of the political mainstream. Regardless of the fact that those agreements were primarily to ensure the stability of the Government, they have an extreme political value since minorities can now directly influence social issues.

When reproached for being slow in the reconstruction of houses for returnees, the Government often finds justification in the lack of money and bad economic circumstances. A positive avis given to Croatia also made available access to some European funds. Can financial assistance be expected in order to provide better conditions for the returnees?

- Bad economic circumstances are a reality but they cannot be, by no means, a justification. The resolution of the issue of refugees cannot wait for Croatia to join the EU. It is true that the access to some financial funds will be made available to you already now but simultaneously, other programmes will run out, for example the CARDS programme for reconstruction which was used for the repair of demolished houses. It is very important that the Government, but also the Croatian public, views the refugee return as a national priority. When this is accepted as a priority, funds for the realization will be found. The main task of the Croatian political establishment is to create conditions for the integration of minorities into the society.

The mandate of the OSCE, extended last year in December, expires at the end of this year. Is it realistic to expect that until then you would have ended the mission?

- I do not wish to speculate about dates. As soon as these issues which we spoke about are resolved, we will be able to say that our job is done. I expect that we will play a useful role and assist Croatia in the future as well in its successful completion of preparations for the accession to the EU. Namely, we are not here to obstruct Croatia's aspirations towards the integration. On the contrary, we are here to assist Croatia in the creation of preconditions which are necessary for that integration.

Do you have an impression that this is the understanding of our politicians? Do they accept, and to what extend, your advice?

- It seems that there is more and more understanding lately. Since Croatia's application for membership welcomed by the EU member states and it was confirmed at the EU summit in Thessaloniki that each applicant would be judged on its own merits, the attitude towards our Mission started changing as well. I guess this was proof that we work on the same side and with the same goals as Croatia. Namely, the resolution of numerous specific problems, which are in some way politically very sensitive, is to follow and, as it seems, the Government finally understands how useful it is to have a neutral, advisory body, such as the OSCE.

In your opinion, what needs to be done until June, when the European Council will examine the avis and decide on candidate status and the date for the beginning of negotiations?

- Now that you have a positive avis, the Government must reinforce its efforts to resolve all open issues. The most important thing is to demonstrate good will and efforts in the resolution of the refugee issue, but it is very important to show willingness for regional co-operation and opening towards neighbours.

What are the priorities with regard to regional co-operation?

- The issue of western neighbours, i.e. disputes with Italy and Slovenia, will be resolved through negotiations, but the real challenge is to devise a friendly policy toward Balkan countries. In your public, Croatia was for a long time represented as "the last bastion of the West." There was a well-established attitude that you do not want to deal a lot with your eastern neighbours because, throughout history, they only caused you trouble... This is a fundamentally flawed, politically short-sighted and a very dangerous attitude. Luckily, that attitude is changing. The Government recently started to portray Croatia as a "bridge" towards other countries in the region. The stability of this region, normalisation and stabilisation of

Southeast Europe is the strategic goal of the EU and NATO alliance, and this is where Croatia could play a key role. Croatia by itself will be a relatively unimportant part of the EU, but it will be a major player in the eyes of the EU in its policy towards South Eastern Europe.

Croatia's avis was in some parts more positive than the Bulgarian or Romanian ones, but they already have candidate status. What are their comparative advantages? What places those countries before Croatia?

- The war, as well as divisions which occurred in the society due to war activities, probably represent the most important reason why Croatia, conditionally speaking, is lagging behind in the integration process. During the 90's, Croatia lost several very important years, which significantly slowed down democratic transition. Another key difference is the fact that after its separation, Croatia had to face the establishment of institutions of an independent state. Although Bulgaria and Romania were in many regards in far worse a position during the 70's and 80's, those countries maintained their institutions in independence. All those factors, meaning the war, slow democratic transition and the problem of establishing state institutions, influenced the speed of accession to the EU. Still, all those obstacles are being overcome, which was confirmed through the positive avis. Croatia received a clear confirmation and recognition in Brussels that Europe views it as a future member.

Do you have some advice on how to improve domestic judiciary?

- I think the Government's idea to concentrate war crimes investigations to four courts in the country is a good one. By doing so, meaning limiting the number of judicial staff dealing with war crimes issues, the organisation of necessary trainings will be facilitated. Namely, judges need to be educated and trained for trials in those cases. Generally speaking, it is ultimately up to a judge's attitude and character whether and to what extent he/she will be objective, but possible shortcomings can be remedied by additional education on the protection of basic human rights, objective examination of the facts and assessment of presented evidence.

How would you rank problems, i.e. priorities, Croatia still needs to work on in order to meet European standards and criteria?

- I do not want to do that because someone might draw a wrong conclusion that some things are more important than others or that they require a less serious approach, which would not be good. Instead of that, I will summarise the important issues we mentioned during our conversation. Therefore, it is necessary to resolve the issue of refugees and repossession of their property, to strengthen regional co-operation, reform the judiciary and educate judges, adopt quality laws on the media, protection of human rights and national minorities... Of course, in all the above mentioned fields the Croatian Government may expect advisory and concrete assistance from the OSCE.

EXCERPT:

Problem for 2007

CROATIAN COURTS IN VERY BAD SHAPE

You regularly monitor war crimes trials. How do you assess domestic judiciary?

- I will be honest, the judiciary is in fairly bad shape, but that is the case in the majority of transitional East-European countries. During the communist times, judiciary was not independent and all post-communist countries now have to radically reform the judiciary. However, when we are talking about the way Croatian courts approach war crimes trials, I

have to say that we have noticed numerous problems. I think it is one of the areas where the role of the OSCE Mission will become even more important in the future. Especially after the International Tribunal in The Hague starts ceding a part of the cases to Croatia, which could happen very soon. Those are very sensitive issues and Croatian judges should learn to approach them in a fair and objective manner.

Can you state some examples of non-objective administration of justice?

- For several years already we have been monitoring war crimes trials before domestic courts. From the practice so far it is evident that Serbs who stand trial for war crimes are far more likely to be convicted than Croats accused of similar crimes. Furthermore, a large number of verdicts against Serbs who were tried *in absentia*, without the right to a quality and full defence, are also questionable. The fact that a large number of verdicts end up before a court of higher instance where, following the appellate procedure, a large number of verdicts are either dismissed or decreased in a re-trial especially in cases involving Serbs, proves that this is often the issue of non-objective administration of justice at courts of lower instance. That encourages us to some extent because it proves that justice at courts of higher instance functions, but on the other hand it is a sign for us that something needs to be done immediately for the purpose of professionalizing the judiciary and courts of lower instance.