

Interview with Ambassador Bernard Poncet, Head of the OSCE Mission to Croatia, for 'Identitet' magazine, June 2001

Bernard Poncet, Head of the OSCE Mission to Croatia: "Application of the rule of Law is the main challenge of the Croatian Government".

A Lot of Work Ahead of Us

"The International Community and the Croatian Government initially seriously underestimated the amount of effort required to deal with the key issues covered by the OSCE mandate. Return of refugees, the resolution of property issues, reform of the judiciary... our conclusion that much work still remains to be done to accomplish the OSCE mandate should not have created any surprise" – said Poncet

With what mark is Croatia passing the difficult exam of its democratization, most important for its equal accession within the group of civilized states? We received a part of the answer to the above question exclusively from Mr **Bernard Poncet, Head of the OSCE Mission to Croatia**. Only a part [of the answer], because Mr Poncet had not agreed to answer all of our questions excusing himself that some of them were outside the OSCE competence. He diplomatically refused to talk about anything which does not belong strictly within his Mission's framework. The interview, based on 16 questions handed to the OSCE Mission in Zagreb in advance, has been authorised. Our interlocutor is a French career diplomat who, apart from the economics, also studied Croatian-Serbian language.

1 - You have just presented a five-year report on Croatia's progress in meeting its international commitments. What was the main assessment in that report?

Let me say a few words, first of all, about the preparation of this report. The OSCE Mission was tasked to prepare this five-year report following a decision by the OSCE Permanent Council, in Vienna, on Croatia's suggestion. The report is a thorough review of the progress made by Croatia in meeting its international commitments, since the beginning of the OSCE Mission in April 1996. The Mission has taken this task very seriously and worked several months on its preparation checking and double checking the validity of its data and its assessment. While doing so, we could not overlook the difficult problems that the present Croatian administration inherited upon coming to office which undoubtedly have had an effect on the speed and effectiveness with which those problems have been addressed.

The OSCE believes that both the International Community and the Croatian Government initially seriously underestimated the amount of effort required to deal with the key issues covered by the mandate. Paramount issues such as the sustainable return of the Croatian Serb citizens, the resolution of the extremely complex property issue, the reform of the judicial system and the application of the rule of law, have posed major challenges to the government. It should not have created any surprise our conclusion that much work still remains to be done to accomplish the OSCE mandate.

Having said so, our report documents also significant progress in a number of areas, including freedom of the media, the organization of free and fair elections, police reform and the creation of a more open and democratic atmosphere, which is something that often is overlooked. These are all important accomplishments and the Government deserves credit for the progress in these areas.

ABSENCE OF LEGAL REGIME

2 - Recently you stated that there was no significant return of refugees to Croatia. Which are the main obstacles to that return, and how can they be overcome?

Let me stress, first of all, that while numbers of returns are important, we believe that the key thing is the sustainability of such return. Conditions must be created for returnees, once back

home, to remain, not simply to pick up their documents and leave. That means that returnees need, first and foremost, to be able to re-enter and inhabit their properties. Unfortunately, many of them still cannot do so after many years because their house is either destroyed or occupied by somebody else. Our assessment is that the biggest obstacle to the return of refugees is posed by the lack of a comprehensive legal regime for property repossession. In other words, and this will be familiar to many refugees, the process of repossessing one's property in Croatia is still riddled with difficulties.

This goes at the heart to our mandate to assist, advise and monitor Croatia in its efforts to create conditions for the sustainable return of refugees. Thus we have advised the government that it must recognize the need for and adopt a comprehensive, transparent and functional legislative framework on property repossession, valid throughout the entire country (i.e. beyond the Areas of Special State Concern) which is in compliance with international standards. This legislative framework should provide for the expeditious repossession of occupied property by their legitimate owners. It should also provide for the resolution of lost occupancy/tenancy rights (*stanarsko pravo*), either through the return of apartments, allocation of other housing or through appropriate compensation. We believe that it is now time that this issue which hampers the potential returns on several thousands refugees be addressed.

3 - Has the government shown that it intends to carry out these reforms?

The government has declared that it supports the unconditional return of Serb refugees and displaced persons who wish to return and that there is no political obstacles to accomplishing that goal. We have stated that the government, in support of its declared policy, must also take practical administrative and legal steps to guarantee the effective right of unconditional return for all pre-war residents. We have also recognized the important first steps taken by the government in the decisions made in Knin on March 29 and presented to the International Community on May 9 of this year regarding aspects regarding the repossession of property, reconstruction assistance, emergency social aid and the development of infrastructure. This is a good beginning, but we believe much additional work must be done to build on that beginning.

LAW RIDDLED WITH DISCRIMINATION

4 - You expressed dissatisfaction with the Croatian Law on Areas of Special State Concern, which as you claim, has an unfavourable impact on the return of refugees. Why?

The Law was adopted in 1996 and contained a number of discriminatory provisions which raised the concern of the international community; it was then amended in July 2000 when the discriminatory provisions were taken out. The new amended law now enables owners, whose house was allocated for temporary use to others on the ground of the Law on Areas of Special State Concern, to repossess their property. Although in our assessment the provisions of the law dealing with property repossession are unclear and do not establish legal certainty for property owners, it should be noted that, according to the government this law affects only a limited number of properties. That is because most homes were given for temporary use to others, on the ground of the Law on Temporary Takeover and Administration of Specified Property, which was adopted in 1995 and abolished in 1998. The consequences of this law have not been properly addressed so far, which means that around 10,000 houses are still occupied on the ground of this abolished law. I reiterate my point that there is an urgent need to adopt a comprehensive legislation on property repossession which would be in accordance with the Croatian constitution and international human rights standard.

5 - Could you briefly compare the Croatian State policy towards national minorities during the former HDZ rule with the year-and-a-half rule of the new Government of the six?

Although a period of one and a half year and the different circumstances makes it difficult to bring straight parallels, one could assess the policy of this Government towards national minorities as being more oriented towards fulfilment of Croatia's international obligations and commitments. The new Government adopted in June 2000 two laws regulating the right to education and the right to official use of minority languages. Later on a governmental working group, which includes representatives of the national minorities, was formed to prepare the draft of a new Constitutional Law on the Rights of National Minorities. However, this law has still not been adopted and is still

under preparation in consultation with the Council of Europe's Venice Commission. We look forward to seeing this law adopted in the near future.

6- How do you comment on recent arrests of Serbs just before local elections? Was it calculated to demoralize the Serb electorate?

Some representatives from the Serb community have pointed out to a connection between different arrests and the electoral campaigning, however, we are not in a position to confirm such an opinion. The Croatian authorities have informed the Mission that since October 2000 the judiciary and the State prosecutor have started a review of war crimes cases pending in different stages of the proceedings. We have supported this action in the understanding that it is an impartial pursuit of war crimes. It should also contribute to a greater sense of transparency in the system and provide for legal certainty, if the cases are handled expeditiously and in conformity with international law and standards. Nevertheless, the review has led to increase of the number of arrested individuals and although a significant number of persons have been released, it has caused a lingering sense of insecurity in the Serb community.

7 - Was the Croatian judiciary serving a policy of ethnic cleansing of the Serb community in Croatia?

I am not aware of anything which would support such a charge. I also think we should not continue to use these terms to describe events nowadays as I would hope they belong to another, past period of time.

8 - Do you consider that the court proceedings against the citizens of Croat ethnicity suspected of committing war crimes are too slow and why?

I would not characterize it that way. The court proceedings in cases of war crimes as a whole are sometimes very slow and other times too quick, having in mind the complexity of this kind of violations of humanitarian law. The most important quality we look for is impartiality and strict adherence to the rule of law.

(OVER)POLITICIZED JUDICIARY

9 - Is the Croatian judiciary overpoliticized?

Work definitely remains to be done to ensure real independence and the impartiality of the judiciary. This is a process, which as shown by other transition countries takes a long time. We should be patient, having in mind that the whole judiciary system is in need of reform. Work must be done, for example, to improve the efficiency of the judiciary, the reduction of the number of pending cases, and the upgrading of the professional quality of the judiciary at all levels.

10 - Do you see signs in the Croatian politics of abolishing collective guilt of Serbs for all war and post-war misfortunes?

There have definitely been statements of high-ranking officials, that prosecution of grave violations of humanitarian law will be determined on the basis of individual guilt. I would say that progress is faster in this area than in other areas like, for example, repossession of properties, where the signs sent are contradictory.

11 - Do you see Croatia as a member of the European Union in this decade?

That is not up to us to decide but for the European Union to do so.

12 - Can the incumbent state leadership of the Republic of Croatia during its mandate fulfill the most important commitments contained in the Stabilization and Association Agreement, which is a ticket to the EU?

I am afraid you will need to ask this question to my colleagues of the European Commission's office as I am not in a position to answer.

NON-GOVERNMENTAL ORGANIZATIONS

- **Does the OSCE co-operate with non-governmental organizations in Croatia, and with which ones? Do you consider that co-operation of the Croatian authorities with NGOs should also be better, and why?**

Our people work and cooperate with NGOs on a regular basis. We think this is an important part of our mandate as the state of NGOs is an extremely valid indicator of a country's democratic maturity. After a long struggle for several years, the NGOs have now begun to make progress in Croatia and the public is more and more aware of the importance of their role.

Although we are neither a humanitarian nor a donor organization, we have been funding some small grassroots projects in support of local NGOs. We have now requested our organization to increase funds directed at developing a domestic capacity to monitor government activities once the OSCE and other international organizations have completed their mandates in the country. The role of NGOs then will be paramount in taking up much of what we are doing nowadays. As for Croatian authorities, I think the priority in this area should be to pass a new Law on Associations, which governs the establishment and operation of non-governmental organizations.