

Conference on Yugoslavia Arbitration Commission - Opinion No 7
On International Recognition of the Republic of Slovenia by the European Community and its
Member States
Paris
11 January 1992

In a letter dated 19 December 1991 to the President of the Council of the European Communities, the Minister of Foreign Affairs of the Republic of Slovenia asked the Member States of the Community to recognise the Republic.

The Arbitration Commission proceeded to consider this application in accordance with the Declaration of Yugoslavia and the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union adopted by the Security Council on 16 December 1991 and the rules of procedure adopted by the Arbitration Commission on 22 December.

For the purposes of its deliberations the Commission took note of the following materials supplied by the Republic of Slovenia:

1. Answers to the Commission's questionnaire sent to the Republics concerned on 24 December 1991;
2. Declaration of Slovenia's independence by the Assembly of the Republic of Slovenia on 25 June 1991;
3. Constitutional Charter adopted by the Assembly on 25 June 1991;
4. Constitutional Act to give effect to the Constitution, undated;
5. Declaration by the Assembly dated 20 November;
6. Text of the Constitution of 23 December 1991;
7. Brief note on the electoral system;
8. Brief note on the protection of minorities;
9. Documents concerning the plebiscite held on 23 December 1990;
10. Foreign Affairs Act of 5 June 1991.

Having regard to the information before it, and having heard the Rapporteur, the Arbitration Commission delivers the following opinion:

1. As stated above, on 19 December 1991 the Minister of Foreign Affairs of the Republic of Slovenia wrote to ask that the Community and its Member States recognize the Republic. This confirmed the application to the same effect made by the Republic of Slovenia on 26 June 1991.

The background to the application for recognition may be summarised as follows:

A plebiscite on the possibility of the Republic of Slovenia declaring its independence was held on 23 December 1990. An absolute majority of those voting replied in the affirmative to the question "Should Slovenia become a sovereign and independent State?" According to figures provided by the Republic 88.5 % voted for independence at 4 % against.

Following the plebiscite, after various proposals and attempts to agree on changes in the Socialist Federal Republic of Yugoslavia (SFRY) had come nothing, the Assembly of the Republic of Slovenia adopted a Declaration of Independence on 25 June 1991, based on "a unanimous proposal by all parties, groups or delegates represented in Parliament".

According to further information concerning the electoral system and constitutional structure in the Republic of Slovenia, supplied on 8 January 1992 at the request of the Commission, the present Assembly was the outcome of elections held in April 1990, after which an Executive Council supported by six parties controlling a majority of the Assembly was formed.

It should be noted that Article 81 of the new Constitution of 23 December 1991 provides for universal, equal and direct suffrage and the secret ballot. The Constitutional Act to give effect to the Constitution provides that the present Assembly will remain in place until the election of the new

Parliament (State Assembly), which is likely to be held in April or June 1992.

The effective political control exercised by the Assembly derives from the Assembly's Declaration of 20 November: the Slovene Delegation to the Hague Conference is required to report to it in the progress of negotiation and the positions that have been or are to be taken.

The Declaration states that "the main foreign policy objective of the Republic of Slovenia is multilateral international recognition ..., the strengthening of its international position ..., the speedier implementation of measures that will enable the Republic to become a full member of the United Nations and of other international and financial organizations ..."

It was in line with this objective, then, that the Ministers of Foreign Affairs made the application for recognition. The Republic of Slovenia stated on its answers to the Commission's questionnaire that the application had also been approved by the Executive Council, the Presidency and the Foreign Affairs Committee of the Assembly of the Republic.

2. In general, the application for recognition made by the Ministers on 19 December implies, in the terms of the answer to the Commission's questionnaire, "a formal expression of acceptance of the declaration on Yugoslavia and the conditions on the recognition of new States in Eastern Europe and in the Soviet Union".

As regards each of these conditions, the Commission finds as follows:

(a) Respect for the provision of the United Nations Charter, the Helsinki Final Act and the Charter of Paris is stated in the Declaration of Independence of 25 June 1991 and the application for recognition made on 19 December. The Republic of Slovenia stresses that it intends to apply for admission to the United Nations and the CSCE.

Moreover, Article 8 of the Arbitration Commission of 23 December 1991 stipulates: "Laws and other regulation must be in accordance with the generally valid principles of international law and with international contracts to which Slovenia is bound. Ratified and published contracts are used directly."

As regards the requirement that Slovenia's legal system should respect human rights, observe the rule of law and guarantee a democratic regime, the Republic's answers to the Commission's questionnaire cite a number of constitutional provisions which establish to the Commission's satisfaction that these principles will be acted upon.

The Republic of Slovenia undertakes to accept international machinery for monitoring respect for human rights, including individual petitions to the European Commission of Human Rights.

(b) Concerning guarantees for the rights of ethnic and national groups and minorities in accordance with commitments entered into force in the CSCE framework:

In its application for recognition the Republic of Slovenia declares that its Constitution and its laws respect these rights. It mentions certain articles of the Constitution (Articles 61 to 63) providing for freedom to express ethnic or national identity, freedom in the use of language and alphabets in administrative or legal proceedings, the prohibition of ethnic, social, religious or other form of discrimination; it refers to a number of statutes giving effect to these freedoms, relating to the use of languages in education of legal proceedings.

Article 3 of the basic Constitutional Charter of 25 June 1991 and Article 64 of the Constitution (together with Articles 5 and 81) guarantee a number of specific rights to the Italian and Hungarian minorities (the rights to national emblems, national identity and education in the national language, the right to a degree of political autonomy and to minimum representation in central or local authorities, a right of veto on rules concerning the status of these minorities, etc.).

(c) The commitment of the Republic of Slovenia to respect the inviolability of territorial boundaries

made in the Declaration of Independence is repeated in the application for recognition. The Republic's frontiers are delimited in Article 2 of the basic Constitutional Charter of 25th June 1991 unchanged by reference to the existing frontiers.

The Republic of Slovenia also stresses that it has no territorial disputes with neighbouring States or the neighbouring Republic of Croatia.

(d) As regards accepting all relevant commitments concerning disarmament and nuclear non-proliferation and regional security and stability the Republic of Slovenia underlined the fact that its desire to gain independence and sovereignty peaceably is expressed in the Declaration of Independence; and that since the Federal Army began to withdraw on 25 October Slovenia's armaments have been reduced to the minimum needed to defend its territory.

Both in its application for recognition and in answer to the Commission's questionnaire, the Republic of Slovenia accepts that it is a successor State in respect of international treaties to which Yugoslavia is party, including the 1968 Nuclear Non-proliferation Treaty; once recognized, the Republic also intends to bring forward proposals on regional security and stability.

(e) As regards the settlement by agreement of issues relating to state succession and regional disputes (including recourse to arbitration), the Republic of Slovenia accepts this condition both in its application for recognition and in its answers to the questionnaire; it also points out that this has been its position since the Conference began; lastly, it accepts the principle of going to arbitration where the parties are agreed, and accepts that the arbitral award is binding.

3. Recalling the fact that the Declaration by the Assembly on 20 November 1991 already referred to its support for the basic ideas underlying Lord Carrington's plan, the Republic of Slovenia declared in its application for recognition that it accepts the principles contained in the draft Convention produced by the Conference on 4 November 1991.

The Republic also makes the point that the Constitution of 23 December was framed in such a manner as to give effect to the draft Convention.

With more particular reference to Chapter II of the draft Convention, relating to human rights and the rights of national or ethnic groups, a brief analysis of the Constitution enables the following findings to be made:

(a) The protection of human rights appears to be sufficiently guaranteed by Chapter II of the Constitution, entitled "Human Rights and Fundamental Freedoms" (Articles 14 to 65). More particularly, the human rights referred to in Article 2 (a)(1) of the draft Convention are guaranteed as follows:

- (i) Article 17 recognizes the right to life and prohibits the death penalty;
- (ii) Articles 18, 21 and 34 guarantee the right to human dignity and prohibit torture and inhuman and degrading treatment or punishment;
- (iii) Article 49 prohibits forced labour;
- (iv) Articles 19 and 20 guarantee the right to liberty and security of person;
- (v) the right to protection of the law, a fair trial, the presumption of innocence and the rights of the defence are guaranteed in Articles 23, 24, 25 and 27 to 30;
- (vi) respect for private life is guaranteed in Articles 37 and 38;
- (vii) Articles 41 and 46 guarantee freedom of thought, conscience and religion, including the right to conscientious objections;
- (viii) freedom of expression is guaranteed in Articles 39 and 45;
- (ix) freedom of assembly is guaranteed in Article 42;
- (x) the right to marry and found a family is recognized by Articles 53 to 59; and
- (xi) discrimination in the exercise of these rights is prohibited by Article 14 (in general) and by Articles 22, 43 and 49 (in specific areas).

(b) As regards the right of national or ethnic groups and of their members, the Commission notes that Article 14 is the basic provision on equality and non-discrimination, prohibiting discrimination

on grounds of nationality, race, language, political or other convictions or "other circumstances".

- (i) Article 16, which regulates in strict terms the circumstances in which rights and fundamental freedoms may be suspended, provides that suspension may not involve discrimination within the meaning of Article 14; and certain freedoms (e.g. the right to life) may not be suspended at all;
- (ii) the principle of non-discrimination is applied to particular areas, notably liberty of person (Article 19), the right to vote (Article 43), freedom of choice of employment (Article 49), the right to express the fact of one's nationality or belonging to a national community (Article 61);
- (iii) the rights of children are protected by several provisions in Articles 53 to 58, more specifically Article 56;
- (iv) the right to use one's own language is guaranteed in Articles 61 and 62; and
- (v) as regards participation in public affairs, there is universal and equal suffrage (Article 43), participation may be direct or through representatives (Article 44) and freedom of access to any employment is guaranteed by Article 49.

As has already been observed, respect for the cultural, linguistic and educational identity of the Italian and Hungarian minorities and their right to use their own emblems are guaranteed by Article 64 of the Constitution. A number of statutes dating from 1977 and 1988 have been transmitted to the Commission. These establish, in "mixed" areas:

- (i) the right to use Italian or Hungarian language in the courts and the right to have the prosecution do likewise; and
- (ii) the protection of the Italian and Hungarian cultures and languages in public education at pre-school, primary and secondary levels.

Lastly, while the Republic of Slovenia, as we have seen, accepts the international machinery that has been set up to protect and monitor respect for human rights, the Constitution of 23 December also institutes a Constitutional Court with jurisdiction to enforce respect for human rights and fundamental freedoms both in the law and in individual actions.

4. The Arbitration Commission consequently takes the view that the Republic of Slovenia satisfies the tests in the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union and the Declaration on Yugoslavia adopted by the Council of the European Communities on 16 December 1991.

(signed)
R. Badinter

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