

Interview: Wolfgang Petritsch, High Representative for BiH: "1991 Population Census is an acceptable mechanism for ethnic composition of RS government"

Serb news agency asked the High Representative, Mr. Wolfgang Petritsch, ten questions, which encompass most important segments of life in BiH and the present dilemmas, such as: changes to the BiH constitution, parity or proportional system of formation of government, restitution, new population census, real chances for BiH's accession to the European Union....What is Mr. Petritsch advocating and what is his vision for BiH after the last High Representative leaves. These are the responses:

SRNA: You are supporting the view that, in the implementation of the elections, representation in the government should be based on the 1991 census. Do you fear, however, that this could lead to significant reductions in the multi-party system in BiH and that it might represent a rerun of the 1990 elections, when the voting /with minimal exceptions/ was a mere census of the population, and that citizens, fearing another wave of national fervour, which is characterised in this region by voting along ethnic lines, for "their parties", i.e. nationalistic parties?

WP: The suggestion to use the 1991 census as a basis for the ethnic composition of the RS government is one of several

proposals being considered. It seems to me an acceptable mechanism to ensure full representation of BiH's constituent peoples and Others in the RS.

Of course, it is up to the political parties represented in the Entity parliaments to decide which mechanisms will turn the ruling of the Constitutional Court into political and social reality. It would reflect very badly on BiH if, in the year in which it is most likely acceding to the Council of Europe, its leaders fail to implement this court's decision. The implementation of the ruling is one of the post-accession criteria that BiH needs to fulfil.

What the International Community as a whole wants to see with regard to the Constitutional Court's ruling are comprehensive, substantial solutions – solutions that will ensure the full representation and protection of BiH's peoples and citizens in the two Entities. As you know, on 21 June 2001, the Steering Board also demanded that "symmetry in substance and principle in the Entity Constitutions is achieved within realistic and prompt time limits." This is a historic chance to advance Bosnia and Herzegovina, and I hope its leaders will live up to this challenge.

They do not have much time left – the Entity Constitutions should be amended by around mid-March to allow for the timely completion (dopuna) of the Election Law and general elections under this Election Law in October. So, I expect full-scale political engagement. The meetings in Mrakovica and Sarajevo have been a good start. This may be the first time since Dayton that the top leaders from both Entities and all three constituent peoples are coming together without mediation by the International Community in order to solve a question that is crucial for the future of Bosnia and Herzegovina.

Back to your question: Unlike you, I believe that the application of the 1991 census would actually increase party pluralism in the RS since some parties who have not run there

yet might then feel encouraged to do so. Also, if the thesis you mention in your question were true, each election in which Serbs, Bosniaks and Croats participate, for example elections at the State-level, would be what you call "a mere census of the population." They are not. In particular in the last country-wide elections in 2000, the parties without a national pre-fix made considerable gains: for example, the SDP won more than 20% of the votes.

I also think the requirement to include a certain number of Bosniak, Croat and other non-Serb ministers in the government would encourage the current parties in the RS, of which the biggest ones have an exclusivist Serb pre-fix, to open themselves up to non-Serbs. This would certainly be a welcome development in a multi-ethnic society.

Lastly, I would like to stress that the overall record of the RS in the implementation of Annex 7 has been dismal. There has been some progress in the last two years, but looking back at the entire six years since Dayton, the RS has done more to prevent return than to facilitate it.

If the RS National Assembly ensures full representation of Bosniaks, Croats and other non-Serb citizens in the RS government and other RS institutions, it will prove that it means business when it comes to Annex 7 and the Dayton Agreement. This would encourage Bosniaks and Croats to return to the RS and dramatically improve the image of the RS in the eyes of the International Community. The same, of course, goes for the Federation, which needs to include Serbs in its institutions.

SRNA: The principle 1:1:1 (Serb, Croat, Bosniak or vice versa) is being insisted upon in the proposals for important Entity level positions, regardless of the current population or election reality, which, even after the highest level of return, is not likely to be the same as ten years ago. Many argue that this is another attempt at introducing the so-

called “Kardelj principle” from the Communist era, which did not prevent the conflicts at the beginning of the 90s?

WP: You are raising a broader question regarding the relative merits of a proportional representation system in a multi-ethnic society, also called the civic concept that is based on individual rights, in comparison to a system based on ethnic quotas, parity and collective rights.

The problem is that all too often the arguments presented for one system or the other depend on the particular situation, rather than the merits of the system.

In that regard, former Yugoslavia is a case in point. In every ex-Yugoslav republic in which one people has made up more than half of the population, its representatives have demanded proportional political representation and found arguments for this model. Wherever a people have been, in numbers, a minority, suddenly a system based on ethnic parity has been advocated as “the only possible, right and just system.”

Parity, rotation and strong veto rights are what BiH Croats and Serbs demand at the BiH state-level; however, in the RS, which is dominated by Serbs, almost all political parties advocate proportional political representation.

I believe that each system has its advantages and disadvantages, and it depends on the particular situation which one is better suited. Often combinations of both are possible.

However, what is also important is how the elected representatives use and work the political system. If they respect each other and act in accordance with the law, if they take each other’s concerns seriously, talk to each other, negotiate with each other, make a sincere attempt to find solutions, every democratic system will function. If communication breaks down, if they try to out-manoeuvre each other, if they start bending the law, the system will break

down. In this respect, I believe that the Constitutional Commissions, which I established in both Entities a year ago, have made a positive contribution to the evolution of the political process.

The former Yugoslavia at the end of the '80s, early '90s is a prime example of the catastrophic consequences that a breakdown of the political dialogue can have. But there was more to it: there was a willingness to wage a war and simply – kill for one's political gains. With regard to the war in Bosnia and Herzegovina, which you mention, it is also clear that the influence of neighbouring countries played a decisive and destructive role.

Coming back to the issue of representation of BiH's three constituent peoples and the group of Others in the Entities, I have to say that this is one of the central points of the Constitutional Court's decision and should give Serbs in the Federation and Bosniaks and Croats in the RS, plus members of the group of Others, the assurance that their representatives play a significant role in making decisions, developing legislation, and eliminating the possibility of discrimination in the Entities.

SRNA: If we count with the 1991 census as the basis of establishing governments, should we take into consideration the 1981 census, which treated private property, too, since the Restitution Law is only to be considered in the future and we know that there have already been many instances of exchanges or sales of houses and apartments in both Entities, or are in progress, which could lead the nationalised property to the position of "collateral damage"?

WP: The implementation of the Constitutional Court's decision and restitution are two completely separate issues.

With regard to the Constitutional Court's ruling, common sense dictates using the latest available figures, which means the

ones from the 1991 census. Another reason why this makes sense is that the current demographic situation is not the result of natural movements, but of war and criminal activities, such as ethnic cleansing. It is the authorities' duty to ensure that people are able to return if they wish to do so. Returnees will of course feel encouraged if they see that they are represented in institutions and have a say in the decision-making process.

Secondly, if you take the 1981 census into consideration, why stop there? Why not use records from 1971, 1948, 1921 or even the Austrian or Ottoman times? If we allow this discussion to start, which census was "the best", it will never stop.

With regard to the question of restitution, the Steering Board of the Peace Implementation Council has been very clear on this issue. As early as September 2000, it stated that the conduct of a restitution process is the choice of the domestic authorities, but that it needs to be fiscally sound, provide actual and fair compensation to all entitled regardless of their ethnicity, and not be detrimental to the economic viability of BiH's already fragile economy. So far, the responsible authorities have not come up with a model that meets these requirements. If they do, I believe it will cover all property that was nationalised by the Yugoslav Communists.

SRNA: When would it be realistic to expect a new census of the population in BiH and what are the conditions and deadlines for such an event, considering that a census was made even in Kosovo, only two years after the arrival of the International Administration, regardless of the exodus of a part of the population, and the census was later used for voter lists. On the other hand, more than six years have passed since Dayton and a census is not planned yet?

WP: I do not believe BiH is ready for such a project. During the 1992-95 conflict, roughly half the country's population, more than 2 million people, were forced to flee their homes,

and only some 800,000 have so far returned.

Many refugees and displaced persons have started new lives elsewhere, but according to our information, some 700,000 are still waiting to return.

Until those who want to return have been enabled to do so, a census would come too early. This is not to say that a census should not be held in the coming years, as a census is a very useful tool for planning policies and reforms – which will be important for BiH in the future. But, as said, this only makes sense after Annex 7 is fully implemented.

Regarding Kosovo, I am not aware of any census there. As far as I know, the international administration had to find out who lived in Kosovo to issue ID cards and put together a voters' register for the elections since the 1991 records were partly destroyed, partly not available to the administration. So the administration only assembled a civil registry. The administration did not even include people younger than 16 in this registry. In BiH, we fortunately have access to the 1991 records.

SRNA: With the suspension of the Federation law on the two-year prohibition of sales of purchased property, your office stated some time ago that it was not against exchanges of occupancy rights either. Some parties, particularly those in the FBiH are against that, and, on the other hand, a large number of displaced persons in the RS, are seeking to exercise the right to decide where to live. Do you think you have waited too long, and that the solution to the problems of returnee property would have been resolved much faster if this position had been taken by OHR several years ago?

WP: I have always been a supporter of the freedom of choice. In the first years of peace implementation, the unofficial policy of all three nationalist parties in power was to discourage return, in particular return of people of a

different ethnic background to areas that the nationalist parties controlled. This can hardly be described as promoting the freedom of choice.

While the RS, but the Federation, too, still needs to do much more to ensure the right to return, in 2000, we saw the first real signs of improvement. Today return is possible in relative safety across BiH, although return related incidents still occur far too frequently.

This improvement of the situation has enabled me to lift the two-year ban. If it had been lifted before, I fear returnees would have come under pressure to sell their apartments and would not have had real freedom of choice.

With regard to the exchange of apartments, you know that my latest amendments to the property laws allow for the recognition of exchange contracts unless one party objects to it, so we can make sure that nobody is forced to stick to a contract into which he or she was forced under duress. Secondly, socially owned property cannot be exchanged until it has been repossessed – again in order to ensure that people have real freedom of choice.

I am confident that my position, and that of the International Community as a whole, has been correct. The ever-increasing number of returns testifies to this.

SRNA: The House of Peoples or Constitutional Commissions argued for in the amendments to the Entity Constitutions have a counterpart in a similar body from 1990, which also demanded an ethnic consensus, under the then Constitution of the Socialist Republic of BiH. This was not respected and a simple majority then changed the Constitution and a course was set for a referendum against the will of one of the peoples (it was the Serbs on that occasion) which lead to the horror of war. What guarantees are there that the current solutions could prevent something like this?

WP: As I said before, any democratic political system is only as stable as the institutions that protect its function, and the elected representatives that use it, abide by the law and make an effort to ensure that it functions.

I do not want to enter into an argument with you about what actually happened in 1990 and who is to blame for what. But BiH is today in a radically different position. Firstly, the International Community maintains a heavy presence in the country and will continue to do so until BiH is self-sustaining. Secondly, Belgrade and Zagreb now fully support an independent and sovereign BiH as established by the Dayton Agreement, while in the early '90s their policies were directed at the partition of the country. Thirdly, BiH is on its way to Europe – slowly integrating in European structures. It will not be left alone one day, but as the presence of the International Community in BiH decreases, its ties with Europe grow stronger.

The real guarantees for stability and prosperity lie in strengthening BiH's ties with Europe, developing economically, and ensuring the rule of law, an independent judiciary that treats everybody equally, and respect for individual human rights.

SRNA: There is a contradiction between the Decision of the Constitutional Court of BiH on the constituent status of the three peoples in BiH on the whole territory of BiH and the approved Election Law, in other words, the manner of election of people's representatives in common institutions/ as provided for by the Dayton Agreement/ according to some members of the Court itself, but also according to some politicians – for instance, only a Serb may be elected to the Presidency of BiH from the RS and a Bosniak and a Croat from the Federation of BiH, and Houses of Peoples will have five Serb representatives /exclusively from the RS/ and Bosniak and Croat representatives /exclusively from the F BiH/. Since the High Representative has the final say, if there is a dispute,

how do you see your role in this “most explosive” political problem?

WP: There is no contradiction.

The Constitutional Court's ruling on the constituent status of the three BiH peoples on the whole territory of BiH is of course based on the BiH Constitution because that's what a constitutional court does – it checks whether other laws are consistent with the state constitution, which is the highest law of a country and takes precedence over all other laws.

The Election Law is also fully in accordance with the BiH Constitution.

So, I do not see how you can say that a Constitutional Court's ruling based on the Constitution is not in accordance with the Election Law, which is also based on the Constitution.

SRNA: Ambassadors of the BiH Contact Group member countries said in interviews that the constitutional framework of Dayton should not be touched, in other words, that the Entities should remain, but the common institutions should be strengthened as well. Does this mean that arguing for the so-called Dayton II will come to nothing or essential changes will be made, after all, albeit on other levels?

WP: There will be no Dayton II, and the whole International Community is in full agreement on this question.

There are two key reasons for this. Firstly, it does not make sense to change something before it is fully implemented. Secondly, the Agreement is far more intelligent and open to evolution than many think.

It is a living document. As Annexes are implemented, they become less relevant or are nationalised. For example, Annex 3 dealing with the role of the OSCE in elections is no longer applicable as BiH has its own Election Law and its own bodies

to organise the elections. Annex 7 will become less significant once all refugees and displaced persons will have returned home and all forms of ethnic discrimination will have been eliminated.

The core of the Dayton Peace Agreement is of course Annex 4, the BiH Constitution. The fact that there will be no Dayton II does not mean that the present constitutional arrangements in Annex 4 are frozen for all time. The Constitution itself outlines the mechanism for its amendment, so the elected representatives might one day choose to amend it, or outside pressure from the Council of Europe or the EU might produce the need for amendments. Further, the Constitutional Court might be asked to elaborate on certain points, thereby developing the constitutional position through interpretation of the Constitution.

The Constitutional Court's decision on the constituent status of BiH's peoples in both Entities is a prime example of how the Dayton Peace Agreement offers possibilities for the advancement and evolution of BiH. The establishment of the Court was a Dayton requirement, and now the Court has passed a ruling that will change the internal structure of the Entities and ensure full representation and protection of BiH's peoples and citizens across BiH.

But at the moment, the emphasis must continue to be on the implementation of the Dayton Agreement rather than on how to change it, because only when it is implemented will it become evident what if anything needs to be improved.

SRNA: The former Stability Pact Co-ordinator, Mr Bodo Hombach, sharply criticised in a report to the German Government the "bureaucracy of the European Commission", which, in his words, slows down the recovery of the region. Mr Erhard Busek, his successor, has the same position. How do you see their arguments that the Balkans countries should be "sent a clear signal about the possibility of joining the European Union",

in other words, whether such a “Divine Gift” is a reality considering the economic collapse of BiH?

WP: I am convinced of the need for Europe to reach out to Bosnia and Herzegovina. Europe must do all it can to help BiH recover from its terrible past and develop as a modern democracy and market economy. I have advocated this at every opportunity, at all levels in my visits to European capitals and contacts with EU officials. This week I was in London, before that in Strasbourg addressing the Council of Europe, a few weeks ago I spoke before the NATO and EAPC ambassadors in Brussels, and each time I made my call for a European perspective for BiH.

Eventual membership of the European Union will not be a “divine gift”, but the result of the hard work and positive engagement that is required from the elected officials in BiH to make it happen on behalf of all people in BiH. I need not tell you of the travel, employment and trade benefits that are associated with membership of the EU.

The EU at its summit in Zagreb in November 2000 sent a very clear signal to BiH with regard to the steps that lead to membership. One of them is called the “EU Road Map”. It calls for 18 measures in the fields of economy, politics, human rights and rule of law. Fulfilment of these 18 preconditions means that BiH will qualify for a feasibility study for a ‘Stabilisation and Association Agreement’ (SAA) with the EU.

This is the first step to EU membership and will send a strong signal to the EU and potential investors that BiH is improving legally, politically and economically.

The EU assessment was that these points could be completed by mid-2001, but by that date, only half of the requirements were fulfilled. By now, we are a bit further, but still not there yet.

One of the reasons for this is Serb obstruction in the State

institutions. They blocked many laws that were on the "EU Road Map" and obstructed some other measures that needed to be taken.

One thing is clear: only the State of BiH will join the EU one day – the Entities will never be admitted on their own. And BiH will only join if its State institutions function, so I would assume that the Entities have a strong interest in creating "a functional state," which is an expression I coined back in 2000 and which is now even used by RS President Sarovic.

If the RS obstructs BiH's integration in Europe, it obstructs its own integration in Europe. It will be responsible for having denied its own citizens and all the citizens of BiH the benefits that come with it. It will have to explain to its citizens why many other countries, among them perhaps the FRY, will have joined, and BiH will not have. One should not forget that the EU unites countries and its citizens. It is the roof under which we all will live.

SRNA: When the Ottoman Empire left the area of today's BiH – everyone wondered what would happen with the region. The same happened after the departure of the Austro-Hungarian administration, then after the collapse of the Yugoslav Monarchy and then the death of the former communist leader of the second Yugoslavia, Josip Broz Tito. Every change was followed with conflicts and grave political turmoil. Since another reduction of SFOR troops is being announced as well as the reduction of the international administration, how would you answer the question: What will happen with BiH after the departure of the High Representative (whoever he or she is)?

WP: As I already mentioned, BiH will not be left alone. As the presence of the International Community in BiH declines – be it the number of SFOR troops or the staff of civilian organisations such as my Office -, so BiH's ties with Europe will grow stronger. By the time there will no longer be a High

Representative, BiH will have become part of Europe. And the internal politics of BiH will be a European domestic affair by then.

This is the reason why I have always preferred to work on an “entry strategy” into Europe for BiH, instead of agonising about an “exit strategy” for the International Community from BiH.

BiH has already taken its first steps towards joining the European family of states. Formal admission into the Council of Europe is very close. The country’s legislation is being reviewed and brought into accordance with EU standards. BiH is introducing institutions required by the EU, such as the State Border Service. Slowly but surely BiH is working toward a Stabilisation and Association Agreement with the EU.

It is in the interest of the International Community and the EU in particular to assist BiH in becoming a stable and self-sustainable state. This is something I have tried to promote through the concept of “ownership” – the responsibility of BiH’s officials and citizens for their own country and its affairs – since the beginning of my mandate. The partnership that has developed over the last year is an important step towards the domestic authorities’ taking full responsibility for your country’s future.

As BiH moves towards Europe and begins to participate in Europe’s future development, so it will become more stable and prosperous. History testifies to this. Would anyone have believed but a short time after WWII that France and Germany could be such close partners?

Not so far in the future, Serbs, Croats, Bosniaks and Others, regardless of the country they reside in, will come together to live in a single Union – the European Union. This is the future that I see for BiH and for the region, and I am sure that I share this with the citizens of BiH.