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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

**WORKING PARTY
ON THE OMBUDSMAN
OF THE REPUBLIKA SRPSKA**

Strasbourg, 24 April 1997

Secretariat Memorandum

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The Working Group on the establishment of an Ombudsman of the Republica Srpska (Bosnia and Herzegovina) met in Strasbourg on 24 April 1997 with Mr Jean-Claude Scholsem in the Chair. The names and positions of the participants appear in the appendix to this memorandum.

In the course of their discussions, the working group made the following observations.

- There is general consensus within the international community (High Representative, Council of Europe, OSCE, UN) that an ombudsman-type institution should be established as soon as possible in the RS;
- For this purpose, consideration had to be given to:
 - the judicial systems for the protection of human rights in Bosnia and Herzegovina, characterized by the complexity in the FBiH and the simplicity, if not non-existence, in the RS.
 - the need to give some immediate thought to the nature of the long-term relationship between the Ombudsman structure in the RS and the existing Ombudsman structures in the BiH and the FBiH, as well as the relationship between these structures and the judicial apparatus.
- Given the differences between the working methods of the OBiH (more legalistic approach, use of English, transfer of know-how relating to international human rights protection instruments, especially the ECHR) and those of the OFBiH (having a more political mandate, use of local languages, working at grass-roots level, not using international instruments), it has been decided to widen the scope of the study to cover the situation as regards the work of the Ombudsmen of the FBiH.
- The objective provisionally agreed upon is the establishment of an office of the ORS working at grass-roots level and adopting a somewhat political approach, like the OFBiH, although more balanced and with some degree of international supervision.
- Regarding the legal basis of the ORS, the Dayton agreements (Annex 6), which provide for the establishment of an office of Ombudsman for the whole of BiH, could be interpreted as authorising the establishment of such a structure along more "federalist" lines, and, consequently, the establishment of an ORS by analogy with the OFBiH.
- However, for the long term, it is essential to opt for a domestic-law legal basis, to ensure the "survival" of the institution post-Dayton and to resolve a number of legal questions (the legal validity of the measures taken by the ORS, the obligations of the RS, relations

between the ORS and the various RS institutions). The international community (in this case, the Venice Commission) could propose draft legislation to the RS which could then be enacted in order to give the ORS a basis in domestic law. In the period prior to the enactment of this legislation, the office of the ORS would be established alongside the OBiH pursuant to Annex 6 of the Dayton Agreements. The draft legislation could also be included in the rules of procedure of the OBiH and would thus serve as a provisional legal basis for the operation of the ORS.

- The working group reached the following conclusions:
 1. As regards the institution of the ORS, the approach agreed upon is to transpose the Washington system (OFBiH) to the RS, and in this way create a parallel with the FBiH, by laying down conditions to ensure a certain degree of international supervision. Accordingly, the office should comprise three Ombudsmen of the RS (1 Bosnian, 1 Croat and 1 Serb); it would be funded by international organisations (primarily the OSCE); the international community (High Representative, OSCE, OBiH) would be responsible for the appointment of the first Ombudsmen of the RS. An RS law should constitute the legal basis for the office of the ORS.
 2. During a preliminary stage, the transposition of the institution of the OFBiH to the RS would be carried out under the umbrella of Annex 6 of the Dayton Agreements. The rules of procedure of the OBiH would serve as the provisional legal basis of the institution.
 3. The Venice Commission is instructed to prepare a draft legislation for an ORS, in conformity with the positions outlined in paragraph 1 above and on the basis of the Council of Europe's programme of activities. It will also take into account, for the long term, the legal basis of the OBiH and that of the OFBiH. The draft legislation will be included in the rules of procedure of the OBiH, which will serve as a provisional legal basis for the institution.
 4. The Venice Commission will initiate discussions with the Serbian authorities (if possible before the beginning of June) in order to secure their co-operation.

Abbreviation used:

RS	Republika Srpska
FBiH	Federation of Bosnia and Herzegovina
BiH	Bosnia and Herzegovina
OFBiH	Ombudsman of the Federation of Bosnia and Herzegovina
OBiH	Ombudsman of Bosnia and Herzegovina
ORS	Ombudsman of Republika Srpska

LISTE DES PARTICIPANTS

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