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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT

PROPOSAL FOR A LAW ON THE MERGER OF THE HUMAN RIGHTS CHAMBER AND THE CONSTITUTIONAL COURT OF BOSNIA AND HERZEGOVINA

DRAFT LAW ON THE MERGER OF THE HUMAN RIGHTS CHAMBER WITH THE CONSTITUTIONAL COURT OF BOSNIA AND HERZEGOVINA

"Having regard

- *to the constitutional obligation of Bosnia and Herzegovina under Article II.1 of the Constitution to ensure the highest level of internationally recognised human rights and fundamental freedoms, as well as to ensure that any amendment of the Constitution does not eliminate or diminish these rights and freedoms;*
- *to Article II.1 of the Constitution of Bosnia and Herzegovina read together with Article XIV of the Annex 6 of the Dayton Peace Agreement and to the Agreement of the 10th of November 2000 between the Parties to Annex 6;*

Considering that the possibility offered to victims of human rights violations directly to seek judicial protection and obtain redress of those violations from a highest judicial authority at the level of the State concerned is the cornerstone of international human rights protection;

Decides as follows:

Article 1

The Human Rights Chamber established as part of the Commission on Human Rights provided for in Annex 6 to the Dayton Peace Agreement shall be merged with the Constitutional Court of Bosnia and Herzegovina in accordance with the following provisions:

Article 2

[*Six months after / On] the date of entry into force of the European Convention on Human Rights and Fundamental Freedoms for Bosnia and Herzegovina, the Human Rights Chamber's competence to receive applications, as provided for in Article VIII of Annex 6 to the Dayton Peace Agreement, shall cease. [The Constitutional Court is invested with the same powers and competences as the Human Rights Chamber for Bosnia and Herzegovina under Annex 6 of the Dayton Peace Agreement.]*

Article 3

The Human Rights Chamber shall continue to deal with all cases which are pending before it on the date mentioned in Article 2. All cases introduced to the Chamber after the said date shall be deemed to have been introduced before the Constitutional Court of Bosnia and Herzegovina and will be dealt with by the latter in accordance with Article VI of the Constitution, the Constitutional Court's Rules of Procedure and other relevant legislation on the Constitutional Court.

Article 4'

The Human Rights Chamber shall terminate its operation 18 months after the date of ratification of the European Convention on Human Rights, but in any case not before 31 December 2003. All cases pending before the Chamber at the time of the termination of its operation shall be transferred to the Constitutional Court and will be dealt with by the latter in accordance with Article VI of the Constitution, the Constitutional Court's Rules of Procedure and other relevant legislation on the Constitutional Court.

Article 5

In the framework of proceedings before the Constitutional Court, the Court may, on its own initiative or upon request of the parties or of the Ombudsman of Bosnia and Herzegovina, invite the latter to submit observations and conclusions concerning a case pending before it.

Article 6

Any appeal under Article VI.3.b. of the Constitution must be lodged within six months from the date on which the decision complained of becomes final and enforceable or, where appropriate, within six months from the date on which the appellant/applicant is notified of such decision, or, in the absence of an available effective remedy against the act, decision or omission complained of, within six months from the date on which the alleged violation has occurred / the date of the alleged violation.

Article 7

In the framework of proceedings relating to alleged human rights violations under Article VI.3.b, the Constitutional Court may, when it finds that a violation has occurred, order any competent authority to refrain from particular action or to take specific action with a view to redressing the violation found.

The Court shall also be competent to take cognisance of any claims for compensation relating to costs, pecuniary and non-pecuniary damage and interest. The decision may state the amount of the compensation to be paid to the victim of the violation, and interest if appropriate, and specify the authority responsible for payment.

Article 8

In the framework of proceedings relating to alleged human rights violations under Article VI.3.b and in order to avert potential serious and irreversible damage to fundamental rights and freedoms, the Court may order provisional measures. These may consist of injunctions to any authority to refrain from particular action or to take specific action. Orders for provisional measures may be issued without oral proceedings. Their validity shall cease, at the latest, when the Court's final decision on the case is issued.

Article 9

*The Chamber and the Court shall retain their respective staff**s** and separate financial resources until six months before the termination of the Chamber's operation. On that date the Chamber's staff and material resources and assets**,** with the exception of the Executive Officer and other international staff and financial resources necessary for the functioning of the Chamber until the termination of its operation, are transferred to the Constitutional Court.*

Article 10

*The funding of the Constitutional Court of Bosnia and Herzegovina shall be provided for in the State budget and shall ensure the independent and comprehensive exercise of the Court's constitutional judicial tasks. The State budget shall annually allocate in a separate item funds needed to enable activity of the Constitutional Court**,** that shall be managed by the Constitutional court autonomously.*

Article 11

Following the date referred to in Article 2, a co-coordinator shall be appointed by the Presidents of the Constitutional Court and the Human Rights Chamber jointly, after consultation with the High Representative, with a view to advising the Presidents of both institutions on all legal and material issues relating to the merger operation.

EXPLANATORY NOTE

General comment

Introduction

1. At its 39th Plenary meeting (Venice, 18-19 June 1999), the European Commission for Democracy through Law (Venice Commission) adopted a Preliminary Proposal for the re-structuring of Human Rights protection Mechanisms in Bosnia and Herzegovina (CDL-INF (99) 12)**.** This document, drawn up at the request of the Office of the High Representative, includes the proposal for a "merger" of the Human Rights Chamber (hereafter "the Chamber" and the Constitutional Court (hereafter "the Court"), at the level of the State of Bosnia and Herzegovina. Two main reasons are put forward for this proposal:

   First, the partial overlapping between the competence of the Chamber and the Court as regards human rights issues is likely, in the Venice Commission's view, to become an important factor leading to the dysfunctioning of human rights adjudication in the country.

   Second, in the Commission's view, the Chamber is a transitional *sui generis* (quasi-international) institution, whose establishment under Annex 6 to the Dayton Peace Agreement was necessary pending the accession of Bosnia and Herzegovina to the Council of Europe and ratification of the European Convention on Human Rights (ECHR). The Chamber should thus cease its operation after the ratification of the ECHR, when Bosnia and Herzegovina will be subject to the control mechanisms of this instrument, namely, the European Court of Human Rights.

2. The Venice Commission concluded that it is both logical and desirable to opt for the transfer of all competences of the Chamber to the Court in order to entrust all final appeals in human rights cases to a single jurisdictional body at the level of the State. This transfer should take the form of a "merger" of the (Human Rights) Chamber with the Constitutional Court, ensuring not only the transfer of competence but also an effective transfer of expertise, experience, procedural and other capacities and resources.

3. At its 42nd Plenary Meeting (Venice, 31 March – 1st April 2000), the Commission concluded that the proposed "merger" should consist of the termination of the Chamber's operation and transfer of its competences (and possibly of its docket), together with its human and financial resources, to the Court. The proposed merger should not take place before the ratification by Bosnia and Herzegovina of the ECHR, after which Bosnia and Herzegovina will be subject to the control mechanisms of this instrument, namely the European Court of Human Rights. In order to achieve access to the Court under the same conditions as to the Chamber in cases of a lack of effective remedies, the Court's appellate jurisdiction (Article VI, 3 (b) of the Constitution) could be construed in such a way as to enable the Court to deal not only with human rights issues arising out of a judgment but also with similar issues arising out of the lack of

judgment, such as denial of justice. As the case-law of the Court did not so far contain any indication of a development in this sense, it was difficult to conclude, at that time, that the competence of the Chamber to deal with allegations of human rights violations under Article II para 2 of Annex 6 coincided with the "appellate jurisdiction" of the Court. The Commission found that Article VI, 3 (b) of the Constitution should be amended in order to ensure that the Constitutional Court's "appellate jurisdiction" comprises appeals against judgements as well as appeals challenging the lack of judgements (CDL-INF (2000) 8).

4. Following its conclusions above and upon the initiative of the Office of the High Representative the Venice Commission convened two meetings in Paris in March 2001 (CDL 2001 (32)) and in Bled, Slovenia, on 10-12 June 2001 (CDL (2001) 62def) with a view to preparing a draft law on the merger. The issue of the merger of the Human Rights Chamber and the Constitutional Court was further discussed with representatives of the Government of Bosnia and Herzegovina and of the Entities in a meeting held in Sarajevo, on 11 October 2001.

As to the use of the term "merger"

5. The Venice Commission considered whether the terms "transfer of competencies" could possibly be more appropriate to designate the proposed operation. Although, one could consider that the draft law deals principally with the issue of **transfer** of Human Rights Chamber competencies, the term **"merger"** has been chosen in order to illustrate the whole mechanism of this transfer, which includes not only the transfer of competences but also an effective transfer of expertise, and experience, procedural and other capacities and resources. Therefore the Commission upholds the use of the term "merger" rather than transfer considering that this transfer is achieved by a merger rather then by a transfer in a stricto sensu sense.

As to the proposed merger and its timing

6. The Commission has repeatedly indicated the reasons that advocate for the proposed merger (see above).

7. It is however aware that other solutions may be found to accommodate the existence of two highest judicial authorities in Bosnia and Herzegovina. These include the continuation of the Chamber as a permanent judicial institution of Bosnia and Herzegovina together with the Constitutional Court and there may be good reasons for such an approach both from a legal point of view[1] and from the view of judicial policy. In fact, a specialised human rights court can be regarded as a powerful domestic remedy for human rights cases and simultaneously as an effective filter for human rights cases that are likely to be brought to the European Court of Human Rights after ratification of the European Convention of Human Rights by Bosnia and Herzegovina. Moreover, despite the partial overlapping of competencies and the risk of conflicting jurisprudence, the Court and the Chamber seem to have reached a certain equilibrium in the distribution of competencies and for the time being no appeals from one institution to the other seem admissible.

[1] *Article II.1 of the Constitution of BiH makes a direct reference to the institutions of Annex 6, i.e. the Human Rights Ombudsman and the Human Rights Chamber, as means to ensure the highest level of internationally recognised human rights in Bosnia and Herzegovina.*

8. This equilibrium may however be disturbed after the accession of Bosnia and Herzegovina to the Council of Europe and the ratification of the European Convention of Human Rights, which are the working hypotheses of the merger proposal.

9. Indeed, it will no longer be possible to consider the (Human Rights) Chamber as a quasi-international judicial institution embodied in the judicial system of Bosnia and Herzegovina. The Chamber will have to be regarded as a "court" in Bosnia and Herzegovina, within the meaning of Article 6. 3 (b) of the Constitution and, consequently, appeals from the Chamber to the Constitutional Court will be possible.

10. Alternatively, it might be possible for the (Human Rights) Chamber to be regarded as an international institution created by the Dayton Peace Agreement (an international treaty). This will avoid appeals from the Chamber to the Constitutional Court but may also exclude individual applications to the European Court of Human Rights in Strasbourg, as this Court cannot deal with matters that have been submitted to other procedures of international investigation or settlement (Article 27 ECHR). Of course, such a result would be mostly unwarranted.

11. Finally, it would be still possible to envisage a continuation of the present situation with both institutions at the top of the judicial pyramid of Bosnia and Herzegovina. However, this would also prolong the existing "forum shopping"[2] situation and will create a definite risk of conflicting jurisprudence with unpredictable legal but also political consequences. If the two institutions were to be maintained, it would be necessary to amend the Constitution of Bosnia and Herzegovina, and in particular Article VI, with a view to entrusting direct human rights litigation – and possibly also competence to decide issues upon referral by other courts - exclusively to the Human Rights Chamber. It should also be ensured that the permanent Human Rights Chamber, if it is to be regarded as an effective remedy for human rights violations, should not only decide on whether there has been a breach of human rights by the State or an Entity[3], but should have an "appellate jurisdiction" and thus be empowered to quash and annul any acts (possibly also normative acts) or decisions or judgments that are in breach of human rights and freedoms guaranteed in Bosnia and Herzegovina.

12. The Commission is of course at the disposal of the authorities of Bosnia and Herzegovina and the Office of the High Representative to consider further any of the above possible options. It is however convinced that **the proposed merger is a more adequate response** to the concerns and problems that can arise after the ratification of the European Convention on Human Rights by Bosnia and Herzegovina.

13. Moreover, the Commission strongly recommends that **the decision** as to the future of the Human Rights Chamber, be it its merger with the Constitutional Court or any other of the above options, **be taken before the ratification of the European Convention of Human Rights**.

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[2] *An alleged victim of human rights violations can choose, under the present legal regime, to bring his case before the Constitutional Court or before the Human Rights Chamber, a situation prejudicial to the rule of law.*

[3] *See Article XI of Annex 6 to the Dayton Agreement*

14. Finally, the argument has been raised in the discussions on the merger that the judicial system of Bosnia and Herzegovina may not be in a position to secure an effective domestic protection of human rights should the Human Rights Chamber cease to operate in its present form. The Commission should stress that it has no competence to assess the functioning and the effectiveness of the judicial system of Bosnia and Herzegovina and its entities as a whole. The Commission has worked on the hypothesis of Bosnia and Herzegovina acceding to the Council of Europe and becoming a party to the European Convention of Human rights. This presupposes that Bosnia and Herzegovina is capable to respond to the requirements of the Statute of the Council of Europe, to respect the rights and freedoms enshrined in the Convention and abide by the judgments of the European Court of Human Rights. The proposal on the merger is made on this assumption.

As to the normative level of the proposed merger

15. The question whether the proposed merger requires a constitutional amendment, or a law, or a mere amendment of the Rules of procedure of the Court has been raised.

16. The view was expressed that the Constitutional Court, is already constitutionally able to take upon itself all competences of the Chamber of Human Rights without any amendment of the Constitution or adoption of a law on the merger.

17. In the Commission's view, the necessity of amending the rules of procedure of the Court in order to allow the Court to cope with an increased volume of Human Rights cases should, of course, be stressed. However, amending the Court's Rules of procedure seems not sufficient. The Commission would clearly prefer defining in a specific norm the role of the Constitutional Court in the protection of Human Rights in Bosnia and Herzegovina after the ratification of the ECHR and the cessation of activities of the Human Rights Chamber.

18. The Commission would have no objection to see the merger provided for by a constitutional amendment, if a favourable political climate and conditions are present. A constitutional amendment would have the advantage of clarifying in a most appropriate way the competences of the Constitutional Court in human rights matters. Such a constitutional amendment should contain in substance the provisions currently set out in Articles 1 to 4 of the draft.

19. Nonetheless, the Commission considers that there exists already a constitutional basis for the merger that allows for this operation without necessarily going through a constitutional amendment. Actually, Article II.1 of the Constitution enshrines the obligation of Bosnia and Herzegovina to ensure the highest level of human rights and refers in this respect to the Human Rights Commission established under Annex 6. Article XIV of Annex 6, dealing with the fate of the Human Rights Commission after the end of a five year period, refers in turn to a transfer of responsibility for the operation of the Commission to the institutions of Bosnia and Herzegovina. Therefore, Article II.1 of the Constitution, combined with Article XIV of Annex 6 permits that the role, competence and powers of the Human Rights Commission be taken up by institutions of Bosnia and Herzegovina. However, this constitutional permission does not suffice for the merger operation but requires further legislative

action to determine the institution(s) in Bosnia and Herzegovina that are to take up the role, tasks and powers of the Human Rights Commission, the time of the transfer of competencies, the means by which the transfer of responsibilities will be realised. The law on the merger aims at responding to the need for such a legislative action.

As to the inclusion of procedural regulations in the draft law of the merger:

20. The Commission is fully aware that the proposed draft deals in Articles 7, 8, 9 with procedural issues that could be considered as already stipulated or to be stipulated in the Rules of procedure of the Constitutional Court. Nevertheless, the Commission considers it essential to include these provisions in the Law on the merger in order to guarantee the highest level of protection. These provisions, dealing essentially with the fundamental right of access to the Constitutional Court should preferably be foreseen on the level of the law of the merger rather than on the level of Rules of Procedure.

21. In this respect, the Commission recalls that all European Constitutional Courts or bodies of equivalent jurisdiction dealing with human rights issues see their activities and procedures mainly regulated in a specific law; which is often only completed by internal rules of procedure adopted within the Court. The main reason for dealing with procedural aspects in a law is the need to guarantee the legal certainty of the use of legal avenues in the field of judicial protection of human rights.

As to the transfer of capacities

22. The Commission considers that the success of the merger will depend on the human and financial resources dedicated to the Constitutional Court in order to deal with the case load that might follow from the merger. The draft law provides for the transfer of staff and material resources from the Chamber to the Court. The Commission would urge the competent authorities to allocate to the Constitutional Court sufficient financial and human resources for the fulfilment of its tasks.

23. Furthermore – and in order to ensure a certain degree of continuity - the Commission recommends that the competent authorities consider the possibility of appointing former judges of the Human Rights Chamber to sit as judges in the Constitutional Court.

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Proposals for further normative action

24. The Commission further considers that the Rules of Procedure of the Constitutional Court of Bosnia and Herzegovina should be amended where necessary in order to secure the following:

- *Procedural requirements*

In the event that no appealable judicial decision is available, it shall be sufficient for the applicant/appellant to show that no such decision could be obtained.

- *Sessions of the Court*

The Court shall be permanently in session. The duration of judicial vacations shall be determined by the Court with due regard to the needs of its business.

- *Possibility for the Court to decide cases in panels*

The Court may consider and decide cases brought before it under VI.3.b. in chambers composed of [five (?)] judges. A chamber may at any time decide to refer a case to the Plenary Court.

The Court may set up three-member panels that can decide unanimously and in summary proceedings that an appeal/application under VI.3.b is clearly inadmissible or manifestly ill-founded.

The questions falling within the competence of the Court under Article VI.3.a and 3.c. shall be considered and decided by the Plenary Court.

- *The pre-hearing investigation*

The Court shall have the widest possible powers of inquiry and investigation. It may, in particular:

1. correspond directly with any state authority and other public authority of the State or the Entities, in particular the Ombudsman of Bosnia and Herzegovina and the State Prosecutor;
2. hear parties and request them and any public authorities to communicate to it all documents and information concerning the case;
3. take evidence from any person whose testimony it deems useful;
4. establish facts on site;
5. appoint experts;

The Court may, by means of an order, delegate to the Judge rapporteur specific powers of inquiry and investigation, which it shall determine.

- *Amicus Curiae*

An amicus curiae brief that brings to the attention of the Court relevant matter not yet brought to its attention by the parties may be accepted by the Court and admitted to the case file.

The amicus curiae brief shall be submitted in writing [accompanied by the written consent of all parties] within the time allowed for filing a brief. The amicus curiae brief shall identify the party supported, if any. The amicus curiae may be invited to participate in the oral proceedings, in accordance with the Rules of Procedure of the Constitutional Court.

- *Rule on dealing with some cases as a priority*

The Court shall deal with appeals/applications in the order in which they become ready for examination. The Court may in view of particular circumstances, decide to hear a case as a matter of priority.

25. The Commission considered also the possibility of including an Article that would allow the Constitutional Court to impose fines and penalties. It finds that this issue should be regulated at the level of a law, but not necessarily in the Law on the merger. The possibility of imposing fines and penalties should be included in a legal norm, that could read as follow:

"The Constitutional Court has the power to impose penalties or fines when:

1. *Officials and other persons refuse to abide by or unduly delay or otherwise hinder or prevent the execution of provisional measures and decisions of the Court;*
2. *Officials and other persons without valid reasons, fail to comply with requests and orders of the Court, in particular with any order to present documents or other material, to approve documents or texts of acts, or to carry out investigations;*
3. *Without valid reasons, a witness or expert fails to attend, refuses to attend, or does not inform of his/her incapacity to appear before the Court;*
4. *An expert, without valid reasons, refuses or delays to provide the findings;*
5. *An applicant/appellant deliberately lodges a frivolous application/appeal*

Orders and judgements of the Constitutional Court imposing financial penalties or fines shall be enforceable.

The above provisions do not exclude criminal liability of possible offenders pursuant to the criminal legislation applicable."

26. It may be advisable to consider the relations between the Constitutional Court and the State Prosecutor of Bosnia and Herzegovina, in particular as regards the Court's power to entrust the Prosecutor with factual investigation tasks.

Specific comments

27. *Article 2*: It is necessary to have a clear date on which the competence of the Human Rights Chamber to receive applications should cease. This should be the date of ratification of ECHR by Bosnia and Herzegovina although the possibility of having a

later date (six months after the ratification of ECHR) is also retained, as an alternative. A proposal that the Chamber should cease to receive applications alleging that violations of Human Rights have taken place after the date of ratification (termination of the Chamber's ratione temporis competence) was abandoned. It was felt that the determination of the time when the alleged violation occurred may raise delicate issues of fact and law and would oblige the Chamber to deal with an considerable number of cases just to decide whether it is competent or not. For reasons of clarity, the proposal was retained that after a specific date (date of ratification of ECHR or six months after) the Chamber will no longer be competent to register any case and all cases addressed to the Chamber will be channeled to the Constitutional Court.

28. *In fine of Article 2*: This provision is a response to the finding of the Venice Commission's Working Group on the merger that the Constitutional Court's competence to deal with human rights violations in the absence of any judgment by another court in Bosnia and Herzegovina and where no effective remedies are available was questionable. The Venice Commission Working Group on the Merger had raised this issue in the following terms:

> "If no remedy exists before a court in Bosnia and Herzegovina, or if such a remedy exists in theory but is ineffective, the alleged victim will still be able to lodge an admissible application with the Chamber, whereas it is unclear whether his/her application will come within the Constitutional Court's appellate jurisdiction. Two separate questions arise in this respect: Firstly, whether the constitutional provision on the Court's appellate jurisdiction (Article VI, 3 (b) of the Constitution) can be construed in such a way as to enable the Court to deal not only with human rights issues arising out of a judgement, but also with similar issues arising out of the lack of a judgement, such as cases of denial of justice. The case law of the Court does not so far contain any indication of a development in this sense. Although it cannot be excluded that case-law may develop in this direction, it is not possible to conclude already at this stage that the competence of the Chamber to deal with allegations of human rights violations under Article II para 2 of Annex 6 coincides with the "appellate jurisdiction" of the Court." (CDL (2000) 47 fin)

29. The Commission notes with particular attention that since the above Working Group's Report, the Constitutional Court has decided cases under Article VI 3 b) of the Constitution adopting an extensive interpretation of this provision. In its judgment in the case U 23/00 (case Ms MV) it held the following:

> "Under Article VI.3 (b) of the Constitution of Bosnia and Herzegovina, the Constitutional Court shall have appellate jurisdiction over issues under this Constitution arising out of a judgment of any other court in Bosnia and Herzegovina. In this context, the term "judgment" is to be interpreted extensively. The term includes not only all kinds of decisions and rulings but also a failure to take a decision where such failure is claimed to be unconstitutional. In the present case, the Constitutional Court interprets M. V.'s appeal as challenging the Municipal Court's failure to decide on her claim for compensation".

30. Having regard to the above case-law, the Commission is of the opinion that the provision of Article 3 has no other effect than reminding the Constitutional Court's responsibility to ensure protection of human rights taking into account (as in the above case U 23/00) the role and powers that the Constitution in its Article II.1 and Annexe 6 had given to the Human Rights Commission and Chamber. Any ambiguity whatsoever as to the powers of the Constitutional Court to examine cases that the Chamber would have been competent to examine under Annex 6 is thereby definitely lifted.

31. *Articles 3 and 4*: The Human Rights Chamber will continue to deal with its docket. It will continue to operate for 18 months after the ratification of ECHR, but in any case until 31 December 2003 (as required by the Agreement to extend Annex 6 to the Dayton Peace Agreement). After that, all cases will be transferred to the Constitutional Court.

32. *Article 5*: regulates the relations between the Constitutional Court and the Ombudsman of Bosnia and Herzegovina with a view to allowing the latter to take an active part in proceedings before the Constitutional Court, where necessary. The provision aims at giving the Ombudsman locus standi before the Constitutional Court although he/she is not allowed to initiate proceedings (as is the case under Annexe 6).

33. *Articles 6 to 8*: These provisions regulate the procedural aspects of access to the Constitutional Court. They aim at reproducing the procedural rights of applicants before the Human Rights Chamber in the form of appellants' rights before the Constitutional Court (see also par. 20-21 above).

34. *Articles 9 to 11*: These provisions regulate the technical aspects of the merger. The Human Rights Chamber will keep its separate staff and resources until six months before the termination of its operation. All staff and resources will then be automatically transferred to the Constitutional Court. This solution was regarded as easier to put into practice than the progressive merger suggested in the Working Group's Report.

35. However, the Chamber will keep its Executive Officer and other international staff and financial resources necessary for its functioning until the termination of its operation.

36. The fact that there is no longer any provision for the progressive pooling of the Court's and Chamber's respective secretariats makes the proposals for a common Registrar and a common Director General in the Working Group's Report (CDL (2000) 47 fin) superfluous. On the other hand, it was felt that the co-operation between the two institutions should start at a very early stage and that this could be facilitated by a "co-coordinator" to be appointed by the Presidents of the two institutions after consultation with the High Representative. The co-coordinator will have advisory functions as far as legal and organisational issues of the merger are concerned. He/she will have in particular to contribute towards building within the Court the necessary capacities for dealing with a considerable number of individual human rights cases, transferring experience and working methods from the Chamber to the Court as appropriate and to assist in the effective managing of the transfer of cases, of staff, of financial resources and other assets from the Chamber to the Court.

In the participants' opinion, the co-coordinator should be appointed as soon as possible after the ratification of ECHR and should remain in office for some time after the termination of the Chamber's operation, but no more than six months after that date. This means that he/she would be appointed for approximately 18 months. However, it is not necessary for the co-coordinator to be permanently in Sarajevo, although a permanent presence will be required during the critical merger period. The co-coordinator should be a lawyer with important working experience in highest judicial bodies, preferably constitutional courts or equivalent courts that deal with a considerable number of human rights cases.

37. The proposal to dismiss all staff of the two institutions and to re-appoint them as appropriate was not retained. Consequently, all staff of the Chamber shall be automatically transferred to the Court.

38. The question of harmonising the salaries and other remuneration or compensation of judges and staff of the two institutions should be addressed separately.