

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
(VENICE COMMISSION)

**OPINION  
ON THE RANK AND STATUS  
OF THE OMBUDSMAN  
OF THE FEDERATION OF BOSNIA AND HERZEGOVINA**

**Comments by:**

**Mr Hans-Heinrich VOGEL**  
**(Substitute member, Sweden)**

1. With reference to the request made by the Ombudsmen of the Federation of Bosnia and Herzegovina I have been asked for an opinion on two points:

Whether the rank and status of the Ombudsman should be equated with that of senior civil servants or independent judges of ordinary courts,

Whether the Constitution of the Federation of Bosnia and Herzegovina and the Memorandum of Understanding provide a sufficient legal basis to equate salaries of the Ombudsman with those of ordinary court judges.

Together with the text of the original request I have received extensive documentation on the legal questions involved. This documentation included among other documents copies of:

the Memorandum of Understanding between the Organization for Security and Cooperation in Europe (OSCE) and the Federation of Bosnia and Herzegovina, signed on 9 October 2001;

relevant parts of the Constitution of the Federation of Bosnia and Herzegovina;

the Law on the Ombudsman of the Federation of Bosnia and Herzegovina, Venice Commission CDL (2001) 2; and

the Draft Memorandum on the Organic Law on the Institution of the Ombudsman of the Federation of Bosnia and Herzegovina, Venice Commission CDL (2001) 18.

2. In my view, there is very good reason for the agreement on salaries, which has been concluded in the Memorandum of Understanding and documented in its Article 4 (2). The essentials of this agreement the equation of rank, status, salaries and other compensation of the Ombudsmen with that of the highest judges and not of senior civil servants are fully in conformity with European standards. They underline the special character of the special office of the ombudsman, they are widely perceived as doing so, and one should not deviate from this well established view.

3. According to the preamble of the Memorandum of Understanding between the Organization for Security and Cooperation in Europe (OSCE) and the Federation of Bosnia and Herzegovina, signed on 9 October 2001, [t]he Federation of Bosnia and Herzegovina and the OSCE Mission to Bosnia and Herzegovina agree to the following articles and among these articles to Article 4 on Minimum Salaries. This agreement was duly signed, and thus concluded, by competent representatives for the OSCE Mission to Bosnia and Herzegovina on the one hand and for the Federation of Bosnia and Herzegovina on the other, and the signing of the agreement had been preceded by extensive negotiations and deliberations of its material contents.

In view of this, I cannot at present find any reason why the agreement on minimum salaries, as documented in the Memorandum of Understanding, should be seen as not to provide a sufficient legal basis of what has been agreed upon, which among other things expressly is to equate salaries of the Ombudsmen with those of the ordinary court judges mentioned in Article 4 of the Memorandum.

