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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

AGREED CONCLUSIONS
OF THE WORKING MEETING ON
“RESTRUCTURING OMBUDSMAN INSTITUTIONS
IN BOSNIA AND HERZEGOVINA”

(Council of Europe, Strasbourg, 19 April 2004)

In November 2003, Mr Dragan Covic, Chairman of the Presidency of Bosnia and Herzegovina, requested the assistance of the Venice Commission as regards the reform of the Ombudsman institutions in Bosnia and Herzegovina.

At the beginning of 2004, a working group was set up by the BiH Council of Ministers with a view to preparing the reform. Such group is currently composed of a representative of the Minister of Human Rights and Refugees, by the three Human Rights Ombudsmen of Bosnia and Herzegovina, by the three Ombudsmen of the Federation of Bosnia and Herzegovina, by the two Ombudsmen of the Republika Srpska and by representatives of the Ministries of Justice of the State and the two Entities.

The Venice Commission organised a working meeting with representatives of the working group in order for them to identify and agree upon the main aims and an agenda of the reform. This meeting was held in Strasbourg, on the premises of the Council of Europe, on 19 April 2004.

The participants in the meeting (see list of participants attached) reached the following

CONCLUSIONS

As to the principles:

- There is a need to “restructure” the ombudsman institutions in Bosnia and Herzegovina within a reasonable time;
- The current level of human rights protection must be preserved;
- The final merger of the institutions will be accomplished through a transitional period during which the three institutions will co-exist;
- The number of ombudsmen must be gradually reduced first from 9 to 3 and then from 3 to 1;
- The principle of multi-ethnicity of the institution will be preserved through the appointment of deputy ombudsmen (possibly rotating on the post of ombudsman);
- During the transitional period there will be three institutions, each with one ombudsman and two deputies;
- It is necessary to reduce the staff, including during the transitional period;
- The existing infrastructures, including those of the entities’ institutions, must be preserved, while rationalised;
- The best practices of the current three institutions must be identified and preserved;
- Co-ordination and non-hierarchical interrelationships amongst the existing Ombudsman institutions are essential and must be ensured during the transitional period.

As to the procedure and time-frame:

- The working group is to meet as soon as possible and create a sub-working group charged with the preparation of the restructuring plan;
- The concept of the future ombudsman institution of BiH has to be decided at the outset; the manner of achieving it is to be decided next;
- An outline plan will be prepared and submitted to the BiH Council of Ministers and subsequently, notably to the Venice Commission and the OSCE mission in BiH, by 15 May 2004;
- A detailed plan of the restructuring will be finalised and submitted to the BiH Council of Ministers and subsequently, notably to the Venice Commission and the OSCE mission in BiH, by 30 May 2004.

LIST OF PARTICIPANTS

VENICE COMMISSION

Mr Kaarlo TUORI, Expert, Member of the Venice Commission in respect of Finland
Mr Dimitris CHRISTOPOULOS, Expert, Greece

BOSNIA AND HERZEGOVINA

Mr Slobodan NAGRADIĆ, Assistant BiH Minister of Human Rights and Refugees
Mr Safet PASIĆ, Human Rights Ombudsman of Bosnia and Herzegovina
Ms Branka RAGUZ, Ombudsman of the Federation of Bosnia and Herzegovina
Ms Branka KOLAR-MIJATOVIĆ, Ombudsman of the Republika Srpska

COMMISSIONER FOR HUMAN RIGHTS

Mr Alvaro GIL-ROBLES, Commissioner

OSCE MISSION IN BOSNIA AND HERZEGOVINA

Ms Alison JOLLY, Director of the Human Rights Department

SECRETARIAT OF THE VENICE COMMISSION

Ms Simona GRANATA-MENGHINI, Head of the Constitutional Co-operation Division
Ms Dubravka BOJIĆ, Administrative Officer
Ms Brigitte AUBRY, Assistant

OFFICE OF THE COMMISSIONER FOR HUMAN RIGHTS

Mr Christos GIAKOUMOPOULOS, Director

OFFICE OF THE COUNCIL OF EUROPE IN SARAJEVO

Ms Tanja RAKUSIC-HADZIĆ, Legal Adviser

INTERPRETERS

Ms Dvina SUBASIĆ, Interpreter
Mr Goran DAPIĆ, Interpreter

ATTACHMENTS

- I -

Alternative proposal

- II -

Document

Submitted
by Mr Safet PAŠIĆ,
Human Rights Ombudsman of Bosnia and Herzegovina

**LAW ON
CHANGES AND AMENDMENTS
OF THE LAW ON THE HUMAN RIGHTS OMBUDSMAN OF BOSNIA AND
HERZEGOVINA**

Article 1

In the Law on the Human Rights Ombudsman of Bosnia and Herzegovina (Official Gazette 19/2002), wording of Article 1 para. 1 “... of Bosnia and Herzegovina, its entities, and the District of Brčko” is replaced with “ ... in Bosnia and Herzegovina, its entities and the District Brčko”.

Article 2

Article 5 is deleted.

Article 3

Article 10 para 3. should read as follows: “Status and range of the Institution shall be the same as the status and range of the BaH Constitutional Court.”

Chapter “IV – Cooperation with Ombudsman Institutions of the Entities” and Articles 13 and 14 are deleted.

Article 5

In Article 34 para 1. full stop is deleted and the text should continue as follows: “as well as to legislative organs and presidents and vice presidents of the entities”.

Article 6

In Article 39 word “Presidency” is deleted.

Article 7

Article 41 is changed and reads as follows:

“Application of the entity ombudsmen legislation ceases on 31 December 2004 when the entity ombudsman institutions cease to function.

The entity ombudsmen institutions and their branches will continue to function as divisions of the Institution of the Human Rights Ombudsman of BaH, in accordance with internal rules of the Institution.

The entity ombudsmen, who on the day of coming into force of this Law are performing those duties, will continue to work in capacity of deputy ombudsmen in the Institution, until expiration of their then mandates.”

Article 8

Article 42 is changed and reads as follows:

“Personnel, means of work and equipment of the entity ombudsmen will be overtaken by the Institution, on which special rules will be made within time limit from the previous Article and way of overtake.

The Institution will make classification of work positions in accordance with internal rules. For an employee who is not classified in accordance with the previous Article, regulations of the state law will apply which prescribes rights of employees in case of reduction of work and tasks.”

Article 10

This Law enters into force eight days after its publication in the Official Gazette of Bosnia and Herzegovina.

Safet Pašić

INFORMATION
ON THE STATE OF THE BaH OMBUDSMAN INSTITUTION AND FURTHER
TASKS THAT ARE TO BE ACCOMPLISHED IN FUTURE IN ACCORDANCE WITH
THE FEASIBILITY STUDY FOR ACCESSION OF BaH INTO EURO ATLANTIC
INTEGRATIONS

The Ombudsman Institution has existed since 1996 in a way that until 31 December 2004 it was headed by foreigners, as transitional Ombudsmen.

Since 1 January 2004 the Institution has been overtaken by three domestic Ombudsmen who upon proposal of the BaH Presidency were appointed by both houses of the BaH Parliamentary Assembly by two third majorities of votes.

After they have overtaken their duties, the domestic Ombudsmen have agreed that until 31 March this year they will continue with existing organization and rules of work established by the transitional ombudsmen in order to preserve continuity of work of the Institution. According to existing organization of the state Ombudsman Institution there is a central office in Sarajevo and branch office in Banja Luka, which once a week also covers for District Brčko. Such organization has been established in line with Annex 6 to the Dayton Agreement in which it is explicitly established that headquarter will be in Sarajevo, one office in each of the entities and on other locations, if need be. However, other additional offices, apart from the one in Banja Luka, have not been established.

The Institution of the FBaH Ombudsman was established a year earlier, in 1995, and the Institution of the RS Ombudsman in 2002.

Currently there are three ombudsman institutions in BaH, one state and two entity institutions with their branch offices: the state institution has its headquarter in Sarajevo and branch office in Banja Luka and entity institutions have a number of branch offices. In the FBaH, apart from central office in Sarajevo, there are offices in Mostar, Livno, Travnik, Bihać, Tuzla and Zenica. In RS, apart from central office in Banja Luka, there are offices in Prijedor, Doboj, Bijeljina and Foča.

The branch office of the BaH Ombudsman Institution in Banja Luka has continued to exist regardless to the fact that central office of the RS Ombudsman has also been established there. Therefore, the two offices have been functioning in Banja Luka what is also the case in Sarajevo where there is central office of the State Ombudsman and the FBaH Ombudsmen.

That largely contributes to high costs of the BaH ombudsman institutions and besides it also creates a great confusion among the citizens regarding the institutions' competencies. Number of citizens believes that the State Institution is subordinate to the entity institutions and they even submit complaints on their recommendations and other actions. It is important to emphasise that all institutions handle the citizens' complaints regardless to complaint type.

The difference is in fact that unlike entity ombudsmen the BaH Ombudsman Institution also handles complaints of legal persons, complaints that relate to state institutions or both entities, military authorities and issues that relate to the BaH as a whole (the new State Law has extended the competence of the State Ombudsman in relation to the entity ombudsmen and it has established its exclusive competencies). It is difficult to select issues that relate to the BaH as a whole because almost everything is related to Annex 7 of the Dayton Agreement.

In my opinion such problems have occurred for the reason that the entity constitutions were passed before the Dayton and they still contain issues related to the ombudsmen which are incompatible with the Dayton Constitution. For example the entity constitutions contain catalogues of human rights and freedoms which are not identical with human rights catalogue from the Dayton Constitution and consequently the ways of their protection, regardless to the Dayton Constitution obligation that entity constitutions should have harmonized with its regulations within three months.

At the end of January this year the Institution received Feasibility Study with operational tasks and time limits, from which derives that priority tasks for BaH until 31 May this year are: overtaking of full responsibility for the State Ombudsman, what BaH has already fulfilled by making the Law on the Human Rights Ombudsman of Bosnia and Herzegovina and by appointing three domestic Ombudsmen, who have overtaken their duties as of the beginning of this year. It has also said that BaH is obliged to secure financial independence of the State Ombudsman, what has also been fulfilled, since the Ministry of Finance and Treasure has introduced treasury operational system for the Institution of the State Ombudsman also, and means for the functioning of the Institution have been provided in the BaH budget. The only thing that has not been fulfilled so far is drafting of the Law on Merger of the State and Entity Ombudsmen.

For that purpose the Council of Ministers have decided to establish Expert Group, not for drafting of such law, but instead for preparing report and then to proceed with drafting of the law. I believe that that has given rise to delay in fulfilment of this, only unfulfilled task. The fact that the Experts Group also comprises of the entity Ombudsmen contributed to that delay since they believe that earlier established entity institutions and their legislations should remain. In RS there is also an unambiguous opinion that entity legislation should not be annulled what even more contributed to that.

It is my impression that besides reasons of political nature, one of the main reasons is unequal financial position of the institutions. Namely, the State Ombudsmen dispose with double reduced budgetary means in relation to the entity ombudsmen. Therefore, there is drastic difference in salaries of employees in the State Institution and also in means for material expenses. That is the reason for significant number of resignations on positions in the State Ombudsman Institution (6 lawyers have left the office in the last month and the others have also announced their leave). It is important to emphasise here that all of them are persons with significant experience and knowledge of foreign languages, who easily find employment elsewhere.

As a member of the Expert Group I believe that Bosnia and Herzegovina could fulfil this task in fast and painful way. Since BaH already has the State Law it would only be necessary to make some minor amendments and changes. By doing that Bosnia and Herzegovina could fulfil that only remaining task in the human rights sphere.

In order to contribute to simplified and faster way of fulfilling the task from the Feasibility Study, namely merger of the State and entity ombudsmen in BaH, I submit for your attention Initial text on changes and amendments of existing State Law but I am also ready to elaborate about other options if they could contribute to quality and timely fulfilment of this task. On the contrary, I consider that the task will not be fulfilled within the requested time limit, which is 31 May this year.

Sarajevo, 7 April 2004

*The BaH Ombudsman
Safet Pašić*