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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**REPORT
OF THE MEETING
ON THE MERGER OF THE HUMAN RIGHTS CHAMBER
AND THE CONSTITUTIONAL COURT
OF BOSNIA AND HERZEGOVINA**

Paris, 26-27 March 2001

Following its conclusions on the Merger of the Human Rights Chamber and the Constitutional Court of Bosnia and Herzegovina, adopted at its 42nd Plenary Meeting (Venice, 31 March – 1st April 2000, CDL-INF (2000) 8), and the Report of the Working Group on the Merger (Sarajevo, Strasbourg, December 1999-June 2000, CDL (2000) 47 fin), the Venice Commission convened a meeting to consider future concrete steps to be taken with a view to implementing the proposed merger.

Mr Peter JAMBREK (Chairman of the meeting), Ms Michèle PICARD, Mr Peter KEMPES, Ms Therese NELSON, Mr Dusan KALEMBER, Mr Nicolas MAZIAU, Mr Christopher HARLAND, Mr Peter NEUSSL, Mr Ekkehard STRAUSS and Mr Christos GIAKOUMOPOULOS (Secretary) participated in the meeting which took place in Paris on 26-27 March 2001.

The participants considered a discussion document dated 3 October 2000 drawn up by the Office of the High Representative, the Comments of the Constitutional Court on this document dated 8 November 2000 and a proposal for amendments to the OHR discussion document presented by the Venice Commission Secretariat at the meeting.

The participants took note of steps taken by the United States Government concerning the proposed merger on 23 March 2001.

The participants agreed that the proposed merger could be regulated in a law which could read as follows:

Preamble.
(...)

Article 1

[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 Annexe 6 to the Dayton Peace Agreement, shall cease.

Article 2

The Human Rights Chamber shall continue to deal with all cases which are pending before it on the date mentioned in Article 1. All cases introduced to the Chamber after the said date shall be deemed to be 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 3

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. [The Constitutional Court shall notify the parties thereof. It may decide to deal with these cases as a priority.]

Article 4

The Chamber and the Court shall retain their respective staff 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 5

Following the date referred to in Article 1, a co-ordinator shall be appointed by both the Presidents of the Constitutional Court and the Human Rights Chamber, 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.

Notes on the above proposal

1. The participants felt that it was 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. The proposal in the Venice Commission Secretariat document 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 channelled to the Constitutional Court.

2. 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.

3. 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.

4. 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.

5. The fact that there is no longer any 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 superfluous. On the other hand, it was felt the co-operation between the two institutions should start at a very early stage and that this could be facilitated by a "co-ordinator" to be appointed by the Presidents of the two institutions after consultation with the High Representative. The co-ordinator 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 an 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-ordinator 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, in the participants' view it is not necessary for

the co-ordinator to be permanently in Sarajevo, although a permanent presence will be required during the critical merger period. The co-ordinator should be a lawyer with important working experience in highest judicial bodies, preferably constitutional courts or equivalent courts that deal with an considerable number of human rights cases.

6. 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.

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

Further steps

It was underlined during the meeting that the termination of the Chamber's operation should not entail any *lacunae* in or diminishing of the judicial protection of human rights in Bosnia and Herzegovina. This will require some normative action concerning the Constitutional Court's competences, procedures and working methods in order to secure that the Court will have in law and in practice the capacity to take over the human rights cases.

It was further recalled that such normative action was to be accomplished prior to the merger (cf. Report of the Working Group and CDL-INF (2000) 8, p. 2).

However, the participants did not reach any conclusion as to the nature of the normative action required. Undoubtedly, regulation of some aspects of the Court's activity will require enactment of a law, whereas some other parts can be regulated in the Court's Rules of Procedure or even in a memorandum of understanding or other similar documents. However, the possibility of constitutional amendments (or the possibility of adopting a constitutional law, as suggested in the Venice Commission report) was also envisaged.

The following is a list of points that participants identified as areas that may require taking normative action:

- i. Clarifying the scope of the Court's appellate jurisdiction to encompass the Chamber's competence to receive individual applications;
- ii. Possible differences in the Court's and the Chamber's understanding of their respective competences as regards non-discrimination;
- iii. Possible differences in the Court's and the Chamber's concept of alleged "victims" of violations having the right to appeal;
- iv. Possible *locus standi* of the Ombudsman of Bosnia and Herzegovina before the Constitutional Court;
- v. Harmonisation of time limits to bring a case before the two jurisdictions (presently, 60 days for the Court and 6 months for the Chamber);
- vi. Court's competence to award compensation to victims of human rights violations and to issue orders addressed to the authorities;
- vii. Court's competence to order provisional measures;

- viii. Criminal liability of persons refusing to abide by or to implement the Court's orders and decisions; Court's power to impose fines;
- ix. Constitutional Court being permanently in session;
- x. Possibility for the Court to decide cases in panels;
- xi. Possibility for the Court to dismiss manifestly inadmissible or ill founded cases in committees;
- xii. Procedure of investigation by the Court; co-operation with the Ombudsman of Bosnia and Herzegovina (or the State Prosecutor);
- xiii. *Amicus curiae* before the Constitutional Court;
- xiv. Rules on dealing with some cases as a priority;
- xv. Responsibility of Bosnia and Herzegovina for funding the Constitutional Court;
- xvi. Appointment of former judges of the Human Rights Chamber in the Court;
- xvii. Possible appointment of international judges in the Court;
- xviii. Possible partial (instead of total) renewal of the Constitutional Court in 2002;
- xix. Training for the Constitutional Court's staff to develop capacities in dealing with a large volume of human rights cases.

The participants agreed to examine the above points and the nature of the normative action required at a meeting to be held in June 2001 [11-12 June ?] on the basis of a draft law to be prepared by the Venice Commission.