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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**REPORT**

**ON THE SECOND MEETING  
OF THE WORKING GROUP  
ON THE INTRODUCTION  
OF THE OFFICE OF OMBUDSMAN  
IN REPUBLIKA SRPSKA  
(BOSNIA AND HERZEGOVINA)**

**Venice 16 October 1997**

The Working Group on the Ombudsman for Republika Srpska met in Venice on 16 October 1997. The meeting was attended by Mr J.-C. Scholsem (Belgium), Mr G. Batliner (Liechtenstein), Ms M. Serra-Lopez (Portugal), Mr J. Gil Robles (Spain) and Mr P. Bardiaux (France), assisted by Mr C. Giakoumopoulos and Mr P. Titun (Council of Europe). Mr G. Jeness, Head of the Human Rights Bureau at the OSCE Mission to Bosnia and Herzegovina and Ms C. Auclair, Assistant to the Ombudsperson in Bosnia and Herzegovina, were also present.

## **1. Progress**

Mr C. Giakoumopoulos noted that, at its meeting on 24 April 1997 in Strasbourg, the working group had considered the question of instituting the office of Ombudsman in Republika Srpska. The Group had noted that there was a general consensus within the international community on creating this position quickly, and that consideration should be given to the possible long-term relations between the Ombudsman of Republika Srpska and the existing Ombudsman structures in Bosnia and Herzegovina and in the Federation of Bosnia and Herzegovina, as well as to the interactions between these structures and the judiciary.

Following this meeting, the Secretariat of the Commission had contacted the authorities in Republika Srpska, and on 3 June 1997, MM Gil Robles, Giakoumopoulos and Titun had met with Ms Plavsic, President of Republika Srpska, and Mr Mijanovic, President of the Constitutional Court, in Banja Luka. This meeting confirmed that Republika Srpska was interested in instituting the office of Ombudsman and that representatives from the Republika would take part in the Group's work. Indeed, representatives from Republika Srpska were present at the 31st Plenary Meeting of the Venice Commission (Venice 20-21 June 1997) and presented the outlines of their plans for creating the office of Ombudsman.

A second meeting of the working group and representatives from Republika Srpska was initially planned for 24 June 1997. However, due to the constitutional crisis in Republika Srpska, this meeting could not take place.

The current meeting should allow the working group to examine the outlines of the plans by the Bosnian Serb authorities to create the Ombudsman institution, and to determine an action plan.

The working group then examined the various elements of the plan to introduce the office of Ombudsman in Republika Srpska, as outlined in document CDL (97) 25 "The Introduction of the Office of Ombudsman in Republika Srpska", by Mr Mijanovic, President of the Constitutional Court of Republika Srpska, which was presented at the 31st Plenary Meeting of the Venice Commission. The working group paid particular attention to the Ombudsman's powers, the Ombudsman's role and the procedures before the Ombudsman, as well as to the questions of appointment and the structure of the Ombudsman's Office.

## **2. The powers of the Ombudsman of Republika Srpska**

As regards the powers of the Ombudsman of Republika Srpska, the working group considered that, as well as examining complaints about human rights violations, he should also supervise the proper functioning of the administration. This wide range of powers was considered necessary in view of the fact that it was not possible for individuals to lodge petitions with the Constitutional Court.

On the other hand, the working group considered that the Ombudsman should not deal with "public morality and corruption", in addition to his role as defender of individual rights. The working group believed that the notion of public morality was too vague and was likely to weaken the Ombudsman's role by making it too political. The working group further considered that it was normally the role of the courts to examine accusations and cases of corruption.

The Ombudsman of Republika Srpska would not deal with complaints directed against the entity as a whole, but with complaints against the authorities of Republika Srpska.

## **3. Nature of the institution and procedures**

With regard to the nature of the institution and procedures before it, the working group was of the opinion that the Ombudsman should examine cases submitted to him by physical and legal persons through a non-judicial process.

He should also be able to act on his own initiative.

The Ombudsman should be able to initiate legal proceedings (for example, before the Constitutional Court), particularly in cases of human rights violations. However, referring cases to the Constitutional Court should not be his main task and his role should not appear to be an alternative to the courts. His powers should be restricted in cases of *res judicata*, but he should be able to intervene in the execution of court decisions. He should also be able to supervise the functioning of the judicial system.

The Ombudsman of Republika Srpska should also be able to refer cases to the Human Rights Chamber through the Ombudsperson described in Annex 6. This is already provided for in the Rules of Procedure for the Ombudsperson, and similar provision should be made in the law on the Ombudsman of Republika Srpska. The importance of this possibility was emphasised by the working group. Submissions to the Chamber of Human Rights by the Ombudsman of Republika Srpska will not only contribute to easing the existing imbalance between the two entities as regards human rights protection mechanisms (see the Report by the Venice Commission on the constitutional situation in Bosnia and Herzegovina, with particular regard to human rights protection mechanisms, CDL-INF (96)9), but would also amount to going beyond the legal system of Republika Srpska to the courts of the State of Bosnia and Herzegovina, as the office of Ombudsman would be acting beyond the limits of the entity's jurisdiction. Of course, before addressing the Human Rights Chamber, the Ombudsman of Republika Srpska would have to ensure that domestic remedies had been exhausted.

In principle, the Ombudsman's recommendations to the authorities should be accessible to the public. However, the public need not be informed about all his activities. It should be possible to maintain confidentiality about actions and decisions taken by the Ombudsman in the course of his enquiries, as well as about those concerning secret information, for example, relating to national security. In the same way, it ought to be possible for the Ombudsman not to disclose the identity of those who contact him, if they so request.

The working group did not consider it necessary for the Ombudsman of Republika Srpska to prepare a report for an international institution, as is the case for the Federation Ombudsmen. The Ombudsman of Republika Srpska should present his annual report to the Government and the Parliament. If he wished, he could of course also send a copy to the High Representative of Bosnia and Herzegovina.

#### **4. Nomination and mandate**

On the subject of the Ombudsman's appointment, the working group noted firstly that the Serb plan made no provision for protecting the Ombudsman from dismissal. It was generally accepted that the Ombudsman could only be dismissed in cases of mental disorder. The draft law should also rule on issues such as the Ombudsman's immunity, and the possible waiver of this immunity, as these are important factors in preserving the institution's independence. The working group indicated its support for the proposal, included in the plan, that the person selected for the role of Ombudsman should be seen to have high moral qualities.

The Ombudsman's mandate should be fairly long. The working group considered that a mandate of five years, renewable once, was sufficient to guarantee the institution's independence.

The exercise of other functions, whether public or private, should be incompatible with that of Ombudsman. In particular, the Ombudsman should have no political position, and should not be a member of a political party.

The working group also considered how far it was appropriate to provide for a system comparable to that of the Federation's Ombudsmen (there are three Ombudsmen, one from each of the Bosnian, Croatian and Serb national groups). After observing that several Ombudsmen work in parallel in certain European states (for example, there are three Ombudsmen in Austria and two in Belgium), the Group held that the most appropriate system might be that of three Ombudsmen, one from each national group. In order to be in a position to suggest rules on the functioning of this three-Ombudsmen institution, the working group decided to meet the Ombudsmen from the Federation and examine how they operated.

After considering several proposals regarding the appointment procedure for the Ombudsmen, the working group came to the following conclusion:

The three Ombudsmen of Republika Srpska would be elected by Parliament. The President of the Republic, the Prime Minister and the President of the Parliament would jointly propose three candidates to Parliament, which could adopt the nomination by a two-thirds or three-fifths majority (a level which would require negotiation and would also offer the Ombudsman broad democratic legitimacy). Parliament must elect the three candidates within a

period of one to three months, as provided for and established by the Ombudsman law.

Other proposals to the effect that candidates be nominated by political parties or by a parliamentary commission, or that any person could put himself forward as a candidate, were dismissed, as they were considered less appropriate for this particular case.

As regards the international community's involvement in the appointment, the working group considered that international organisations would have an important political role to play in the selection of candidates. However, their election and appointment should be a matter for the national Assembly.

#### **5. The working group's future activity**

As regards action by the working group over the coming months, it was agreed that, pending political developments in Republika Srpska and especially the results of the parliamentary and presidential elections, the working group should agree on its position and prepare the approaches to be made to the relevant authorities of Republika Srpska. The group could also, on the basis of its work, prepare a preliminary draft law or a statement of its position and send them to the authorities in Republika Srpska.

The group instructed Mr Gil Robles to prepare a document containing the working group's main positions concerning the setting up and functioning of the Office of the Ombudsman of Republika Srpska with a view to its examination by the group at the next meeting.

It was also decided to hold the group's next meeting at the same time as the next meeting of the Venice Commission on 11 December 1997.