

# Information Documents

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## Bosnia and Herzegovina: Compliance with obligations and commitments and implementation of the post-accession co-operation programme

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Document presented by the Secretary General

### Sixth Report (November 2003 - February 2004)

#### *Executive Summary*

Reinforcing Bosnia and Herzegovina (BiH) Statehood, reform ownership and integration into Europe are the main strategic objectives justifying the decision to invite the country to join the Council of Europe (CoE) almost two years ago. Significant progress has already been achieved but the current rate of reform remains too slow. The fulfilment of CoE post-accession commitments is clearly a pre-condition for the development of closer relations with the European Union.

- **Democratic institutions:** The strengthening of BiH's statehood and democratic institutions is still progressing, under constant pressure of the international community. More emphasis on concrete implementation of decisions/legislation and an increasingly pro-active approach, both at State and Entities' levels, are required. The development and functioning of local democracy should accompany the reinforcement of State level institutions.

- **Human Rights:** the Human Rights Chamber's competences have been transferred to the State Constitutional Court and the State Ombudsman institution has been nationalised. Restitution of properties has almost been completed but the return process still needs much attention. Recent accession of BiH to the CoE Development Bank could facilitate the sustainable return of IDPs. Cooperation with the ICTY should still produce concrete results and efforts to build reconciliation need to be stepped-up.

- **Rule of Law:** Steady and substantial progress is being made to consolidate judicial institutions at State level but full support should be provided to the establishment of an independent and professional judiciary. The lack of proper execution of decisions of justice needs an increased attention. Several CoE Conventions in the penal field should still be signed and ratified by the end of April 2004.

- **Education:** Legislative reform in the field of primary, secondary and higher education should advance faster and *de facto* segregation in a number of schools should be abolished without further delay. The recent ratification of the Convention on the recognition of qualifications concerning Higher Education is a milestone.

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## I. INTRODUCTION

1. Bosnia and Herzegovina (BiH) joined the Council of Europe (CoE) on 24 April 2002. Accession of BiH to the CoE followed the adoption of Opinion No 234 (2002) of the Parliamentary Assembly of the CoE (PACE), which lists a series of commitments to be met by BiH following its accession to the Organisation (see the Addendum to the present report), as well as the specific issues which were the subject of an exchange of letters between the BiH authorities and the Chair of the CoE Committee of Ministers.

2. The present report is the sixth quarterly report prepared by the Secretariat following the Committee of Ministers decision of 29 May 2002 mandating the Secretariat to provide the Committee of Ministers Rapporteur Group for Democratic Stability (GR-EDS) with quarterly progress reports on the honouring of commitments by BiH, as well as developments in the post-accession co-operation programmes.<sup>1</sup> It also provides an update of the follow-up given by the authorities of BiH to the Decision adopted by the CoE Committee of Ministers' Deputies on 19 November 2003, which followed the report on the visit of a Group of Ambassadors, headed by the Chairman of the GR-EDS (see document CM/INF(2003)50 and Appendix II to the present document).

3. This report is the last one to be produced before the end of the second year of BiH membership in the CoE (24 April 2004). It should be remembered that a series of specific commitments has to be fulfilled by BiH by this date. The present report is based *inter alia* on the information gathered during a Secretariat mission to BiH (Sarajevo, Mostar and Banja Luka) which took place from 22 to 27 February 2004, as well as other contacts and information provided by the authorities of BiH and international organisations. The programme of the Secretariat delegation's visit is appended to this report (Appendix I).

4. The Secretariat delegation would like to express its gratitude to the Ministry of Foreign Affairs of BiH, and the Permanent Representative of BiH to the CoE, as well as to the CoE Office in Sarajevo, for their co-operation and the arrangements for the visit. The Secretariat delegation was again able to meet the highest authorities (national and international) and to have open discussions, including on the most sensitive issues at State level and in both Entities (Federation and Republika Srpska).

5. In order to guide CoE work, notably the co-operation programmes, a number of priority matters have been identified in the fields of democratic institutions, human rights, rule of law and education. These priority matters appear in boxes in each relevant chapter below .

## II. MAIN CONCLUSIONS AND RECOMMENDATIONS

6. The strengthening of BiH's Statehood and democratic institutions is still in progress. More specifically, since the last report and the Decision of the CoE Committee of Ministers' Deputies on 19 November 2003 (see Appendix II), the following **progress should be underlined:**

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<sup>1</sup> The first five reports were presented in July 2002 [doc. SG/Inf (2002) 27], November 2002 [doc. SG/Inf (2002) 40] March 2003 [doc. SG/Inf (2003) 9 and Addendum], June 2003 [SG/Inf (2003) 21 and Addendum] and October 2003 [SG/Inf (2003) 36 and Addendum].

- i. The State Law on defence (with the creation of a State Ministry of Defence) and the Law on the Indirect Taxation Authority were adopted in December 2003; the law on a single Intelligence service is in parliamentary procedure;
- ii. Revision of the Election legislation has started with the assistance of the Venice Commission;
- iii. Competences of the Human Rights Chamber were transferred to the Constitutional Court on 01 January 2004; the latter has revised its Rules of Procedure to increase its efficiency;
- iv. Three national State Ombudsmen were appointed on 1st January 2004 (the Serb member resigned a few days later and was replaced in February 2004);
- v. As of the end of December, the overall implementation ratio of Property legislation was 92, 5 % and the Ministry of Human Rights and Refugees has opened its first regional Centre in Sarajevo to maintain and facilitate the return process; BiH is now a member of the CoE Development Bank;
- vi. The State report under the Framework Convention on the Protection of National Minorities (FCNM), due on 1<sup>st</sup> June 2001, was finally submitted on 20 February 2004;
- vii. The Entities Parliaments have agreed to transfer certain competences to the State, allowing the establishment of a single High Judicial and Prosecutorial Council (HJPC) at State level; the State Court is being strengthened, the preparations for the establishment of a War Crimes Chamber are progressing and additional financial resources -though insufficient- are being allocated to the courts and Prosecutors' offices;
- viii. The European Convention on the suppression of terrorism was ratified on 10 October 2003 and a National Action Plan to Fight Organised Crime was adopted;
- ix. BiH also ratified the Lisbon Convention on the recognition of qualifications concerning Higher Education on 9 January 2004.

7. However, the Secretariat's assessment of the results achieved by BiH in the fulfilment of its commitments after almost two years of membership to the CoE, concurs with the opinion expressed by the High Representative Paddy ASHDOWN when addressing the UN Security Council in New-York on 3 March 2004, i.e. the **current rate of reform in Bosnia-Herzegovina is too slow**. In addition, **constant pressure by the international community** (and sometimes decision by the High Representative) is needed to achieve progress. This goes contrary to the strategic overall objective of BiH membership in the CoE, i.e. **developing ownership and domestic responsibility**.

8. Commitments to be fulfilled by the end of the second year of BiH's accession to the CoE (i.e. 24 April 2004), include the ratification of a number of Conventions which do not automatically result from the Dayton agreements and require positive action by the relevant authorities of BiH (at State and Entities levels). In addition, BiH is expected to implement Conventions already ratified as well as legislation adopted and to continue progress in the priority areas defined in the fields of democratic institutions, human rights, rule of law and

education. As expected, BiH encounters many difficulties in this process and fulfilment of some commitments is being delayed. In particular, *de facto* segregation in schools should have already been abolished and full support should be provided to the establishment of an independent and professional judiciary. This delay is particularly harmful, as some of these commitments are directly connected to the preparations for the feasibility study for a future Stabilisation and Association Agreement with the European Union and the Partnership for Peace (PfP) with NATO.

9. Outstanding recommendations made by the CoE Committee of Minister's Deputies on 19 November 2003 (see Appendix II) remain to be fulfilled. The CoE stands ready to provide advice and assistance in this process.

10. In general, more emphasis should be placed on concrete implementation of decisions/legislation. An increasingly pro-active approach, both at State and Entities' levels is also required. More specifically:

#### **A. Democratic institutions**

- i. Capacities of action of State institutions, in particular Ministries, must be strengthened and State institutions should be provided with the necessary resources (human, material and financial);
- ii. Progress in the implementation of the European Charter of Local-Self-Government is necessary; developing capacities (in particular financial means) of local authorities in both Entities is indispensable to improve efficient decision-making processes and to create economically-viable decentralised structures; in this perspective, the RS is preparing a new legislation with the assistance of CoE experts;
- iii. The European outline Convention on transfrontier cooperation should be signed and ratified by the end of April 2004;
- iv. Municipalities should meet their funding obligations for the October 2004 local elections;
- v. Progress is also expected in the implementation of the new status of Mostar and the reform of the status of Sarajevo as a State capital;
- vi. Streamlining the administrative structures in the FBiH will also be necessary;
- vii. The issue of "Others"- BiH citizens who are not Constituent peoples (Bosniaks, Croats or Serbs) - will need to be addressed to enable full participation of all non-constituent groups in the democratic process at all levels of government;
- viii. There is an urgent need to improve BiH capacities for reporting and providing adequate information in the context of the various conventional or other monitoring procedures put in place by the CoE. Both State and Entities should play an essential role in this respect.

## B. Human rights

- i. Following the ratification of European Convention on Human Rights (ECHR), the Office of the Government Agent to the European Court of Human Rights should be established as soon as possible and a new impetus should now be given to the 'compatibility exercise' of BiH legislation with the ECHR;
- ii. The Constitutional Court, and in particular its new Human Rights Commission, still needs to be reinforced;
- iii. The establishment of a sustainable, independent and effective State Ombudsman institution is of the utmost importance. The working group established to make proposals for the creation of a unified Ombudsman institution should be given time and a proper mandate to achieve its task. As requested by the BiH Presidency, the Venice Commission should be involved in due course and manner in this process. Independently of the future restructuring of these institutions, the authorities are urged to ensure that all human rights institutions are properly funded, that they are able to perform their functions independently and that their recommendations are acted upon, as required in BiH's post-accession commitments;
- iv. In spite of repeated expressions of their will to cooperate, with ICTY RS authorities should make sure that declarations are translated into action, in particular for the (voluntary or forced) transfer of indictees to the Tribunal. An information campaign to depoliticise the issue of cooperation with the Tribunal and to demystify war crime indictees still considered by large segments of the local population as heroes is needed and the setting up of a Truth and Reconciliation Commission should also be encouraged;
- v. More active measures should be taken on the issue of missing persons; in this respect, the new 'Srebrenica commission' should give a serious account of the events;
- vi. Return of properties should be completed and continued efforts are requested, in particular in the economic and social fields (job creation), to promote sustainable return of refugees and IDPs; the recent accession of BiH to the CoE Development Bank could contribute efficiently to this process;
- vii. Preparation for the signature of the European Social Charter needs to be stepped up;
- viii. A countrywide and sustainable Public Broadcasting System should be set up;
- ix. The situation of national minorities ('the Others', according to the BiH Constitution) deserves increased attention. Preparations for the signature and subsequent ratification of the European Charter for Regional and Minority languages should also be stepped up;
- x. Legislation on NGOs would need to be revised, in particular with respect to fiscal treatment;

- xi. Implementation of legislation on Civil Service; citizenship; ‘movement and residence of foreigners’ (replacing the Law on immigration and asylum) and ‘recognition of Public documents’ is required ‘within two years’ of BiH accession to the CoE;
- xii. Preparations for a future population census should be initiated; however, the question of the proper timing of such a census remains open.

### **C. Rule of law**

- i. Full support should be provided to the establishment of an independent and professional judiciary. The agreement allowing the establishment of a single High Judicial and Prosecutorial Council (HJPC) at State level should be signed by the Prime Minister of Republika Srpska and the law on the single HJPC should be adopted as soon as possible by the State Council of Ministers and the State Parliament. It should be accompanied by the establishment of a single BiH Judicial Training Centre and construction of State detention facilities. Adequate resources should be allocated to the judiciary and law enforcement bodies;
- ii. Full support should also be provided for the establishment of the new War Crimes Chamber within the State Court;
- iii. BiH should step up process for the signature and ratification of European Conventions in the penal field (commitment to be fulfilled by 24 April 2004); they include the European Conventions on extradition; on mutual assistance in criminal matters; on laundering, search, seizure and confiscation of the proceeds from crime; on the transfer of sentenced persons; on the transfer of proceedings in criminal matters; and on the compensation of victims of violent crimes;
- iv. Thorough follow-up should be given to recommendations of the Group of States against corruption (GRECO).

### **D. Education**

- i. The situation in a number of schools in FBiH which still apply the principle of ‘two schools under one roof’ should be stopped as soon as possible. The relevant Cantonal and Municipal authorities should pass decisions to complete the administrative unification of "two schools under one roof" by 15 March 2004 and this should be completed by a common curriculum.
- ii. All Cantons in FBiH and RS should adopt laws in conformity with the prototype law on primary and secondary education without further delay. In RS a new draft law in line with the State framework law has been developed and adoption by RS Parliament is expected in the nearest future.
- iii. The State law on Higher Education should be adopted by the end of March 2004.

## **E. Co-operation programmes**

11. BiH continues to be one of the most important beneficiaries of CoE assistance activities, and the Organisation is largely active in the fields that have been pinpointed in the post-accession monitoring reports. Nevertheless, it seems BiH could make even more use of its membership of the Organisation.

12. The co-operation in BiH between the European Commission and the CoE can be considered a model. The political co-operation is evident from the linkage to CoE post-accession commitments in the European Commission's November 2003 BiH Feasibility Study for the Stabilisation and Association Agreement. At present, four Joint Programmes are in force in BiH. The tri-partite Joint Programme Steering Committee arrangement allows these programmes to promptly adapt to changed needs.

## **III. DEMOCRATIC INSTITUTIONS**

<p><b>A. Strengthening and functioning of democratic institutions (at State and Entity level), with particular reference to the legislative process and to effective participation of representatives of the constituent peoples in decision-making</b></p>
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### **Reinforcing BiH Statehood, reform ownership and integration into Europe**

13. Reinforcing BiH ownership on its future and its political decision-making were the main strategic objective justifying the decision to invite the country to join the CoE almost two years ago. The High Representative publicly expressed, on several occasions, his wish to progressively reduce the use of his 'Bonn powers'. However, still today, most of the reforms are either imposed by the High Representative, or the result of strong pressure by the international community. Political leaders both at State and Entities level strongly expressed their frustration at the regular imposition of decisions on them by the International community. At the same time, they show a great reluctance to accept the compromises which would be necessary to agree on any decision of importance. Short term electoral interests (often presented as 'vital national interest') all too often prevent the adoption of any decision and international pressure remains the only way to avoid full paralysis.

14. In this respect the new status for Mostar imposed by the High Representative on 28 January 2004, is very symbolic of the incapacity of local political leaders to negotiate constructively and to agree on workable solutions respecting everyone major interests. After months of unproductive negotiations, the High Representative had to impose a solution. The only consensus on which local political leaders could agree was the expression of frustration and disagreement with the High Representative's decision.

15. In spite of these difficulties the –often too slow- strengthening of State institutions is still progressing : new staff is being recruited and experienced high-profile politicians are joining State institutions. Most importantly new institutions, with the corresponding transfer of responsibilities, are being created at State level. This concerns in particular the State Ministry of Defence (negotiations for the nomination of the Minister were still taking place at the moment of the Secretariat visit), the future War Crimes Chamber to be established in the framework of the State Court, the State Ombudsman (to be merged together with the Entities



Ombudsman) etc. However, these positive developments are not the result of a smooth and efficient process; each decision is the result of long and painful negotiations and when a new institution is being created the questions of location, financing and nomination of staff remain problematic. In addition, the very difficult financial situation of BiH results in most institutions still lacking a proper budget for 2004 which clearly undermines their capacity for action and ultimately their credibility.

16. Consolidation of State-level institutions and building ownership cannot be totally dissociated from a reflection on the evolution of the constitutional system inherited from the Washington and Dayton agreements. Discussions and speculations in BiH on the possible constitutional reform flourish. However consensus only exists on one point: to be acceptable and sustainable any constitutional reform should be the result of the decisions of the peoples of BiH and not be imposed by the international community. The most debated issue is the necessity to simplify the constitutional structure of the FBiH whose four layers of administration generate high-costs, inefficiency and heavy bureaucracy. Many question the possibility of amending the FBiH structure without modifying the structure of the State of BiH itself. According to some interlocutors there is room only for one level of administration between the State level and the municipalities. The question is what would be the intermediary level: the present Entities or a new structure modelled on former economic regions?

17. One crucial incentive to accelerate reforms in BiH concerns the consensus of all political leaders on the necessity to further the process of European integration. The Feasibility Study for the Stabilisation and Association Agreement (SAA) with the European Union is of paramount importance. In this respect, it should be underlined that the first of the 16 preconditions for the conclusion of the SAA, includes the “implementation of BiH’s CoE post-accession criteria, especially in areas of democracy and human rights”. In addition, a number of the other preconditions are directly linked to concrete CoE post-accession commitments. They concern good governance, the judiciary, the fight against corruption and organised crime and the reinforcement of human rights protection mechanisms. The other issues concern economic and social conditions of the country which for some of them are indirectly connected to CoE activities and projects. Fulfilling CoE commitments is clearly a pre-condition for the conclusion of the SAA and the development of closer relations with the EU. In this context, the very substantial and fruitful co-operation developed between the CoE and the European Commission in BiH, which resulted in the conclusion of four separate Joint Programmes (for a total amount of € 3.3 million over a two-year period 2003-2004), brings a concrete contribution to the fulfilment of those commitments.

18. Similarly, the civil control over the army which is one of the commitments with the CoE conditions, to some extent, the accession to the Partnership for Peace (PfP) with NATO. In this respect, the delegation was informed that in December 2003, the BiH Parliament adopted legislation on Defence which strengthens the authority of all state-level institutions over BiH Armed Forces by creating a single military establishment under the operational and administrative control of a new State Ministry of Defence and BiH Joint Staff, and by establishing parliamentary oversight of the defence establishment in BiH. At the time of the visit, however, the Draft Law on Intelligence and Security Agency had still not been adopted. The State Law on the Indirect Taxation Authority was adopted in December 2003.

### **Implementation of the BiH Constitutional Court's Decision on Constituent Peoples**

19. One difficulty for the progress of democratic institution building in BiH seems to rely on a very strict interpretation of the concept of 'vital national interest' by some political forces. Short-term political and electoral interests seem to prevail all too often over the general interest of the State.

20. The implementation of the Constitutional Court's decision on Constituent peoples has not been completed at all levels. One clear example is the composition of the Chamber of Peoples in the Parliamentary Assembly of the FBiH which is still lacking 7 Serb members due to insufficient number of Serbs elected in Cantons at the last elections of October 2002. On the other hand, it should be noted that the membership of the State Constitutional Court (where a Serb member was missing for a long period) has now been completed (at least as regards national members). This is very important bearing in mind the additional responsibilities entrusted with the Constitutional Court following the dissolution of the Dayton Human rights institutions on 31 December 2003.

21. Strict respect of the Constitutional Court's decision on 'constituent peoples' which constitutes the basis of the present constitutional, institutional and political order in BiH, might in some cases, lead to difficulties when the question of appointments to public functions is at stake. Concerns for the balanced ethnic composition of institutions should not run counter to the primacy of competences and efficiency.

22. A particularly delicate issue concerns the education system and the use of languages at school. Increased pressure is exercised at all levels (including by parents of schoolchildren) for developing mono-lingual curricular in one of the three local languages (Bosniak, Croatian and Serbian). This trend to mono-linguistic schools (or mono-linguistic curricular within officially pluri-linguistic and pluri-ethnic education institutions) could lead to three parallel education systems, in spite of the efforts to promote administrative reunification of schools.

23. The very delicate political balance which was at the basis of the Dayton Agreement and the still prevailing lack of trust between different communities, make it necessary to respect the Constitutional Court decision on Constituent peoples and to secure their proper implementation. However, in parallel more efforts should be deployed to promote dialogue, mutual understanding and cooperation between all peoples living in BiH, independently of their ethnic, cultural or religions obedience. Through its various civil initiatives to promote multicultural dialogue, the Council of Europe could be more active in creating opportunities to consolidate internal cohesion and feeling of belonging to a common society.

24. Finally, the problems of those who do not belong to any of the three constituent peoples, the so-called "Others" or in fact, the national minorities in BiH, still need to be recognised. This is an issue which must be dealt with to ensure that every BiH national has a say in the future of the country (see also part IV.D below).

### **Election Legislation in BiH**

25. Revision of the electoral law, in cooperation with the Venice Commission was one of the BiH post-accession commitments to be fulfilled by the first year of BiH's accession to the CoE. Work has recently started on this issue, following the establishment of a working group in late 2003. Representatives of the State Parliament indicated that the reform would comprise

two stages: one, rather urgent, to revise the legislative framework of the forthcoming local elections – now foreseen on 2nd October 2004, and a more comprehensive reform of BiH Election Law. The Venice Commission is providing its assistance.

26. Amendments to the existing F BiH legislation will allow the direct elections of mayors for the October local elections.

<b>B. Development and functioning of local democracy (powers and finances)</b>
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27. Local democracy continues to be a pivotal issue in BiH and must accompany the on-going processes of strengthening the State-level. In July 2004 it will be two years since BiH ratified the European Charter for Local Self-Government and an assessment of the implementation of the Charter in BiH, by the Congress of Local and Regional Authorities in Europe (CLRAE), could be appropriate. Moreover, in view of the local elections scheduled for 2 October 2004 reform of the existing local government legislation is becoming an acute matter. The financing of these local elections also remains to be secured, as most municipalities did not foresee these expenses in their 2004 budget.

28. In RS the government is in the process of amending its new draft law to comply with the guidelines that the CoE recently has provided. The CoE is committed to offering further detailed advice in the field of local government this spring.

29. In F BiH the municipalities also need to be empowered. It is of utmost urgency that the constitutional amendments giving further competencies to the municipalities are adopted soon. Ultimately, a new F BiH law on local self-government needs to be put into place, without delay, and needs to be followed by appropriate cantonal legislation.

30. The planned Conference of Mayors of BiH, to be held on 22-23 April 2004, under CoE auspices, provides a good opportunity for reviewing the exact state of preparations for the local elections and for setting the priorities for action in the remaining period of time.

31. A new Statute for a united Mostar will be operational as from 15 March and its full implementation is now a top priority, in the spirit of the European Charter for Local Self-Government. However, it is very regrettable that this Statute, which merges the existing six municipalities into one, had to be imposed by the High Representative in January 2004.

32. Nevertheless, during the visit of the CoE delegation, the possibility of opening a Local Democracy Agency (LDA) in Mostar, in partnership with European cities and regions, was once again welcomed by all local political groups. The preparations are progressing and a first meeting of the potential partners is scheduled to take place on 16 April 2004, in Mostar.

33. The status of Sarajevo is also an issue which should be dealt with. It is at present the capital of the State of BiH, of the Federation and the seat of the Sarajevo Canton but there is no law on the city of Sarajevo, although a draft law has already been prepared.

34. Finally, it needs to be underlined that the signature and ratification of the Madrid Outline Convention on Transfrontier Co-operation is a post-accession commitment to be fulfilled within the second year of CoE Membership. However, it should be noted that BiH has established good co-operation with all its neighbours.

#### IV. HUMAN RIGHTS

A. <b>Future of the Dayton Human Rights institutions</b>
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35. Competences of the former BiH Human Rights Chamber have now been transferred to the State Constitutional Court and the first three national Ombudsmen were appointed at State level. This transfer of responsibilities to BiH institutions is an important step forward in the State-building process and reinforcement of BiH ownership of its future.

#### **Transfer of Human Rights Chamber's competences to BiH Constitutional Court**

36. On 31 December 2003, the responsibilities of the BiH Human Rights Chamber were transferred to the BiH Constitutional Court pursuant to the "Agreement pursuant to Article XIV of Annex 6 to the General Framework Agreement for Peace in BiH" signed on 25 September 2003 by the Entities and the State of BiH. A Human Rights Commission within the Constitutional Court of BiH will work from 1 January to 31 December 2004 at the latest, to deal with the Chamber's backlog (around 9 500 cases), i.e. the cases registered before the Human Rights Chamber before 1 October 2003, and those provisionally registered between 1 October and 31 December 2003. The Commission consists of 5 judges (2 international and 3 local members). The Constitutional Court deals with cases registered after 1 January 2004.

37. According to the President of the Constitutional Court, the Human Rights Commission could solve approximately 50 % of the cases with its current resources. The Commission needs additional international and local lawyers to be able to deal with the backlog inherited from the Human Rights Chamber.

38. As concerns the Constitutional Court, the amended rules of Procedure and the strengthening of the secretariat have already enabled a better processing of the cases. Resources, however, remain insufficient to cope with the large number of applications already received (sometimes 40 within a day), which concern mainly missing persons and pensions. The President of the Court has called on the international community to provide funds to recruit additional lawyers and to pay a number of staff members whose salaries is not foreseen in the existing budget. Despite promises made by several Governments, several of them have yet to materialise and the Constitutional Court still needs additional resources. Equipment, in particular computer services is also requested. Training already provided by the Council of Europe was highly appreciated.

39. Although progress has been made in the past years, the lack of proper implementation of decisions of human rights institutions by the State and the Entities is still a matter of concern. The Constitutional Court intends to publish an overview of implementation of decisions issued by the (former) Human Rights Chamber.

40. As concerns implementation of the Human Rights Chamber's Decision of 7 March 2003 on the 'Srebrenica cases', the delegation was informed that the RS Government had established, in December 2003, a 'Srebrenica Commission' to investigate events in and around Srebrenica in July 1995. The High Representative reportedly gave the RS authorities a 6-month deadline to give a serious accounting of these events.

## **Ombudsman institutions**

### **- National State Ombudsman institution**

41. The mandate of the State Human Rights Ombudsman, Mr Orton, ended on 31 December 2003. In November 2003, the BiH Parliament approved the nominations for the 3 candidates submitted by the BiH Presidency and on 1<sup>st</sup> January 2004, Safet Pašić, Snežana Savić and Mariofil Ljubić succeeded Mr Orton as the first national State Ombudsmen in BiH. However, Mrs Savić resigned on 19 January 2004. A new Serb member, Mr Popovic, was appointed in February 2004. The newly appointed State ombudsmen have requested the Venice Commission to provide an opinion on their status and salary. The Venice Commission adopted this opinion on 12-13 March 2004<sup>2</sup>.

42. It would appear that much remains to be done to strengthen and ensure the proper functioning of this new State institution as a sustainable, independent and effective body and to build population's trust and confidence in it. State and Entity Ombudsmen indicated that they were establishing coordination mechanisms to avoid duplication of their work until a merger is carried out. These institutions have an essential role to play to develop a greater respect for human rights.

### **- Reorganisation of the Ombudsman institutions**

43. There are now three Ombudsman institutions in BiH: one at State level and one in each Entity. Each of these institutions is composed of 3 Ombudsmen (one Bosniak, one Croat and one Serb). In its Opinion<sup>3</sup> adopted in July 2002, the Venice Commission concluded that there is a commitment to consider, in the long term, the establishment of a unified ombudsman office at State level. At the end of last year, the International Community has called on the authorities of BiH to complete the reform by 1<sup>st</sup> January 2005. A working group has now been established within the MHRR to oversee the process. A draft law on the merger should be prepared by 1st April 2004. The Venice Commission was requested by the BiH presidency to assist in the preparation of this law and will do so as soon as the working group commences its activities.

44. While accepting the need for a merger of the institutions in the long term and recognising the needs to strengthen the State ombudsman institution, to improve coordination and reduce the institutions' financial costs, the Entity Ombudsmen, as well as representatives of the civil society still consider that the time is not ripe for such a merger. They consider that the Entity Ombudsman offices should not be abolished until there is a well-functioning State Ombudsman institution – which also requires popular confidence in a unified State organ- and until a proper structure for the future unified institution is designed. This could require a transitional period of one to two years during which the three institutions could no doubt find

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<sup>2</sup> See CDL-AD (2004) 6.

<sup>3</sup> See CDL-AD (2002)10, dated 8 July 02, *Opinion on certain issues related to the Ombudsman institutions in BiH and on the interpretation of certain commitments undertaken by BiH upon accession to the CoE*. The Venice Commission concluded that there is a commitment to consider, in the long term, the establishment of a unified ombudsman office at State level. It should be established "as a fully national, multi-ethnic institution". "Until such time as a single, unified institution may be established, co-operation and co-ordination in the work of the existing bodies remain essential and there should continue to be no hierarchical relationship between these institutions". "Any steps taken towards creating a single institution at the level of the state must not interfere with the work currently carried out by each; indeed, there is a firm commitment by the authorities of Bosnia and Herzegovina to guarantee the independence of the existing institutions at each level."

appropriate working methods to coordinate their activities. The Entity Ombudsmen have urged the international Community to reconsider the timeframe and modalities of the drafting process of the law on the merger to allow a proper discussion about the best Ombudsmen 'model' structure for BiH.

45. Independently of this future reorganisation, the authorities should ensure that the human rights institutions are properly funded, that they are able to perform their functions independently and that their recommendations are acted upon, as required in BiH's post-accession commitments.

<b>B. Co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY)</b>
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46. Co-operation with the ICTY requires unconditional access to archives, protection of witnesses and the arrest or surrender of indicted persons. During its mission, the Secretariat delegation continuously reminded the authorities of their commitment to fully comply with the ICTY and stressed that it was also part of the further European integration of BiH.

47. While admitting that it was one of the most difficult issues, the RS authorities reiterated their commitment to cooperation with the ICTY. However, despite these repeated commitments, concrete results are still expected. In RS, there has not been a single arrest and transfer of indicted war criminals. On 4 March 2004, the US Ambassador-at-large for war crimes reportedly warned the RS Parliament that the RS authorities will face "continued or expanded economic and political sanctions" if they do not apprehend top war crimes suspects Radovan Karadzic and Ratko Mladic.

48. There is an urgent need for a large information campaign to depoliticise the issue of cooperation with the Tribunal and to demystify war crime indictees still considered by large segments of the local population as heroes.

49. According to representatives of the civil society, parallel to the work of the ICTY, an honest evaluation of the past should be undertaken in order to avoid repetition of similar events in the future. For this purpose, a Truth and Reconciliation Commission at State level should be set up. In the long run, it could help the population to face the past, however painful and difficult it might be and hence, contribute to the improvement of inter-ethnic relations. A draft law on the Truth and reconciliation Commission has already been prepared. During the visit, interlocutors generally agreed on the principle of setting up such a commission but expressed doubts as to the modalities (timeframe, composition etc.). Since reconciliation can not be imposed, a public debate on this issue to ensure support of the BiH population for the setting up of this Truth and Reconciliation Commission should be initiated.

50. In this perspective, the Secretariat urges the authorities to take more active measures on the issue of missing persons, which Amnesty International<sup>4</sup> considers as one of the most serious persisting human rights violations in the country resulting from the war. The International Committee of the Red Cross (ICRC) reported that, since 1995, it had received requests from family members to trace 20 931 persons missing from the war years, including 17,369 Muslims, 744 Croats, 2,683 Serbs, and 135 others. Reportedly, a total of 4,076 of

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<sup>4</sup> "BiH: honoring the ghosts – ending impunity for disappearances", AI INDEX: EUR 63/004/2003, 5 March 2003.

these persons had been accounted for (326 of whom were found alive) by the end of 2003. A law on missing persons has been prepared and should be soon adopted. In addition, a state institution - Missing Persons Institute (MPI)- designed to serve as a working platform for entity-level commissions on missing persons should start operating as soon as possible.

51. It should also be noted that the arrests and detention of two alleged former members of Mr Karadzic's security unit by SFOR in RS in early 2004 has drawn some criticism among RS politicians who argued that ECHR standards were not applied by SFOR. These persons have now been handed over to the RS authorities.

<p><b>C. Sustainable return of refugees and displaced persons, on the basis of freedom of choice</b></p>
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**Property Law Implementation (PLI)/restitution of property and handover**

52. The mandate of the Commission for Real Property Claims (CRPC) ended at the end of 2003. The process of return of property, which is a BiH's post-accession commitment, has almost been completed. As of the end of December, the overall implementation ratio of PLI was 92, 5 %. As a number of municipalities had failed to meet the deadline (31 December 2003) for completing the property claims, the Framework Transfer Agreement could not be signed as foreseen. However, CRPC's claims files, records and databases have been transferred to the authorities of BiH. Municipalities will still have to enforce outstanding property decisions.

53. The Property Law Implementation agencies (OHR, UNHCR and OSCE) indicated that they were concerned about the closure of several municipal offices of the Ministry for Displaced Persons and Refugees responsible for property law completion in the RS, which was seriously disrupting the final phase of this process.

**Returns**

54. All interlocutors stressed again that the return of property on many occasions does not equal sustainable return. In many cases the properties were sold, possibly to their temporary resident and their previous owner returned to the temporary residence which became permanent residence. However, according to UNHCR<sup>5</sup>, "real and tangible progress in the return of BiH refugees and Displaced Persons (DPs) has been achieved". "Out of an estimated 2.2 million persons forcibly displaced during the war, 985 003 former refugees and DPs have returned to their pre-war homes as at end December 2003. These returns significantly include 434,206 so called minority returns". "A large number of persons still remain displaced in the region, however, including 103,614 refugees from BiH. Out of this number 99,761 are residing in Serbia and Montenegro (SCG), and 3,853 in Croatia. Within BiH, some 327,000 DPs are still registered including 2,000 DPs who continue to live in squalid conditions in Collective Centres, and 22,510 refugees from the region for whom durable solutions will still have to be found". During its mission, the Secretariat delegation was also informed that there are even cases of returnees going back to their places of displacement due to the poor economic prospects in their return area.

<sup>5</sup> UNHCR, 2003 Annual Return Statistics, Sarajevo, 11 February 2004.

55. The BiH Ministry of Human Rights and Refugees (MHRR) opened its first regional centre in Sarajevo on 22 December 2003. Centres will be established throughout the country to maintain and facilitate the return process. The launch of the regional centres marks the start of an implementation program that will set in place a comprehensive nationwide structure through which the MHRR can discharge its responsibilities effectively. According to the Office of the High Representative (OHR), there is no definitive data on how many registered returnees have chosen to remain in their pre-war communities but as many as 2-300,000 may still wish to return. The aim of BiH's strategy is to complete the return of displaced persons and refugees by 2006.

56. During its visit, the Secretariat encouraged the authorities to make best use of the recent accession of the country to the CoE Development Bank (CEB). In this respect, the delegation was informed that projects could focus on the social integration of vulnerable groups of returnees. The authorities also indicated that the assistance of experts of the Bank would be highly beneficial.

57. Eventually, the delicate issue of a new census will have to be dealt with. Many interlocutors (both national and international) have raised the issue of the new census and requested CoE assistance to secure the best possible preparation and observation of a highly delicate operation. At this stage, there is no consensus on the most adequate date for such a census. However, ideally, it should be carried out prior to the next parliamentary elections, ultimately due in 2006.

#### **D. Other relevant issues**

##### **CoE Conventions in the field of Human Rights**

58. In January 2004, Mrs Ljiljana MIJOVIC was elected judge on behalf of BiH to the European Court of Human Rights (ECtHR). The Secretariat delegation was informed that the procedure for the constitution of the Government Agent Office before the ECtHR was under way and that nomination should take place in the near future. As concerns the 'compatibility exercise' of BiH legislation with the ECHR, which is fundamentally linked to BiH's capacity to fulfil its commitments to the CoE, little progress has been made so far. Following the restructuring of the Council of Ministers in late 2002, competences lies at present either with the new Ministry of Justice or the Ministry of Human Rights and Refugees. A new impetus should now be given to this activity.

59. The delegation also stressed the importance of concrete implementation of CoE Conventions already ratified and recalled that the European Social Charter should be signed by the second year of BiH's membership to the CoE, i.e. 24 April 2004. In this respect, much concern was again expressed by representatives of the civil society and Ombudsmen with the social climate in BiH, widespread violations of social rights, the situation of unemployed, elderly and ill persons, refugees and IDPs.

60. At the time of the Secretariat mission, experts of the Framework Convention for the Protection of National Minorities (FCNM) Advisory Committee were also visiting BiH. The Secretariat delegation was informed that the State Report, due on 1<sup>st</sup> June 2001, was finally submitted on 20 February 2004. However, it would appear that the data contained in the report raised some criticisms, in particular in RS and the authorities of BiH might therefore wish to complement or even correct this report. This illustrates a general problem in proper



reporting in the context of the various CoE Monitoring procedures. The FCNM experts plan to adopt their Opinion in May 2004.

61. With respect to minority protection the Secretariat delegation reminded of the importance of the European Charter for Regional or Minority Languages, to be signed and ratified by the second year of BiH membership to the CoE (24 April 2004).

62. Although the CoE was not consulted on the Law on protection of rights of national minorities, adopted in April 2003, it is nevertheless available to work with the BiH authorities towards its implementation.

63. Finally, the issue of “Others”-BiH citizens who are not Constituent peoples (Bosniaks, Croats or Serbs)- will need to be addressed to enable full participation of all non-constituent groups in the democratic process at all level of government. The situation of Roma in BiH is of particular concern. According to the European Roma Rights Centre, Roma in BiH are “regularly exposed to abuses of their civil, political, economic and social rights as members of a second class "non-constituent" people and because entrenched anti-Romani sentiment in BiH gives rise to endemic racial discrimination and other human rights violations against Roma”. Reportedly, the Advisory Council on Roma established under the auspices of the MHRR ceased to convene meetings due to lack of finances.

### **Freedom of expression and information**

64. BiH signed the European Convention on Transfrontier Television on 9 December 2003. The media landscape in BiH is still characterised by the weakness of independent media and the low level of ethics and professionalism of journalists. Legislation should be adopted at State and Entity level to set up a countrywide and sustainable Public Broadcasting System in line with Council of Europe standards.

65. In February 2004, threats were directed to the Helsinki Committee for Human Rights in RS (HCRS) in Bijeljina and editor-in-chief in RS. On 25 February 2004, the BiH Press Council has called on all relevant institutions to prevent violations of freedom of expression. These events deserve full investigation by the relevant authorities..

### **Freedom of religion**

66. On 28 November 2003, the BiH Parliament adopted the Law on Freedom of Religion and on Legal Status of Churches and Religious Communities, which was prepared by the Inter-religious Council. The law defines the legal status of religious organisations, including property rights and grant a right to property restitution "in accordance with the law". However, it would appear that this restitution law has not yet been adopted. Main religious communities have extensive claims for restitution of property.

67. Most religious leaders criticise violence and nationalism but, on the ground, other clerics are said to contribute to the incitement of religious-ethnic and ideological intolerance. The CoE Forum “Learning from each other –Civil Society intercommunity and inter-religious dialogue” organised in 2003 issued an ‘Appeal’ for dialogue and tolerance.

**Legislation relating to commitments to be fulfilled by the second year of accession to the CoE (24 April 2004)**

68. Finally, it should be stressed that implementation of legislation on Civil Service; citizenship; ‘movement and residence of foreigners’ (replacing the Law on immigration and asylum); ‘recognition of public documents’ and NGOs is required ‘within two years’ of BiH accession to the CoE. As concerns NGOs, legislation needs to be revised since NGOs are not taxed as charities or non-profit organisations, but as businesses. NGOs also expressed concern about a number of problems relating to the process of registering at the local and State level.

**V. RULE OF LAW**

**Functioning of the judicial system, particularly with regard to execution of court decisions and the fight against corruption and organised crime**

69. Steady and substantial progress is being made in consolidating judicial institutions at State level and the appointment procedure will soon be completed at all levels. The lack of proper execution of decisions of justice and adequate financial resources for the judiciary have still to be addressed.

**A. Reform of the Judiciary**

70. The High Representative extended the mandate of the Independent Judicial Commission (IJC), and the transitional period of the High Judicial and Prosecutorial Councils (Councils) until 31 March 2004. By this date the IJC and Councils are expected to finish the process of reappointment of all judges and prosecutors in BiH and merge the three Councils that exist currently into a single High Judicial and Prosecutorial Council at State level.

71. Both Entities Parliaments have now agreed to transfer certain competencies concerning the judiciary to a single High Judicial and Prosecutorial Council (HJPC) at State level. However, the RS National Assembly indicated that it would retract its agreement if a number of conditions are not contained in the draft law on the HJPC. These conditions include the creation of a sub-council to protect the interests of the Entity and the establishment of the HQ of the HJPC in Srpsko Sarajevo. The agreement allowing the establishment of the HJPC at State level should now be signed by the Prime Minister of Republika Srpska and the law on the HJPC adopted as soon as possible by the State Council of Ministers and the State Parliament. This transfer of competences is a benchmark in the strengthening of the judiciary at State level and should not be jeopardised. It should also be followed by the establishment of a single BiH Judicial Training Centre and construction of State detention facilities.

72. As of 3 March 2004, 95 % of the appointments of judges and Prosecutors had been fulfilled. At their meeting in January 2004, the Ambassadors of the Peace Implementation Council (PIC) expressed great concern over attempts to politicise the process of appointing judges and prosecutors, emphasising that it could obstruct efforts to transform the Councils into a fully-fledged BiH institution later this year. On 3 March 2004, when addressing the UN, the High Representative warned that ‘certain groups were waging a campaign against the process of establishing an independent and professional judiciary in BiH, and that this could further delay the reform process and BiH’s integration into Euro-Atlantic structures’.

73. Adequate equipment and financial resources should be allocated to the judiciary system, in particular to the courts' and prosecutor's offices to allow, *inter alia*, proper implementation of new Criminal legislation<sup>6</sup>. Measures should also be taken to improve execution of decisions. Significant progress in this respect is necessary to improve confidence of the population in the judicial system.

74. Major progress has been achieved in the setting up of the State Court, inaugurated in January 2003, which will deal with inter-Entity and international crimes, organised crimes and, in due course, war crimes. The Court is composed of international and local judges and has presently 3 judicial divisions: Criminal Law (including a Special Panel for Organised Crime, Economic Crime and Corruption), Administrative Law and Appeals. The Court is currently conducting a high-profile case concerning an alleged extensive human trafficking network. The President of the Court considers that greater efficiency could be achieved if the term of office of international judges were longer than one year. He also raised the need to provide adequate pensions to judges and Prosecutors to consolidate their security. State detention facilities should also be built. This issue should receive greater priority within the BiH authorities and within the international community. At present, there is an agreement to use Entity detention facilities. But this arrangement could create difficulties when cases of alleged war criminals will be examined by the War Crimes Chamber.

75. The establishment of a War Crimes Chamber within the State Court will be another important benchmark. It should be operational by 2005. In October 2003, international donors agreed to provide start-up funding, which would apparently cover costs of the first two years. However, many pre-conditions should still be fulfilled to allow proper functioning of the War Crimes Chamber, in particular: adequate funding for premises, additional staff and judges (local and international), security measures, court police, State detention facilities, a better protection of witnesses and a specific legislation. The authorities of BiH should provide full support for the establishment of this War Crimes Chamber.

76. However, according to Amnesty International<sup>7</sup>, the current proposal for a War Crimes Chamber appears to be based on short-term planning aiming to effect the quickest and cheapest possible withdrawal of the International Community. "The plans do not address the specific shortcomings of the criminal justice system in the country: thousands of perpetrators continue to enjoy impunity for war crimes, crimes against humanity and genocide, committed during the war in Bosnia-Herzegovina. "

77. As concerns the State Constitutional Court, as indicated above, additional resources should be provided to ensure it can cope with its new competences in the field of human rights.

78. During the visit, the Secretariat delegation stressed the importance of CoE conventions in the penal field (i.e. Conventions on extradition; on mutual assistance in criminal matters; on laundering, search, seizure and confiscation of the proceeds from crime; on the transfer of sentenced persons; on the transfer of proceedings in criminal matters; and on the compensation of victims of violent crimes) to be signed and ratified before the end of the second year of BiH membership to the CoE. It was informed that the signature and/or

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<sup>6</sup> Implementation of criminal legislation is included in the commitments to be fulfilled 'within two years' after BiH's accession to the CoE.

<sup>7</sup> EUR 63/021/2003, 12.11.03: 'Justice cannot be achieved on the cheap'.

ratification of some of these instruments was foreseen in the Action Plan adopted by the Council of Ministers.

79. BiH has now fulfilled its commitment to ratify the European Convention on the Suppression of Terrorism by 24 April 2004.

## **B. Police and Fight against corruption and organised crime**

80. Fight against corruption and organised crime is closely linked to the recent restructuring and strengthening of the State level judiciary and Council of Ministers. The new state-level BiH Ministry of Security (MoS) does not maintain police forces but is supported by a new State level Information Protection Agency (SIPA), as well as the State Border Service. New laws on SIPA and Police Officials should soon be submitted to Parliament for adoption. It would appear that SIPA still lacks adequate budget and permanent premises. It should be fully staffed by March 2004. Concerning the restructuring of police forces, a number of options are currently being examined. At present, the RS Ministry of Interior (RSMUP) has a centralised structure with five public safety centres (PSCs) throughout the RS while, in the Federation, each of the 10 cantons has its own cantonal ministry of interior that functions autonomously from the Federation Ministry of Interior (FMUP). Reportedly, neither the FMUP nor the RSMUP are required to report to the MoS since each structure has jurisdiction over different offences.

81. A regional Conference on Efforts to Fight Organised Crime and Corruption was held in Sarajevo on 27-28 October 2003. Following the Sarajevo Declaration's signing, the BiH Council of Ministers adopted on 30 October a National Action Plan to Fight Organised Crime, which brings BiH instruments for fighting organised crime in line with the UN Convention Against Transnational Organised Crime. A regional Anti-Corruption office was also opened in Sarajevo in October 2003 within the framework of the Stability Pact's Anticorruption Initiative (SPAI).

82. As concerns the fight against corruption, a proper follow-up should be given to the GRECO<sup>8</sup> evaluation report's conclusions and recommendations which focus on the judiciary.

## **VI. EDUCATION**

**Adoption of education legislation at all levels, reform of curricula and eradication of all segregation in the school system.**

### **A. Eradication of segregation in schools**

#### **Brcko District**

83. The full integration of elementary and high school classrooms in the Brcko District is reportedly successful. Materials that could be hateful or offensive to others were eliminated and language questions were resolved.

<sup>8</sup> <http://www.greco.coe.int/> Group of States against corruption, First Evaluation Round, Greco Eval I Rep (2002) 10E, 11 July 2003.

### **“Two schools under one roof” in the FBiH**

84. In the FBiH, all Cantonal Ministers of Education have endorsed the ‘Education Reform Strategy’, which pledges to end discrimination in education, cut waste and duplication of effort and resources and eliminate basic inefficiencies in the education system. Yet, the High Representative reported that there has been little progress in implementing these reforms.

85. 52 “two schools under one roof” (separate classes for Croat and Bosniak children) still exist *de facto* in the FBiH. Although instructions were issued for the administrative and legal unification of the schools at the cantonal level, the municipalities have failed to implement the new instructions.

86. The High Representative indicated that he expects the relevant Cantonal and Municipal authorities to pass decisions to complete the administrative unification of "two schools under one roof" by 15 March 2004. He underlined that this unification will not affect the curriculum taught or the languages spoken in the classrooms. Also, by the beginning of the next school year 2004/2005, 'non-national subject courses' such as maths and sciences should be taught in the same classrooms.

87. The Mostar gymnasium is often presented as an exception since the municipality is now completing the required legal measures to secure the administrative reunification of the school. However, the Secretariat delegation which visited both schools in Mostar, was informed that even after administrative unification, there will still be two separate curricula, one in Croat language and the other in Bosniak language and that children will only meet for extracurricular activities. Such a situation could only but consolidate segregation and if confirmed, should not be accepted.

88. The persistence of ethnically segregated schools in BiH is a matter of grave concern for the CoE. Elimination of all aspects of segregation and discrimination based upon ethnic origins is not only one of the post-accession commitments undertaken by BiH. It is of the utmost importance for the citizens concerned and for the further European integration of BiH.

### **Refrain from any remark, which reinforces hatred or mistrust**

89. History, language and literature textbooks still need revision but progress was made in the subjects of geography, religious instruction and nature and society. An Independent Textbook Commission will be established in February 2004 to develop guidelines for authors of history textbooks. The CoE will provide expertise in this process.

<h3><b>B. Legislation on Primary and Secondary Education</b></h3>
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90. The state-level Framework Law on Primary and Secondary Education was adopted unanimously by Parliament on 30 June 2003. However, several key aspects of the law have not yet been implemented: parents do not always respect catchment areas in order to send their children to the school of their ethnicity and the Curriculum Agency should still be established.

91. Harmonised lower level legislation should have been adopted by 31 December 2003. The CoE finalised a prototype law with a group of BiH experts in October 2003, in order to provide the 10 Cantons, the RS and the District of Brcko a 'model' law. As of the end of the Secretariat's visit, only the District of Brcko has adopted new legislation based upon the prototype law and draft laws were at different stages of the parliamentary procedure in a number of Cantons. The use of language in schools and religious instruction are the most contentious areas. RS legislation had to be blocked twice by the international community. However, the Secretariat was informed just after its visit that the RS Ministry of Education will now submit a primary and secondary education law to Parliament which is line with the Framework law. This is a very welcome development.

<b>C. Higher Education</b>
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92. By ratifying the Lisbon Convention on the recognition of qualifications concerning Higher Education on 9 January 2004, BiH has fulfilled one of its commitment relating to higher education.

93. The state-level Framework Law for Higher Education, drafted by BiH and CoE experts, must be adopted by the end of March 2004 to secure a World Bank loan package. The International Community is urging the authorities to adopt it in time. The Secretariat delegation was informed during its visit that the most contentious issue in this law concerned the funding of higher education at State level. The authorities indicated that an agreement could be found whereby funds would be allocated by Entities and not by the State. Competences involving international co-operation and co-ordination have been assigned to the State-level. A concerns the Federation, it should be noted that the law foresees the deferral of power in Higher Education from cantonal level to Entity level<sup>9</sup>. The required constitutional amendments will therefore have to be adopted by the FBiH Parliament. Adoption of the law will allow the establishment of a National Information Centre required by BiH's accession to the Lisbon Convention. It will represent another milestone in the reform of education.

## **VII. COUNCIL OF EUROPE CO-OPERATION PROGRAMMES WITH BiH**

94. Bosnia and Herzegovina continues to be one of the most important beneficiaries of Council of Europe assistance activities. Since the last report the CoE has provided assistance with, among other things, the development of the statute and curricula of the Judicial Training Centre in BiH, commentaries on the newly adopted criminal and criminal procedure codes, comments on the draft public service broadcasting law and training of judges on the ECHR. In a new development, the Council of Europe recently completed the first of a series of training activities for parliamentarians on the ECHR and the role of the Ombudsman institution. Several support activities have also been carried out to the benefit of the penitentiary system (peer exchange in BiH and abroad) and, as mentioned earlier, there has been an expert appraisal of the third Republika Srpska draft law on local government. The Council of Europe, to a large extent, offers support to precisely those areas that have been pinpointed in the post-accession monitoring reports.

95. In total, the Council of Europe activities database registered some 60 completed assistance activities in the period October 2003-March 2004 (excluding partial agreements).

<sup>9</sup> See in this respect, the Opinion of the Venice Commission: CDL-AD(2003)17, dated 24 October 2003, Opinion on the transfer of responsibility in the field of higher education within the Federation of BiH ("a revision of the Federation's Constitution is to be recommended").

Detailed information on the cooperation activities with BiH can be found on the CEAD database. Nevertheless, based on the modest number of requests now reaching the Secretariat, as well as on the basis of the current level of participation in CoE committees' work, it seems BiH could make even more use of its membership of the Organisation. As already mentioned, BiH has also recently become a Member of the Council of Europe Development Bank (CEB).

96. In the context of co-operation programmes the CoE Sarajevo Office plays a crucial role not only in coordination activities on the spot, but also in implementing itself a large number of activities and in helping to mobilise additional resources.

97. The co-operation between the European Commission and the Council of Europe can be considered a model. The political co-operation is evident from the linkage to CoE post-accession commitments in the European Commission's November 2003 BiH Feasibility Study. In the reporting period more than one third of all CoE assistance activities were implemented in the context of Joint Programmes with the European Commission, and this figure is still on the rise. At present, four Joint Programmes are in force in BiH. The tri-partite Joint Programme Steering Committee arrangement allows these programmes to adapt to changed needs. The next Steering Committee meeting will take place in the early autumn of 2004.

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**Appendix I****Programme of the Mission of the Secretariat Delegation****Sunday, 22 February 2004**

20h45                   Arrival of the Monitoring Team at the International Airport Sarajevo  
Flight from Vienna

**Monday, 23 February 2004 – Sarajevo**

7h45 – 8h30           Working breakfast with the High Representative in BiH, Mr. Paddy  
Ashdown

09h00 – 09h55       Meeting in the Ministry of Foreign Affairs of Bosnia and Herzegovina  
with Mrs. Lidija Topic, Deputy Foreign Minister

10h00 – 10h45       Meeting with the members of the Presidency of Bosnia and Herzegovina,  
Mr. Dragan Covic, Mr. Borislav Paravac and Mr. Sulyman Tihic

11h00 – 12h25       Meeting with the Chairman of the Council of Ministers of Bosnia and  
Herzegovina, Mr. Adnan Terzic; the Minister for Human Rights and  
Refugees, Mr. Mirsad Kebo; the Minister of Civil Affairs, Mr. Safit  
Halilovic and the Minister of Justice, Mr. Slobodan Kovac

12h30 – 14h00       Meeting with Collegiums of both Houses of the Parliamentary Assembly  
of Bosnia and Herzegovina and the Parliamentary Delegation of Bosnia  
and Herzegovina to PACE

14h00 - 15h00       Lunch

15h10 – 16h00       Meeting with Ombudsmen of Bosnia and Herzegovina, Mr. Mariofil  
Ljubic and Mr. Safit Pasic.

16h00 – 18h00       Meeting with the Diplomatic Corps accredited in Bosnia and  
Herzegovina at the invitation of Ambassador Bosscher (Netherlands) on  
behalf of the Chair of the CoE Committee of Ministers

20h 00                Working dinner with Ambassador Beecroft, Head of the OSCE Mission  
in BiH and Directors of the OSCE Mission

**Tuesday, 24 February 2004 – Mostar**

07h30                Departure to Mostar

10h30 - 11h30       Meeting with Ambassador Andrieu, Deputy High Representative, OHR  
Mostar Sud

11h30 – 13h00       Meeting with the Chairman and Deputy Chairman of the City Council  
and representatives of the leading political parties

14h00 – 15h00       Lunch

15h00 – 16h00       Visit to the Mostar Gymnasium. Meetings with the Directors of the



Croatian and Bosnian schools

- 17h00 Departure from Mostar
- 20h00 Arrival in Sarajevo
- 20h30 Dinner with the Head of the Civil Service Agency of BiH, Mr. Jakob Finci

**[Tuesday, 24 February 2004 – Sarajevo (Parallel Programme)**

- 9h30-10h00 Meeting with Mrs. Keating-Chetwynd, Education Officer, CoE Office
- 11h00-12h30 Meeting with Ombudsmen of the Federation of Bosnia and Herzegovina: Mrs. V. Jovanovic, Mrs. B. Raguz and Mr. E. Muhibic
- 12h30-14h00 Meeting with the President of the Helsinki Committee for Human Rights in Bosnia and Herzegovina, Mr. S. Dizdarevic
- 15h00-16h00 Meeting with Mrs. M. Macovei, Judicial Reform Resident Expert, CoE Office
- 16h00-17h30 Meeting with Mrs. T. Rakusic-Hadzic, Human Rights lawyer, CoE Office]

**Wednesday, 25 February 2004 – Sarajevo / Banja Luka**

- 09h00 – 10h15 Meeting with Mr. Niko Lozancic, President, and Mr. Ivan Tomijenic, Vice President, of the Federation of Bosnia and Herzegovina (FBiH)
- 10h30 – 11h45 Meeting with Ministers in the Government of the Federation of Bosnia and Herzegovina: Vice-Minister of Justice, Mrs. Kristo; Minister of Education, Mr. Z. Pasic; Deputy Prime Minister and Minister of Culture, Mr. G. Grahovac
- 12h00 – 13h30 Meeting with the Collegiums of both houses of the Parliamentary Assembly of the Federation of Bosnia and Herzegovina
- 14h00 Lunch
- 15h30 Departure from Sarajevo to Banja Luka
- 19h30 Arrival in Banja Luka
- 20h00 Working dinner with the RS Minister for Administration and Local Government, Mr. Slaven Pekic

**Thursday, 26 February 2004 Banja Luka**

- 09h00 – 11h00 Meeting with the President of Republika Srpska, Mr. Dragan Cavic and Deputy President, Mr. Ivan Tomljenovic
- 11h00 – 12h30 Meeting with Members of the Government of Republika Srpska: the Representative of the Prime Minister's Office, Mr. S. Vranic; Assistant

to the Minister of Justice, Mr. Curkovic; Minister of Education, Mr. G. Savanovic; Minister of the Interior, Mr. Z. Deric and Minister for Administration and Local Government, Mr. S. Pekic

- 13h00 – 15h00 Meeting with Collegiums of the National Assembly of Republika Srpska and Council of Peoples
- [12h45 – 14h00 Meeting with Advisors to the RS Ombudsmen, Mrs. V. Granic-Panic and  
(parallel programme) Mr. D. Radoja]
- 15h15 Departure from Banja Luka to Sarajevo
- 20h00 Arrival in Sarajevo
- 20h30 Dinner with Ambassador Humphreys, Head of European Commission Delegation in BiH

### **Friday, 27 February 2004**

- 09h00 – 10h00 Meeting with representatives of the Constitutional Court of Bosnia and Herzegovina, Mr. M. Tadic, President and Mr. D. Kalember, Secretary General
- 10h15 – 11h15 Meeting with the President of the Court of Bosnia and Herzegovina, Mr. Martin Raguz
- 11h30 – 12h30 Concluding meeting in the Ministry of Foreign Affairs of Bosnia and Herzegovina with Mr. Fuad Sabeta, State Secretary
- 14h30 Departure to Sarajevo International Airport

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### **Composition of the Delegation**

#### **Directorate of Strategic Planning:**

Mr. Jean-Louis Laurens, Director  
 Mr. Fredrik Holm, Programme Co-ordinator  
 Ms. Catherine Maffucci-Hugel, Monitoring Department  
 Ms. Diana Radu, Programme Counsellor

#### **Sarajevo Office of the Council of Europe:**

Mrs. Sonja Moser-Starrach, SRSG  
 Mr. Hugh Chetwynd, Deputy SRSG  
 Mr Esad Mavric, Assistant

## Appendix II

### Decision of the CoE Committee of Ministers' Deputies on 19 November 2003 [Extract]

*861st meeting – 19 November 2003*

#### *Item 2.1a*

#### **Current political questions**

##### **a. Activities for the development and consolidation of democratic stability**

- *Bosnia and Herzegovina*
- *Serbia and Montenegro*
- *Ukraine*

(GR-EDS(2003)CB17 and CM/Inf(2003)50)

#### *Decisions*

#### The Deputies

1. took note of the synopsis of the GR-EDS meeting held on 14 November 2003 (document GR-EDS(2003)CB17);
2. in the context of the post-accession monitoring procedure for Bosnia and Herzegovina and on the basis of the report of a visit by a GR-EDS delegation to the area on 20-23 October 2003 (CM/Inf(2003)50):
  - a. asked the authorities of Bosnia and Herzegovina at State and Entities level to implement the recommendations which appear in paragraph 39 of the report;
  - b. asked the member states of the Council of Europe to consider assistance by way of human, material and financial resources such as to enable the Constitutional Court of Bosnia and Herzegovina to assume its responsibilities in terms of human rights protection (paragraph 40 of the report);
3. decided to declassify the report with a view to transmitting it to the Parliamentary Assembly.

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**Extract from document CM/Inf(2003)50 'Honouring of commitments by Bosnia and Herzegovina: Report of the GR-EDS delegation on its visit of 20-23 October 2003', 18 November 2003:**

Paras. 39-40:

39. *A For the attention of the Bosnia and Herzegovina authorities at State and Entity level*

### *Strengthening of the State*

- continue to develop and strengthen the institutions of the State ensuring that they possess the resources needed in order to function. In some cases this implies transferring existing resources from the Entities (or from cantons in the Federation of Bosnia and Herzegovina);
- adopt without delay legislation to strengthen the powers of the State, such as the law on civil control of military forces in Bosnia and Herzegovina, the law to create the State tax administration and a single VAT system, and the law establishing a single intelligence service;
- adopt the law on the High Judicial and Prosecutorial Council and prepare, in conjunction with the Council of Europe, the law on a unified ombudsman institution at State level, the law on local self-government and the law on higher education;
- carry out the revision of the Electoral Code in conjunction with the Venice Commission prior to the local elections;
- conceive a strategy for the future changes of the Constitution of the State and the Entities;
- in accordance with the commitments made and within the requisite time limit, ratify:
  - the Conventions on Extradition, Mutual Assistance in Criminal Matters and Money Laundering;
  - the European Charter of Regional or Minority Languages;
  - the European Social Charter.

### *Human rights and the rule of law*

- take the necessary measures to enable the Constitutional Court to carry out in practice the responsibilities and tasks of the Chamber of Human Rights;
- assist by all appropriate means the return home of refugees and displaced persons wishing to return;
- ensure the enforcement of judicial decisions and end impunity, notably through the War Crimes Chamber;
- develop cooperation with the International Criminal Tribunal for the former Yugoslavia by:
  - affording unconditional access to archives;
  - guaranteeing protection of witnesses;
  - arresting or obtaining the surrender of indicted persons.

### *Education*

With regard to the law on primary and secondary education:

- take all administrative, judicial and educational measures to implement the law and end segregation in schools;
- create the agency on the implementation of the common core curricula;
- ensure that laws in conformity with the prototype law on primary and secondary education now being drafted are passed in the Entities.

With regard to Higher Education:

- prepare – with the help of the Council of Europe – a draft law on Higher Education.

40. **B** *For the attention of Council of Europe member states*

Consider assistance by way of human, material and financial resources such as to enable the Constitutional Court of Bosnia and Herzegovina to assume its responsibilities in terms of human rights protection. Failing energetic measures in this regard, there is a danger that human rights may not enjoy the judicial protection required by the European Convention on Human Rights.