

Interview: Ian Campbell, Deputy HR for legal affairs and Head of the Legal Department: “Each People in the Entire BiH has Constitutional Basis to Protect its Own Interests!”

Ian Campbell, one of the most esteemed legal experts in the United Kingdom, Deputy of Wolfgang Petritsch for legal affairs and Head of the Legal Department with the OHR, the main creator of the agreement on constitutional reconstruction of Bosnia and Herzegovina, speaks for the first time, in an exclusive interview with our journalist, for the public about the manner in which the document on implementation of the Decision of the BiH Constitutional Court on the constituent status of peoples was issued, explains how BiH will look like after its implementation, takes issue with opponents of this historical agreement

Two-Chamber system in RS was agreed upon by Bosnian politicians and not by us;

Experts of the International Community have not sought to impose anything, they were “shaping” the agreement on equal terms with political leaders from BiH – Full symmetry achieved in Republika Srpska and Federation – Considering that the Parliaments and Governments will be multiethnic, politicians will not be able to turn only to voters from their own people

Ian Campbell, Deputy High Representative for Legal Affairs is

one of the most eminent legal experts in his country, the United Kingdom, and he earned his doctorate at the University of Cambridge. Mr. Campbell is Head of the Legal Department with OHR and one of those who signed the agreement that was accepted last week by representatives of the SDP, NHI and SBiH. Last year he chaired an international group (consisting of representatives of the OHR, the OSCE and the Venice Commission) which was tasked with developing guidelines and options for implementing the Decision of the BiH Constitutional Court in the whole territory of BiH. Mr Campbell has played an active role for more than a year in all relevant discussions pertaining to the implementation of the Constitutional Court's Decision, including the weeks-long negotiations of political leaders in BiH, which he followed continuously. Mr. Campbell speaks for the first time, exclusively for our magazine, about the agreement that was reached and its significance for the constitutional and political reconstruction of Bosnia and Herzegovina.

SB: How did the Agreement develop that was signed last week by the representatives of the parties of the Alliance for Change – SDP, SBiH, NHI? Is it true that the agreement existed before representatives of the leading BiH parties even started their negotiations? According to statements by some participants, the High Representative needed the negotiations only as a screen for issuing his own Decision.

IC: The approach was not such that there was already a solution with respect to which decision was taken. Obviously the point when the negotiations started was preceded by a long history of preparations both on our part and on the part of domestic negotiators. The negotiations by representatives of political parties in the OHR building as such started with a clean sheet of paper. The procedure was as follows: all participants in the negotiations would express their views and someone who would have observed the negotiations at that point would have said that there would be no chance to come to any

agreement. However, what happened later is that OHR legal experts, I would in particular point out the role of Peter Neussl from the Legal Department, were listening carefully to what all participants had to say and that they started to put on paper what was agreed as well as the points with respect to which opinions were different. Let me put it in this way, the proposals of all parties constituted the bricks of which this agreement was made and in fact, the agreement incorporates everything that was said during the negotiations. The process was therefore truly detailed, long-lasting and it took into account every single detail referred to by any of the parties. One could say that it was like a sculpture shaped by all those who participated in the negotiations. As for the Legal Department I could say that our role was to render technical assistance to the domestic participants in their efforts to come to an agreement...

THESE ARE NOT MINIMALIST SOLUTIONS

SB: Is it possible to implement the Constitutional Court's Decision on equal terms on the basis of this Agreement, and can this agreement produce a situation where Bosniacs and Croats enjoy equal rights in RS as well as Serbs in the Federation?

IC: At any rate, from the legal point of view, I am aware of difficulties associated with this process. It is certainly crucial what needs to be done now – the Decision must be implemented. What is, in my view, fascinating in terms of the law, is that precisely these negotiations demonstrate the way in which the peace negotiations in Dayton proceeded. Considering that we have the Decision of the BiH Constitutional Decision which is consistent with the Peace Agreement, we are in the possession of an explanation as to the extent that the Entities Constitutions are (or are not) consistent with the BiH Constitution. The Decision as such does not specify the way in which it should be implemented, it only explains what should be changed in the Entities

Constitutions in order to implement it. I did not expect that the process of reaching agreement and finding a solution would be a simple one. During 2001 I chaired a group formed by the International Community, and its objective was to provide guidelines and options for this process. The group included representatives of the OHR, the OSCE and the Venice Commission of the Council of Europe. From the legal point of view, it is interesting to see how all the elements are interrelated and that it is truly difficult to come to a reasonable solution. However, I also wish to stress that these were only proposals given to BiH representatives for their consideration. The next step in this process was to form constitutional commissions, which was done by the High Representative. Naturally, these Constitutional Commissions worked hard months-long and in their work they went far beyond the proposals submitted to them by the international group. These proposals were forwarded to the political scene. As a lawyer, I was supposed to see that solutions, which they develop, were consistent with the Constitutional Court's Decision. As I said, the Constitutional Court's Decision did not provide any specific solutions, it rather left open many possibilities. One should also point out that there are numerous ways in which the Constitutional Court's Decision could be implemented. This could have really been done in a much more minimalist manner, and it was possible at the same time to opt for more revolutionary solutions while still maintaining harmony with principles.

SB: Which solutions do you have in mind now?

IC: For example, the Council of Peoples, which was introduced in Republika Srpska, is a new body that did not exist there before. If we return to the document developed by the international working group, there are numerous solutions therein which did not find their place in the present agreement... The international group established that it was not necessary to introduce a two-chamber system in Republika

Srpska and that it was possible to implement the Constitutional Court's Decision on the constituent status of peoples without this. This means that they did not chose the minimalist way, as some uninformed, as well as malevolent, persons want to present it.

SB: The representative of the SDA, Sulejman Tihic, walked out before the end, representatives of the HDZ refused to sign, the parties from the RS took certain provisions of the agreement with a qualified acceptance. In essence, those parties in the Federation that rejected the Agreement explained their action by the fact that it constitutes a political victory for the Serbs. According to these assessments, Serbs obtained all rights in the Federation and retained in essence full power in the RS, unlike Bosniacs and Croats. Is such an interpretation of this document correct?

IC: I do not intend to engage into any political debate, yet I will try to provide a legal analysis where our starting point is exactly the Constitutional Court's Decision. All have agreed that this decision must be implemented, thus that Serbs in the Federation and Bosniacs and Croats in the RS must be afforded equal rights as to the protection of their vital national interests and their representation in the authorities. In this case it is possible to apply different principles which might look contradictory at first sight, including parity, the principle of minimum representation and the principle of proportionality. We tried to combine all three principles. As for the protection of the vital national interests of each of the three constituent peoples, the system that was chosen is in substance symmetrical in both Entities. As for Republika Srpska, in my personal view, the most obvious indication that the true symmetry in substance was achieved is the establishment of the Council of Peoples. I think that it is sufficient to look at the first Article of the Agreement, which states that authority in Republika Srpska shall be exercised by the RS National Assembly and Council of Peoples

and in the Federation by the House of Representatives and House of Peoples. After this Agreement has been implemented, of course provided that it has been implemented, the situation in Republika Srpska shall also be radically different... One should also point out that, despite assertions by those who don't approve of this agreement, the Council of Peoples in the RS, which shall automatically deal with laws that concern the vital interests of one of the three peoples, may decide by a majority vote of one of the caucuses, a 2/3 majority, to deal with a law which, in view of these representatives, concerns vital national interests. This should also be confirmed by the Panel for constitutional issues of the RS Constitutional Court, or by two judges of this body...

CONSTITUTIONAL COURT PROTECTS VITAL NATIONAL INTERESTS

The RS Constitutional Court has seven judges, two from each people and one from the group of Others. If only two judges confirm that an issue is a vital national interest of one of the three peoples, this issue will be submitted to the regular procedure of the Council of Peoples...This means that the Council of Peoples can more or less deal with all issues...

SB: The RS National Assembly, whose national caucuses should elect members to the Council of Peoples, has currently only one Croat representative. How then will the Croat caucus be formed in the Council of Peoples?

IC: One should know two things. There is one provision in this Agreement that concerns the minimum representation. Secondly, Article 3 of the Agreement states that in the event where the number of representatives of one caucus in the Council of Peoples is higher than the number of representatives in caucuses of these peoples in the RSNA, the number that exceeds shall be elected from a caucus that shall be formed for this purpose of municipal councilors in the RS. Thus, Croats, who have currently only one representative, will have four

representatives in the future, and the minimum number of representatives in the Council of Peoples is eight. This means that Croat municipal councilors will elect their representatives in the Council of Peoples.

SB: Is it correct that the lists of vital national interests are different in Republika Srpska and the Federation?

IC: No it isn't. There is an absolute symmetry in both Entities with regard to this issue. The Agreement is symmetrical in substance. There are differences with respect to election of delegates to the Council of Peoples in the RS. Cantonal Assemblies are in charge of this in the Federation and representatives in the National Assembly shall be in charge of this procedure in the RS, thus the municipal councilors. Yet in both cases representatives of one people elect their own delegates in the Council of Peoples. The second difference concerns procedures in the Council of Peoples and the House of Peoples of the Federation.

SB: Why is there no reference to the Bosnian language in the Agreement?

IC: One of the paragraphs specifying vital national interests refers to education, religion, language, culture, tradition and cultural heritage... The issue of the language has not been solved yet, it was not touched upon during the negotiations as such. Still it is already included in the list of national interests... The Agreement defines that 2/3 of delegates of a specific national caucus from the Council of Peoples may institute one of the issues considered as of national interest.

THE PROCEDURE TO ELECT MINISTERS

SB: What will be the procedure to elect Bosniac and Croat Ministers in Republika Srpska?

IC: Upon elections, the RS President will appoint the Prime

Minister, who will form the Government and be responsible to have ministers from all three peoples... I think that this Agreement will contribute to the affirmation of multi-ethnic parties and to the promotion of other concerns rather than narrow ethnic interests. The Agreement provides that the national interest of each of the peoples shall be guaranteed by the Constitution, which fact will in substance narrow the playroom for national parties. The Agreement will, in my opinion, change the attitude of politicians toward their voters, because they will have to win over their followers among members of other peoples.

SB: If the Entity Parliaments fail to adopt the Agreement, what will be the next set of measures? What are the legal documents that should be adopted over the following period?

IC: Should the Parliaments fail to adopt the Agreement, amendments to the Entity Constitutions in accordance with the Agreement and amendments to the Election Law will have to be issued. This will fill in the gaps in the Election Law and it is possible that there will be some other consequences pertaining to other laws including the laws on government, ministries etc... Let me remind you that the Election Law lacks provisions concerning the election of the Entity Presidents and the election of delegates to the House of Peoples in the Federation because they were waiting for a solution which will be in conformity with the Constitutional Court's Decision. The Election Law also states that, in case that this should fail, the elections for all three bodies shall take place in accordance with the 1998 Rules of the Provisional Election Commission... The Steering Board set the deadline for the Entity Parliaments to adopt amendments during the first week of April after which everything should be harmonized pending the elections.