

IJC guides and coordinates with the OHR to improve Judicial and Prosecutorial appointments in the Federation of BiH

The Independent Judicial Commission (IJC) welcomes the Decision of the High Representative imposing the Law on Amendments to the Law on Judicial and Prosecutorial Service in the Federation of Bosnia and Herzegovina. The ongoing process of Judicial Reform in the Federation has been challenged for a prolonged period of time by certain executive and legislative authorities most notably in Cantons 7 & 10 – which refuse to make Judicial and Prosecutorial appointments within the established legal framework. A disregard for the Rule of Law has been evidenced to the extent that the responsible authorities have not yet appointed some candidates who were proposed by the Federation Commission for the Election and Appointment of Prosecutors to be appointed to office in October 2000. IJC considers such a disregard for the Rule of Law as unacceptable, as it prolongs the time it takes for individual cases to be resolved and makes the justice system inefficient as a whole.

IJC clearly recognized that such obstruction to the establishment of an independent and impartial Judiciary could no longer be tolerated. The agency initiated work in relation to urgently required legislative reform with the Office of the High Representative, the Federation Commission for the Election and Appointment of Judges, the Federation Commission for the Election and Appointment of Prosecutors and the Federation Government to redress the problems inherent within

the Federation. These efforts culminated with the imposition of the Law by the High Representative on 3 August 2001.

Pursuant to the Law on Amendments to the Law on Judicial and Prosecutorial Service in the Federation of Bosnia and Herzegovina strict deadlines are now introduced that the appointing authorities must comply with in the process of appointing and rejecting candidates. In addition, in relation to the appointment of Prosecutors in the Federation if an appointing authority fails to fulfill its legal obligations and appoint candidates within a specified deadline, the proposed candidates will be deemed appointed pursuant to the Law.

On 4 July 2001 IJC coordinated the signing of a Memorandum of Understanding standardizing the the appointment process by the Presidents of the Federation Commission for the Election and Appointment of Judges and Prosecutors, the Presidents of the RS High Judicial/Prosecutorial Council and the Federation and RS Ministers of Justice. The Memorandum of Understanding combined with the provisions of the Law on Amendments enhance the transparency, objectivity and professionalism of the appointment process. All future Judicial and Prosecutorial appointments will be regulated by the new streamlined appointment procedure which will ensure the review of all candidates in line with the aforementioned criteria to guarantee the appointment of best qualified candidates.

IJC considers the separation of the political and judicial process as fundamental to comprehensive judicial reform. In this regard the protection of the interests of Judges and Prosecutors throughout FBiH is a priority. Consequently, the requirement is now introduced in the Law on Amendments to the Law on Judicial and Prosecutorial Service in the Federation of Bosnia and Herzegovina that a Judge or Prosecutor cannot be dismissed or suspended without the opinion of the responsible Federation Commission that there is a sufficient factual and legal basis to warrant the dismissal or suspension.

Furthermore, with the aim of guaranteeing a selection and appointment process conducted according to objective criteria based on proper professional qualifications and transparent procedures a formula is introduced obliging the Federation and Cantonal Commissions to recommend more than one candidate for a position except only in limited circumstances and for justified reasons.

Moreover, the Law on Amendments to the Law on Judicial and Prosecutorial Service in the Federation of Bosnia and Herzegovina provides that professors of the Faculties of Law in Bosnia and Herzegovina in the fields of constitutional law, criminal law or criminal procedure law, civil law or civil procedure law, administrative law, commercial law or family law may be appointed as judges of the Federation Constitutional Court without having passed the bar examination. This provision which is a reflection of the Law on Court of Bosnia and Herzegovina facilitates for a greater number of candidates to apply for a position as Judge of the Federation Constitutional Court. IJC is confident that this new criteria will help with the selection and appointment of the best qualified candidates to the Federation Constitutional Court in the coming months.

IJC will monitor the implementation of the Law on Amendments to the Law on Judicial and Prosecutorial Service in the Federation of Bosnia and Herzegovina imposed by the High Representative on 3 August 2001, convinced that it will contribute to the depoliticisation of the judicial and prosecutorial system in the Federation of Bosnia and Herzegovina.