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Are we ticking the right boxes?

The BiH Ombudsman institutions reform saga

Sarajevo 13.05.2009

Executive Summary

The main purpose of the Ombudsman institutions reform was to achieve the same standards of human rights protection mechanisms in both of Bosnia's entities; to reduce the costs of having three separate Ombudsman institutions; and to avoid the risk of overlapping competencies. On the basis of these arguments, and without having conducted any proper analysis on the impact of the reform on human rights protection for citizens, the issue became an important priority for Bosnia to join the EU – eventually becoming part of the EU Feasibility Study in 2003 and later becoming an important segment of Block 4 of the "Roadmap" for the visa liberalization process.

A relatively short timeframe was given to relevant stakeholders to decide the best model for the Ombudsman, which the Venice Commission assisted with. The fundamental postulate in planning the reform was to preserve the current level of human rights protection during the reform, and additionally, to preserve the knowhow of the existing Ombudsman institutions, particularly the FBiH Ombudsman. *None of these objectives were met.*

On top of this, the reform process was marked by inconsistency. One of the main principles that the Venice Commission insisted on, was to discard the three Ombudsperson model, and to have a single Ombudsman with two deputies on rotating mandates, with clearly defined and divided competences. Together with an objective and transparent selection process, this would eliminate the risk of having a three-headed institution with opposing opinions, while simultaneously enabling equal ethnic representation in the institution. This important remark by the Venice Commission was eventually disregarded in the adopted version of the Law.

Meanwhile, the damage was being done. Inefficacious to agree on political matters, the former Ombudsman discredited the State institution and its purpose. Their main function – to serve citizens – was disregarded, while human rights violation cases, continued to pile up. As a result of all of this, the Entity Ombudsman complained that the recommendations they had provided, became less adhered to, because they had lost legitimacy in the eyes of the authorities.

Furthermore, having decided to keep the same (malfunctioned) system, the appointments of the new candidates turned out to be more of a political issue than anyone expected. It took more than twenty months for the BiH Parliament to appoint the new ombudspersons. During that time a series of lapses were made, with the international community turning a blind eye. And just when everybody thought it was over and the appointments were finished, within little over a hundred days since his approval, the Croat Ombudsman resigned. Now, it is again up to the BiH Parliament to decide, who is going to be new Croat Ombudsman successor.

This report finds that, as a result of the reform process, at the present time BiH has been left with three poorly-functioning Ombudsman offices and a lower level of human rights protection than before the reform process began. The main reason for this is the lack of analysis and planning done in implementing the reform, which meant the international community was largely oblivious to the unintended consequences that would occur, and continued to hurry through the process in order to complete the process and “tick the right box”.

The inaugural “promenade”

On 4 December 2008, the atmosphere in the Bosnia and Herzegovina’s *Parliament House of Peoples* reached its ardent culmination. Chairman Mladen Ivanić gave the floor to Dušanka Majkić (*Stranka Nezavisnih Socijaldemokrata - SNSD*):

“What I would like to say is that there are number of open issues and it is sure that the questions of the State Ombudsman will be dragged on in the Parliament with the essential and the final question - What will actually come out of this procedure?Those who think they have been elected, wonder - When their work will begin? I really don’t know. Who can answer them? - How and when they will start working, when the mandate begins and when the full takeover will take place? All those questions remain unanswered.”¹

The catalyst for this debate was the report produced by the joint commission of both Houses of the BiH Parliament for harmonising the proposal for the appointment of the Human rights Ombudsman, since the two houses elected different candidates. The joint commission finally managed to agree on the list of candidates, but they concluded that the *Ministry of Justice* should be asked to give its opinion upon the legality of the procedure.

Some of the delegates, particularly Božo Rajić (*Hrvatska Demokratska Zajednica - HDZ*), Slobodan Šaraba (*Srpska Demokratska Stranka - SDS*) and Rudo Vidović (*HDZ*), insisted that the only proper thing to do in this situation would be to revoke the whole procedure, and once again, to make a public call for applications and start all over again, as “only laws can be harmonized, not the appointments.” However, being anxious to finalize this process, parliamentarians adopted the joint commission report, *without* enquiring the Ministry of Justice’s opinion on the matter. Chairman Ivanić concluded the session:

“It is evident that whatever decision we make today, this will end up in the court, and that was clear to me from the very beginning. But I also think that this process should not remain here in our Chamber (House of Peoples) and it should reach the closing stage somehow.... Therefore, I want to say, honestly, that I will support the commission’s report, hoping this will finish today.”²

After more than twenty months of institutional lag, the appointment of three State Ombudsman³ was completed. Mrs. Jasminka Džumhur (Bosniak), Mr. Ivo Bradvica (Croat), and Mr. Ljubomir Sandić (Serb), were appointed as the State Ombudsman with six-year mandates.

¹ Excerpt from 23.Parliamentary House of Peoples session unauthorised transcript, held on 4.12.2008.; Point 14. Report of the joint commission for harmonising the proposals for appointments of BiH human rights Ombudsman

² *ibid*

³ The State Ombudsman institution is one of the BiH state institutions created on tripartite ethnic principle, although this “does not exclude the possibility of “others” to be nominated.” (Law on amendments to the Law on Ombudsman for Human Rights in Bosnia and Herzegovina, Sl list br 32, 25.04.2006, Article 3.)

For the Organisation for Security and Cooperation in Europe (OSCE), which was given an exclusive mandate to monitor human rights in BiH⁴, this was “a point of great relief.”⁵ The Office of High Representative (OHR⁶) also welcomed the appointments, underlining that they were just the “first step towards the full implementation of the Law on the Human Rights Ombudsman of Bosnia and Herzegovina.”⁷ They now expected “the competent institutions to press ahead with the merger of Entity and State Ombudsman Institutions.”⁸

At odds

Not far from the Presidency building, in downtown Sarajevo, a building largely known for the popular disco club in the cellar, has its new residents. Long and Kafkian hallways of the top floor of this building take you to the State Ombudsman’s office. This office space, which costs 9000 KM (4500 Euros) a month of taxpayers’ money⁹, is the now occupied by the three newly appointed Ombudsman of BiH. Put simply, their role is to “bridge” those who rule and those who are ruled. Working on individual cases, the Ombudsman - as an independent institution - examines the work of the authorities, identifying negative practices and, when appropriate, recommending solutions. The Ombudsman ultimately strive to improve the quality of life of individual citizens by promoting *the rule of law, human rights and good public administration*.¹⁰

The Dayton Peace Agreement (DPA¹¹) has implicitly placed Bosnia and Herzegovina under close protection of the international community.¹² Article II of the BiH Constitution (which is a part of

⁴ Dayton Peace Agreement, Annex 6, Article XIII

⁵ Populari interview with James Rodehaver, Head of OSCE Human rights Department, conducted on 16.12.2008

⁶ The Office of the High Representative acts as the steering power on behalf of the international community and is instructed "to facilitate the Parties' own efforts and to mobilize and, as appropriate, coordinate the activities of the organizations and agencies involved in the civilian aspects of the peace settlement". Its powers are affirmed by the United Nations Security Council and which also acts as the special representative of the European Union (EU) in the county. The High Representative has supreme legislative and administrative powers.

⁷ OHR and EUSR Welcome BiH Ombudsman Appointment, OHR/EUSR, 5/12/2008, available on: http://www.ohr.int/ohr-dept/presso/pressr/default.asp?content_id=42753

⁸ Ibid.

⁹ Populari Interview with Jasminka Džumhur, BiH State Ombudsman, conducted on 10.02.2009

¹⁰ The Ombudsman and the Citizens – lessons to be learned from the Scandinavian experience, speech by Chief Parliamentary Ombudsman Mats Melin, Sweden, at the Doha Democratic Forum 2006

¹¹ The 1995 Dayton Peace Agreement, apart from effectively stopping the war, provided a framework for the constitutional and territorial arrangements for Bosnia and Herzegovina. It laid out a complex political system, according to which Bosnia and Herzegovina consists of two entities: the BiH Federation (FBiH) dominated by Bosniak (Bosnian Muslims) and Croat (Bosnian Catholics) populations, and Republika Srpska (RS), which is dominated by Serbs (Bosnian Orthodox).

the DPA), is entirely devoted to human rights. In such constellation, the international community (IC) was accountable for the creation of Ombudsman institutions. These institutions were of utmost importance for restoring the human rights protection level in the fragile peace of post-war Bosnia.

At the present time, there are three Ombudsman institutions in BiH: the State Ombudsman, and the two entity ombudsman institution (FBiH and RS). These institutions were set up gradually, beginning in the mid-1990s; first, the FBiH office was established (1995), then the State office (1996), and finally the RS office (2000).¹³ Amendments to the State Law on Ombudsman adopted by the BiH Parliamentary Assembly in March 2006 envisaged the merger of the three institutions into a single State level Ombudsman by the end of December 2006.

The three institutions continued to exist after the December 2006 deadline, and still do at the time of this report's publication. A recent study points out that the BiH State Ombudsman "*serve mainly to publicize significant human rights issues and are highly politicized*",¹⁴ while the Entity level Ombudsman institutions deal with "matters of everyday public administration relevant in terms of the types and volume of matters addressed" and furthermore, that they "*have often been highly effective and garnered significant domestic and international attention.*"¹⁵

The criteria for the distribution of competencies between the State and the entity Ombudsman is related to the nature of the authority concerned. When a complaint is to be made about an entity authority, it should be made to the entity Ombudsman. "The State Ombudsman has exclusive competence to deal with cases and complaints concerning the State institutions, cases concerning at the same time an institution of an entity and the State, or at the same time institutions of both entities."¹⁶

In Bosnia and Herzegovina, having a *de jure* single State Ombudsman institution since the beginning of 2007, and three *de facto* Ombudsman institutions, has perhaps caused more harm to citizens than might appear at first glance. This situation has led citizens to find themselves in a

¹² Post-War Protection of Human Rights in Bosnia and Herzegovina, By O'Flaherty, Michael (Author), Gisvold, Gregory (Author), Gisvold, G. (Editor), Hotei Publishing, Sep 23 1998.

¹³ The FBiH and BiH Ombudsman institutions had their legal basis in the constitutions which emerged from (Washington and Dayton) peace agreements. Only later the competencies of these institutions were defined through organic laws (both of which are also developed by the IC). Contrastingly, the RS Ombudsman institution did not emerge from the above; in fact the RS constitution has no similar provision regarding the Ombudsman institution, and its establishment occurred much later, after the passing of the Law on the RS Ombudsman (though it was also created under international supervision)

¹⁴ ARD, Inc. for USAID Assessment of the Administrative legal System in Bosnia and Herzegovina; December 2007

¹⁵ Ibid

¹⁶ Law on the Human Rights Ombudsman of BiH, Article 5., BiH Official gazette: 19/02

“legal vacuum”¹⁷, because “it is not totally clear who is responsible for solving their human rights protection complaints.”¹⁸

A challenging bequest

Although among the first post-communist countries in East-Central Europe to have founded its ombudsman office, the Ombudsman of BiH was by far the most unusual.¹⁹ It was created by the 1995 DPA.²⁰ The Ombudsperson was to be appointed by the chairman-in-office of the OSCE for a non-renewable five year term, and could not be a citizen of BiH or any neighbouring state.²¹ After a transitional five year period²² the Ombudsman were to be appointed by the BiH Presidency. This meant that BiH had to produce an organic law which would provide the legal basis for the ombudsman institution in the subsequent five years.²³

The European Commission for Democracy through Law (better known as the Venice Commission) drafted the Organic Law for the State Ombudsman of Bosnia and Herzegovina²⁴ and presented it to the BiH parliament in April 2000²⁵. Although it was predominantly created by international actors, it was to be considered a domestic law, which should enable BiH to fully take over the ombudsman institution. Yet another three year transition period²⁶ has been introduced after which the foreign Ombudsman, once again mandated by the chairman-in-office of OSCE, was to be replaced by three BiH nationals. Together they would form the BiH Ombudsman institution, and were to be elected by the BiH Parliament based on the BiH Presidency proposal.

¹⁷ Građani u pravnom procjepu, Nezavisne Novine, Dejan Šajinović, 19.02.2009

¹⁸ Ibid

¹⁹ The Institution of the Ombudsman in the Former Communist Countries, Paper written under the Charles and Kathleen Manatt, Democracy Studies Fellowship at IFES, July - August, 2002, Ulziibayar Vangansuren, Indiana University, Bloomington

²⁰ As a part of the Commission of Human Rights, together with the Human Rights Chamber

²¹ Dayton Peace Agreement, Annex 6, Article IV

²² Dayton Peace Agreement, Annex 6, Article XIV

²³ Before the end of the transit period: 15.12.2000

²⁴ Preliminary draft Organic Law for the State Ombudsman of Bosnia and Herzegovina and explanatory notes - Prepared by The Working Group on Ombudsman-Institutions in Bosnia and Herzegovina, CDL(1999)028e-restr, Strasbourg, 31 May 1999, available at: [http://www.venice.coe.int/docs/1999/CDL\(1999\)028-e.asp](http://www.venice.coe.int/docs/1999/CDL(1999)028-e.asp)

²⁵ Institucija Ombudsmana BiH - Međunarodna kontrola ljudskih prava, Radenko Udovičić; 18.10.2000, SAFAX Sarajevo - STINA Split

²⁶ Law on the Human Rights Ombudsman of BiH, Article 41., BiH Official gazette: 19/02

After the BiH Parliament failed to adopt the proposed Law on State Ombudsman by the fifth anniversary of the Dayton Peace Agreement, the OHR imposed the law, and the OSCE chairman mandated the second international ombudsman, Mr. Frank Orton. His term ended in late 2003, when he was replaced with three nationals: Snježana Savić, Safet Pašić and Mariofil Ljubić. After less than two months, Ms. Savić resigned and the BiH presidency nominated Vitomir Popović.

Ombudsman is a personality driven institution, whose success will always depend on the person occupying the position.²⁷ **It is of crucial importance that the Ombudsman is a widely respected person who cannot be associated with a particular political party.**²⁸ Therefore, among the most important issues concerning the establishment of the institution is related to the criteria a person should meet in order to be elected Ombudsman. In the case of BiH, the selection process and the appointments of the State Ombudsman proved to be “*a political charade*”²⁹ where the ruling coalition nominated “*candidates who were directly linked with major political parties*”.³⁰ Mr Vitomir Popović was member of SDS and acted as Deputy Prime Minister of RS for one term during the war 1992-1995, Mr. Mariofil Ljubić is one of the founders of HDZ BiH (Croat Democratic Union of BiH), and Mr Safet Pašić was a member of SDA (Democratic Action Party).³¹

For the first year of BiH’s ownership of the State Ombudsman institution, the Helsinki International Federation for Human Rights concluded that the institution of Ombudsman of BiH:

“in its current form does not correspond either to its name or to its purpose” and that it “*served for the protection of individual interests rather than universal human rights*” as a result of which, it was “*on the verge of collapsing.*”³²

Meanwhile, the entity Ombudsman institutions, independent of the State Ombudsman institution, continued to work effectively. The first Ombudsman of FBiH (Mrs. Jovanovic, Mr. Muhibic and Mrs. Raguz) were appointed by the OSCE in 1994. They began working in January 1995. Originally from Bugojno, the very first Federal Ombudsman, Branka Raguz recalls:

²⁷ European Standards and Ombudsman Institutions in Southeast Europe, International Conference, Sofia, June 6-8, 2002

²⁸ The Ombudsman and the citizens – Lessons to be learned from the Scandinavian experience, by Chief Parliamentary Ombudsman Mats Melin, Sweden, at the Doha Democratic Forum 2006

²⁹ Nations in Transit 2008 - Bosnia-Herzegovina, Jasna Jelusic; Freedom House, available at: http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Bosnia-final.pdf

³⁰ *ibid.*

³¹ National Integrity System Study, BOSNIA AND HERZEGOVINA 2007, Report by Transparency International

³² Extract from the IHF report, Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2005 (Events of 2004)

*“Looking back, I don’t know how we managed to stay alive. I consider those recommendations we were forwarding to the governments being very daring at the time.”*³³ But, still, the most challenging part of the job, according to Branka, was *“to build trust and credibility into the institution of Ombudsman, so people had genuine feeling they could come to us, when their rights were violated”*. She adds further: *“It took time and efforts, but I think we managed that.”*

Indeed, the number of FOI (field offices) rose gradually from 5 in 1995 to 11 in 2002. So too did the number of cases (from 1747 in 1995 to 19,414 in 2000³⁴), and also the percentage of positive responses to Federal Ombudsman recommendations (from 45% in 1998³⁵, up to 83% in 2002³⁶). In 1997 the Federation Ombudsman were awarded the Human Rights Prize by the Graz University academic senate "Karl Franzens" for their human rights protection work in Bosnia and Herzegovina.³⁷

Already in 1996 the Venice Commission has envisaged the creation of an institution of Ombudsman in the RS, analogous to the Ombudsman operating in the FBiH.³⁸ The Law was drafted in 1998, but it took until 2000 to be adopted by the RS parliament. The first three RS Ombudsman, Mr. Darko Osmić, Mrs. Slavica Slavnić and Mr. Franjo Crnjac, were appointed by the BiH Ombudsman at the time, Mrs. Haller.

The RS Law on Ombudsman was amended in 2004, so the Ombudsman institution now consisted of one Ombudsperson and two deputy Ombudspersons, elected among the constituent people, rotating between Ombudsperson and deputy every sixteen months.³⁹ Nada Grahovac was the Ombudsperson, and her deputies were Mr. Milan Šubarić and Mr. Enes Hašić.

Despite what was prescribed, this rotation never happened.⁴⁰ However, the fact that in the period 2000-2006 the RS Ombudsman had approximately 152,500 appointments with citizens, and processed 37,707 complaints⁴¹, shows the effectiveness of the Institution.

³³ Populari interview with Branka Raguz, FBiH Ombudsman, conducted on 15.12.2008

³⁴ Annual report of Federal Ombudsman institution for 2000

³⁵ Annual report of Federal Ombudsman institution for 1998

³⁶ Annual report of Federal Ombudsman institution for 2002

³⁷ http://www.ohr.int/ohr-dept/hr-rol/thedept/hr-reports/hrcc-hr-rep/97-weekly/default.asp?content_id=5051

³⁸ Opinion on the constitutional situation in Bosnia and Herzegovina with particular regard to human rights protection mechanisms - adopted by the Commission at its 29th Plenary Meeting (Venice 15-16 November 1996) - [http://www.venice.coe.int/docs/1996/CDL-INF\(1996\)009-e.asp](http://www.venice.coe.int/docs/1996/CDL-INF(1996)009-e.asp)

³⁹ Law on amendments to the Law on Republika Srpska Ombudsman, Article 4., Official Gazette of RS, No. 49/04

⁴⁰ Populari interview with Branka Raguz, FBiH Ombudsman, conducted on 15.12.2008

⁴¹ Annual reports of Ombudsman for Human Rights in Republika Srpska for 2001, 2002, 2003, 2004, 2005, 2006 and 2007.

Reform vs. Common sense

Analyzing human rights protection mechanisms in BiH in 1999, the Venice Commission concluded that *“The operation of an ombudsman institution in Bosnia and Herzegovina is surrounded by not only technical but also conceptual and therefore political difficulties.”*⁴² In their report, they noted that the question of setting up a single ombudsman institution for the entire administration of Bosnia and Herzegovina and its entities:

*“is not currently on the agenda, particularly because the two ombudsman institutions set up in BiH a few years ago are operating satisfactorily,”*⁴³ but that this *“question might arise in the longer term.”*⁴⁴

The creation of the RS Ombudsman remained at the top of the international community’s agenda for BiH at the time, until it finally achieved in 2000. Later, when the Parliamentary Assembly of the Council of Europe gave the green light for BiH’s membership to the Council of Europe in 2002, it stated that, as a post-accession commitment, BiH:

*“needs to work towards establishing multi-ethnic Ombudsmen and to consider establishing, in the long term, a single, unified human rights ombudsman’s office at the state level, which would include the present ombudsmen institutions at Entities level.”*⁴⁵

At the request of the OSCE’s Mission to BiH the Venice Commission gave its opinion on BiH’s accession commitments in respect to the Ombudsman institutions existing in Bosnia:

*“There is no concrete obligation to establish a single, unified institution at the state level; there is rather an obligation to consider doing so, in the long term....Furthermore, there is no rule prohibiting the existence of Ombudsman institutions at both state and entity level within a federal state.”*⁴⁶

⁴² Report of the Working Group of the Venice Commission and the Directorate of human rights on ombudsman institutions in Bosnia and Herzegovina - Adopted by the Working Group at its meeting in Paris on 11 May 1999 and approved by the Commission at its 39th Plenary meeting (Venice, 18-19 June 1999)

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Opinion no. 234 (2002) of the Parliamentary Assembly of the Council of Europe - Bosnia and Herzegovina’s application for membership of the Council of Europe

⁴⁶ Opinion on certain issues related to the Ombudsman Institutions in Bosnia and Herzegovina and on the interpretation of certain commitments undertaken by Bosnia and Herzegovina upon Accession to the Council of Europe - adopted by the Venice Commission at its 51st Plenary Session (Venice, 5-6 July 2002)

Regardless of the Venice Commission opinion, in November 2003 the European Commission has approved a Feasibility Study⁴⁷ which among other priorities requires BiH to:

“Assume full national responsibility for the State Ombudsman and make progress in the merger of State and Entity Ombudsmen.”⁴⁸

Already by this stage, the issue of reforming the BiH Ombudsman institution by merging it with the Entities’ institutions had risen very high on the EU’s agenda for BiH. Ultimately the State Ombudsman institution became an issue that had even greater significance for every Bosnian citizen, as it became one of the preconditions for Bosnia’s visa liberalization. At a meeting in Brussels in March 2009, it was decided this reform should be considered a part of the “Roadmap”⁴⁹ negotiations plan, which the European Union has set before the countries of the Western Balkans. Bosnia, in particular, was reminded of its obligation to have a single, unified, State level Ombudsman institution, as part of the package. More precisely, entity Ombudsman should be merged with the State-level Ombudsman. Although not explicitly stated in the Roadmap, it belongs to the Block 4 requirements of the roadmap - human rights and anti-discrimination.⁵⁰

Muddling through

After the Feasibility Study, BiH requested the assistance of the Venice Commission, upon whose recommendation a Working group was set up to prepare the reform at the beginning of 2004.⁵¹ Members of the Working group agreed in principle that, after a transitional period during which one state-level and two entity-level institutions would co-exist, there would be a single ombudsman institution for the whole territory of Bosnia and Herzegovina, composed of one ombudsman and two deputies, each appointed from the constituent peoples. The Ombudsman and deputies should rotate among themselves after certain periods of time.⁵² *It was agreed that the*

⁴⁷ Feasibility Study served to assess the readiness of Bosnia and Herzegovina (BiH) to take its next steps towards European Integrations, by opening negotiations for a Stabilisation and Association Agreement (SAA).

⁴⁸ Bosnia and Herzegovina: Commission approves Feasibility Study, European Commission, 18/11/2003, available at: http://www.ohr.int/other-doc/eu-stmnt/default.asp?content_id=31227

⁴⁹ In 2008, the EU formulated a series of demanding requirements, assigning concrete "visa roadmaps" for each Western Balkan country – visa-free travel being the reward for meeting these benchmarks. The “roadmap” was presented to the BiH government on 5 June 2008

⁵⁰ Populari interview with Samir Rizvo, chief of BiH negotiating team for liberalization of visa regime, conducted on 21.04.2009.

⁵¹ Working group was composed of a representative of the Minister of Human Rights and Refugees, the three Human Rights Ombudsman of Bosnia and Herzegovina, the three Ombudsman of the Federation of Bosnia and Herzegovina, the two Ombudsman of the Republika Srpska and representatives of the Ministries of Justice of the State and the two Entities

⁵² The Venice Commission in 2004 , Annual report of activities, CDL-RA (2004)001, Strasbourg, 12 March 2005, available at: [http://www.venice.coe.int/docs/2004/CDL-RA\(2004\)001-e.asp](http://www.venice.coe.int/docs/2004/CDL-RA(2004)001-e.asp)

*most important requirement was that the level of human rights protection must not be jeopardised during this process.*⁵³

A draft Law containing amendments to the Law on the BiH Human Rights Ombudsman was developed by the Ministry for Human Rights and Refugees and submitted to the Venice Commission for its opinion, and then subsequently further amended in light of this opinion.⁵⁴ The Venice commission particularly welcomed that the draft law clearly provided for the establishment of a single ombudsman institution, composed of an ombudsman and two deputies.⁵⁵

However, the new draft law incorporating the Commission's comments had *"suddenly, and for no apparent reason, been withdrawn in favour of another draft law which did not comply with the Commission's recommendations at all."*⁵⁶ The Law was finally adopted by both houses of the BiH Parliamentary Assembly in March 2006. The main divergence from the draft law, and the working group conclusions was to abandon the concept of one ombudsperson with two deputies in favour of the three headed (one from each constituency) ombudsman institution model. This is especially important taking into the account that *"In their suggestions, resolutions and reports, the Ombudsmen act jointly."*⁵⁷

The State Ombudsperson, Ivo Bradvica explains: *"I cannot sign the report solely, so it has validity."* However, Mrs. Jasminka Džumhur adds: *"If it happens that I do have a different opinion upon a certain matter I would require it to be noted in the report, that such and such option of the respective Ombudsman is waived out from the final report, and that shall be submitted in written form."*⁵⁸

Only when all three Ombudsmen agree upon the matter in question, can they then act strongly towards governments and put forward trustworthy solutions. The possibility of having "separate" or waived out opinions only weakens the institution because it makes such recommendations dubious. Having three Ombudsman disagreeing upon an issue which they should present jointly

⁵³ Agreed conclusions of the working meeting on "restructuring Ombudsman institutions in Bosnia and Herzegovina, Opinion no. 274 / 2004, CDL(2004)028, Council of Europe, Strasbourg, 19 April 2004

⁵⁴ The Commission concluded that "draft Law reflected in most part the conclusions of the April meeting. However, it was necessary to spell out more clearly the modalities of the appointment and the respective roles and functions of the Ombudsman and of its Deputies."

⁵⁵ Opinion n° 264 / 2003 – Opinion on the Draft Law on Amendments to the Law on Ombudsman for Human Rights in Bosnia and Herzegovina, adopted by the Venice Commission (Venice, 8-9 October 2004)

⁵⁶ The Venice Commission in 2004, Annual report of activities, CDL-RA (2004)001, Strasbourg, 12 March 2005, available at: [http://www.venice.coe.int/docs/2004/CDL-RA\(2004\)001-e.asp](http://www.venice.coe.int/docs/2004/CDL-RA(2004)001-e.asp)

⁵⁷ Law on amendments to the Law on Ombudsman for Human Rights in Bosnia and Herzegovina, Sl list br 32, 25.04.2006, article 8 (3)

⁵⁸ Populari Interview with Jasminka Džumhur, BiH State Ombudsman, conducted on 10.02.2009

did not prove to be uncommon for the first three State Ombudsmen. Still, Mrs. Džumhur was confident that this will not be the case with the newly elected ones.

In February 2009, asked what happens if they do not agree about a specific issue, Ombudsman, Mr. Ivo Bradvica replied: “*In this composition, that will never happen*”⁵⁹. In April 2009, only four months after his appointment, Mr. Ivo Bradvica resigned from the position of the State Ombudsman.⁶⁰

The selection charade

The law asserted that the three institutions should organise meetings where they would “prepare a coordination work plan, exchange experiences, harmonise practices, as well as to create a preliminary framework for the future functioning of the institution”⁶¹. Novelty was introduced in the ombudsman election process, so that instead of the Presidency being responsible for electing the Ombudsman, the task was to be given to a special ad hoc commission within the BiH Parliamentary Assembly⁶². However, the Law allows “on an exceptional basis, the appointment of the first ombudspersons to be done among ombudspersons that hold those positions during the transitional period.”⁶³ Thus, the aim of the coordination meetings was also to come to an agreement to elect new Ombudsman among the existing ones.

A total of seventeen coordination meetings were held between May 2006 and March 2007. They were closely monitored and attended by the representatives of the OSCE and OHR. Still, “*nothing concrete could ever be agreed among participants*.”⁶⁴ When it became apparent that there would be no consensus on the selection of the new Ombudsman amongst the existing state and entity Ombudsman, the BiH Parliamentary Assembly established an ad hoc commission that would select candidates for the Ombudsman position.⁶⁵

The ad hoc commission’s initial task was to make a call for applications and select candidates based on a set of general criteria. They were *not to conduct interviews with the candidates, or*

⁵⁹ Populari Interview with Ljubomir Sandić, BiH State Ombudsman, conducted on 10.02.2009

⁶⁰ “Bradvica podnio ostavku”, Nezavisne Novine, 02/04/2009.

⁶¹ Law on amendments to the Law on Ombudsman for Human Rights in Bosnia and Herzegovina, Sl list br 32, 25.04.2006, article 19. (2)

⁶² Law on amendments to the Law on Ombudsman for Human Rights in Bosnia and Herzegovina, Sl list br 32, 25.04.2006, Article 3 and 4

⁶³ Law on amendments to the Law on Ombudsman for Human Rights in Bosnia and Herzegovina, Sl list br 32, 25.04.2006, article 17. (2)

⁶⁴ Populari interview with Branka Raguz, FBiH Ombudsman, conducted on 15.12.2008.

⁶⁵ The Commission was composed of three delegates from each House of BiH Parliament: Azra Hadžiahmetović, Niko Lozančić, Drago Kalabić (from the House of Representatives) and Dušanka Majkić, Rudo Vidović, Hazim Rančić (from the House of Peoples)

rank them in any way. The commission received complaints from some of the applicants, who referred to the erroneously used laws on the appointments for this particular advertisement, but it decided not to respond to them. They found this to be, “nothing but a pressure onto their work.”⁶⁶

The first call announced on 17 April 2007 resulted in the cancelling of the whole procedure. The House of Representatives could not agree on two of the three candidates for the position of State Ombudsman, and a decision was made to announce a new call.⁶⁷ As the OSCE noted, it had already become clear at this stage that there was:

*“no good way to partially eliminate political considerations, given the way that the caucus system works in the parliament, and given that you have this tripartite selection process that guaranties you`re going to have ombudsman of each ethnicity.”*⁶⁸.

Still, the process of creating a single State Ombudsman continued to be pushed forward. The parliamentary ad hoc commission was re-established again in February 2008.⁶⁹ This time, the OHR and the OSCE were included to “shepherd” the process⁷⁰, submitting amendments to the Rules of Procedure of the Commission.⁷¹ After making the second public call, the Commission had new tasks. Now the change was the ranking system,⁷² introduced because of the “*need to select ombudsman based on objective criteria, and to, as much as possible, leave out subjectivity*”.⁷³ In order to increase the transparency of the process, local NGOs, *Helsinki Committee for Human Rights* and “*Vaša Prava*” (“Your Rights”) were included to monitor the election procedure as independent observers.

After conducting *five minute interviews* with no uniformed questions,⁷⁴ each member of the Commission (six in total), was able to give a candidate thirty points for each of the following four criteria:

⁶⁶ Izvjestaj o provedenoj proceduri Javnog konkursa I utvrđivanju Prijedloga liste kandidata za imenovanje Ombudsmana za ljudska prava BiH, Sarajevo, 16.7.2007. godine.

⁶⁷ AS/Mon(2008)09 Komitet za poštovanje obaveza i angažmana zemalja članica Vijeća Evrope (Monitoring Komitet). Poštovanje obaveza i angažmana od strane Bosne i Hercegovine

⁶⁸ Populari interview with James Rodehaver, Head of OSCE Human rights Department, conducted on 16.12.2008

⁶⁹ Only one member of the Ad commission changed in the second Ad hoc commission: Rudo Vidović was replaced by Branko Zrno

⁷⁰ Populari interview with James Rodehaver, Head of OSCE Human rights Department, conducted on 16.12.2008

⁷¹ “The OSCE and the OHR are monitoring the election of Ombudsman”, *Nezavisne novine*, 20th March 2008

⁷² Each ad hoc commission member was to rank candidates with up to 30 points for each of the 4 criteria’s: working experience in legal practice, high moral standards, interview and experience in human rights protection.

⁷³ Populari interview with James Rodehaver, Head of OSCE Human rights Department, conducted on 16.12.2008

⁷⁴ Populari interview with Ermin Korda, who was present at the selection interviews in behalf of NGO *Vasa Prava*, conducted on 24.12.2008

- (1) Conducted interview;
- (2) Previous legal experience;
- (3) Public appearance and high moral reputation; and
- (4) Expertise in human rights.

After candidates were asked to declare themselves according to their ethnicity, the commission produced four lists⁷⁵:

	Serb Candidates	points	Croat Candidates	Points	Bosniak Candidate	points
1	Rada Kafedžić	549	Branka Raguz	674	Jasminka Džumhur	621
2	Ljubomir Sandić	533	Ivo Bradvica	505	Amira Krehić	556
3	Biljana Simeunović	520	Željka Klobučar	499	Esad Muhibić	534

Fourth was the list of “others”, consisting of only one name: Mrs. Vera Jovanović, the current FBiH Ombudsperson (score: 553). The parliament did not even consider Mrs. Jovanović’s application, as the law allows “others” to apply to the vacancy, but they can be appointed only if one of the three elected *constituent* candidates quits.⁷⁶

If one does not take into account ethnic prefix, the table of the best candidates would appear as follows:

Rank	Candidate	points
1	Branka Raguz	674
2	Jasminka Džumhur *	621
3	Amira Krehić	556
4	Vera Jovanović	553
5	Rada Kafedžić	549
6	Esad Muhibić	534
7	Ljubomir Sandić*	533
8	Biljana Simeunović	520
9	Ivo Bradvica*	505
10	Željka Klobučar	499

* Appointed Ombudsman

On 17 June 2008, the ad hoc commission forwarded the ranking lists to both Houses of the BiH Parliamentary Assembly for further processing. The parliament was never constrained by any rule of procedure or any bylaw to respect the ranking. For the OSCE this was “*an anomaly*” which causes “*serious problems*”⁷⁷. One of the NGO observers of the process, Ermin Korda from

⁷⁵ Above mentioned/listed are only first three candidates from each people from the Ad hoc commission ranking list

⁷⁶ “List established” - Nezavisne novine, 04th June 2008

⁷⁷ Popolari interview with James Rodehaver, Head of OSCE Human rights Department, conducted on 16.12.2008

“Vaša prava” asks: *“what was the purpose of the Commission and why has it been established in the first place, if the parliament totally disregarded their ranking list?”*

Not only did the parliament disregard the ranking list, but furthermore, the House of Representatives and House of Peoples elected different candidates.⁷⁸ Dušanka Majkić, member of the ad hoc Commission told members of the media that this was a result of a dispute between HDZ BiH and HDZ 1990 on one side, and SDA and SBiH on the other.⁷⁹ OHR intervened, suggesting to the Parliament that, in order to resolve this situation without cancelling the procedure and making yet another public call for the position, a joint commission should be established to harmonize the two Houses’ decisions.⁸⁰ *“What in the world was discussed in terms of the candidates selected, so they could reach a consensus? ... How are the political deals made and how is the agreement reached?”*⁸¹

Newly born

Finally, long after over twenty months of the selection process, the BiH State Ombudsman institution got its three ombudspersons. During this period, the ultimate objective – to preserve the existing level of human rights protection - which was not to be risked, was actually at stake. Human rights protection in BiH deteriorated significantly.⁸² It can now also be argued that the aforementioned have contributed to a loss of trust in the Entities Ombudsman institutions. *“I am sure the citizens are demoralized, bearing in mind that we are publicly saying the authorities are becoming more and more reluctant to act in accordance with our recommendations. While we are waiting for the transformation, the authorities think we have no legitimacy, and because of that they do not have to obey the Ombudsman recommendations.”*⁸³

Indeed, not only has the Federal Ombudsman lost its legitimacy, but at the State level, the institution had an even worse experience. Even the current Ombudsman, Mrs. Jasminka Džumhur agrees: *“I have known that the State level Ombudsman institution is not a reputable factor in human right protection sphere. The UN Committee noted that the previous Ombudsman were*

⁷⁸ Only the Serb candidate Ljubomir Sandić got the majority in both Houses. Mariofil Ljubića was supported in the House of Representatives as the Croat candidate, whilst in the House of Peoples the majority voted for Ivo Bradvica. the House of Representatives elected Emina Halilović, but the House of Peoples chose Jasminka Džumhur.

⁷⁹“ Zaštite nas od Ombudsmana”, M. Kremenović, Focus, 09.10.2008

⁸⁰ “Bez dogovora o revizorima i Ombudsmanima”, N. Krsman, Nezavisne Novine, 05.10.2008
“ Zaštite nas od Ombudsmana”, M. Kremenović, Focus, 09.10.2008

⁸¹ Populari interview with James Rodehaver, Head of OSCE Human rights Department, conducted on 16.12.2008

⁸²As an illustration, one can observe the significant increase of cases that BiH has before the European Court of Human Rights, from 209 in 2005 to 971 in 2008 - Annual report 2008 ,, CoE, January 2009.

⁸³ Federal Ombudsman Vera Jovanović for Radio Free Europe, “Ukidanje entitetskih ombudsmena zavisiće od RS”, Milorad Milojević, 14.01.2009

*political appointees, that the credibility of the institution is diminished and that the institution itself is not an efficient mechanism in human right protection system.*⁸⁴

Mrs. Jasminka Džumhur has an impressive track record in human rights protection prior becoming the state ombudsperson. Since 2001 she was a UN officer in BiH, but her engagement in human rights protecting began already in 1993, when she was an active member in one of the most respected organizations for human rights protection (specializing in women's rights) "Medika" in Zenica, and later, also assisting the Centre for legal aid for women there. She believes the Institution with new ombudspersons in charge should be given a chance to prove it can retrieve everything that has been lost: *"What you have here, are three visionaries, who have years long experience, over twenty years; you have people determined for the idea and you have those ready to work and have at least some foundations.*"⁸⁵

However, by the time this report has been published, one of the *visionaries*, Mr. Ivo Bradvica resigned. Another is Ljubomir Sandić, who was born in Stari Martinac, in the Srbac municipality. Upon his graduation at the Law Faculty in Sarajevo in 1974, he worked mostly in municipal and district courts and since 1995 he has run a private law practice. From 1997 onwards, he has been a member of SNSD party and was a delegate in the RS national assembly in two mandates.⁸⁶ The biography that he submitted to the parliamentary commission that dealt with the appointments shows no experience in human rights protection work, whatsoever.

*"At the time I applied for the State Ombudsman position, in March, I was a member of SNSD. I have written that in the application."*⁸⁷ Mr. Sandić does not think this is in contradiction with the Law on Ombudsman, which says the ombudsman function is "incompatible with membership in a political party",⁸⁸ because *"this applies to the elected ombudsman, not the applicant for the position"*,⁸⁹ and furthermore, that the law is clear in this respect: the Ombudsman "has 10 days to forego any position of potential incompatibility"⁹⁰ after being appointed, which he did.⁹¹ It is important also to note, that there is no supervisory body, or any mechanism that ensures this has been done⁹².

⁸⁴ Populari Interview with Jasminka Džumhur, BiH State Ombudsman, conducted on 10.02.2009

⁸⁵ Ibid.

⁸⁶ Ljubomir Sandić's CV submitted to the parliamentary ad hoc commission

⁸⁷ Populari Interview with Ljubomir Sandić, BiH State Ombudsman, conducted on 10.02.2009

⁸⁸ Law on the Human Rights Ombudsman of BiH, Article 17., BiH Official gazette: 19/02

⁸⁹ Populari Interview with Ljubomir Sandić, BiH State Ombudsman, conducted on 10.02.2009

⁹⁰ Law on the Human Rights Ombudsman of BiH, Article 17., BiH Official gazette: 19/02

⁹¹ Populari Interview with Ljubomir Sandić, BiH State Ombudsman, conducted on 10.02.2009

⁹² Populari Interview with Jasminka Džumhur, BiH State Ombudsman, conducted on 10.02.2009

The legal vacuum

One of the political compromises made was that the head office of the Institution would be located in Banja Luka. The Law obliges State Ombudsman Institution to establish regional offices in Sarajevo, Mostar and Brčko, allowing for more field offices to be opened subsequently.⁹³ According to the newly adopted Rulebook⁹⁴ there will be total of thirteen offices. Further on, the Rulebook stipulates there will be eighty-six people employed in the BiH Ombudsman Institution.⁹⁵ On the day the new Ombudsman took over the institution, there were twenty-nine - including eight interns, in three offices: Sarajevo, Banja Luka and Brčko.⁹⁶ There is no Mostar office yet.⁹⁷ *“The Rulebook is designed in such way, that with the merger, we take over full responsibility for the personnel of the entity Ombudsman offices as well as in the State institution. The three regional offices will be linked with the remaining entity offices, when they are taken over.”*⁹⁸ This all sounds like a comprehensive plan, so what is preventing this becoming a reality?

A prologue into the complexity of the situation is approximately 1500 unsolved cases the newly elected ombudsperson found piled up, the oldest dating from as far back as 2004.⁹⁹ In addition to a gradual loss of qualified staff with legal experience in the past few years, from all three Ombudsman institutions, this is a heavy burden for the newly appointed BiH ombudspersons to bear at the start of their mandates.

Although the 2009 BiH Ombudsman Institution budget has been increased by 14% compared with 2008¹⁰⁰, “there are no funds planned for a Mostar office.”¹⁰¹ “There is not a single phening for the capital investments.”¹⁰² “The current financial plan covers just the current 29 employees.”¹⁰³ As with previous years, both the RS and FBiH have planned for the Entity

⁹³ Law on amendments to the Law on Ombudsman for Human Rights in Bosnia and Herzegovina, Sl list br 32, 25.04.2006, Article 1 (3)

⁹⁴ Rulebook on internal organisation and systematisation of the State Ombudsman institution, adopted on 05.01.2009.

⁹⁵ Rulebook on internal organisation and systematisation of the State Ombudsman institution, Articles 8. and 9.

⁹⁶ Populari Interview with Jasminka Dzumhur, BiH State Ombudsman, conducted on 10.02.2009

⁹⁷ Populari Interview with Ivo Bradvica, BiH State Ombudsman, conducted on 10.02.2009

⁹⁸ Ibid.

⁹⁹ Populari Interview with Ivo Bradvica and Jasminka Dzumhur, BiH State Ombudsman, conducted on 10.02.2009

¹⁰⁰ 2008 Budget for the institution was 1.796.739 KM, and for 2009. It is 2.045.000 KM - Zakon o budzetu institucija BiH i medjunardnih obaveza BiH za 2009.god, Sluzbenom glasniku BiH 7/09

¹⁰¹ Populari Interview with Jasminka Dzumhur, BiH State Ombudsman, conducted on 10.02.2009

¹⁰² Populari Interview with Ivo Bradvica, BiH State Ombudsman, conducted on 10.02.2009

¹⁰³ Populari Interview with Ljubomir Sandić, BiH State Ombudsman, conducted on 10.02.2009

Ombudsman institutions in their 2009 financial plans. The Entity Institutions' funds will follow the merger and takeover of the staff and premises, but until the merger takes place the State Ombudsman have to work with what it has now - which is not even close to being enough to support the envisaged systematisation.

It was up to the Entities to make the amendments to their Constitutions and/or legislation necessary for the merger.¹⁰⁴ The Federation Parliament adopted the law necessary to complete the merger on 19 April 2007.¹⁰⁵ As a result, the Federal Ombudsman has closed two field offices - in Bihac and Travnik and fired well over 30% of legal staff.¹⁰⁶ Currently they have 5 offices with approximately only 20 people¹⁰⁷ in total out of the 43 that they had in 2006.¹⁰⁸

In addition, there is no long term strategy that would enable a sufficient merger. In February 2009, when asked about any midterm strategy in place for the State Institution, Mr. Bradvica explained; "I thought you will ask me for the strategy until March 1, 2009. Aren't you clear that we cannot even settle that yet?"¹⁰⁹

The reason that the Federation Ombudsman institution has not yet merged with the state institution is the article of the 2007 Federal Law which says that the merging of both entity institutions should be done "**at the same time.**"¹¹⁰ Whilst the Federal ombudsman insist on the merger being done at the same time, the newly appointed State Ombudsman referred to the State law where simultaneity is not mentioned, adding that "*even the title of the FBiH law mentions a transitional period...which was exceeded on December 31st 2006.*"¹¹¹

Floating in between various scenarios and about their further endurance, the Federal Ombudsman referred this question to the authority in charge, asking the Federal Parliament to decide. In March 2009, Federal Parliament decided there will be no transfer to the state level, until the RS does the same.¹¹²

¹⁰⁴ Amendments on Law on Ombudsman for HR in BiH, Article 19 (3)

¹⁰⁵ "Sl. noviname FBiH", broj: 51/07, od 01.08.2007.

¹⁰⁶ Populari interview with Branka Raguz, FBiH Ombudsman, conducted on 15.12.2008

¹⁰⁷ *ibid*

¹⁰⁸ Federation Ombudsman 2007 annual report

¹⁰⁹ Populari Interview with Ivo Bradvica, BiH State Ombudsman, conducted on 10.02.2009

¹¹⁰ Law on manner for cessation of work of the institution of Ombudsman of the Federation of Bosnia and Herzegovina in transitional period and on transfer of its powers to the institution of Human Rights Ombudsman of Bosnia and Herzegovina , Articles 1. and 3.

¹¹¹ Populari Interview with Jasminka Dzumhur, BiH State Ombudsman, conducted on 10.02.2009

¹¹² Anto Baltic, House of the Representatives secretary, interview on May 7, 2009.

The RS National Assembly has not yet adopted the Law on transfer of responsibilities from the entity to the state level. The law was taken off the RS National Assembly agenda several times, because of the objections from the members of the RS parliament concerning the constitutional basis for the BiH State Law to demand the abolishment of the RS Ombudsman. RS National assembly president Igor Radojičić stated at the press conference that it is a “*complicated legal situation, in which the BiH State Ombudsman started, which no one in RS is disputes, but what has remain unclear is the question of the entity Ombudsman status.*”¹¹³

Moreover, the RS National Assembly adopted the Law on (Entity) Ombudsperson for children’s rights¹¹⁴ in October 2008. The international community in BiH seems startled by this move, as the 2006 Law on state Ombudsman envisages the creation of a department for monitoring children’s rights throughout the whole BiH. Despite this, no significant reaction has been recorded from the International Community, apart for the Council of Europe which concluded, the adoption of this law “undermines the powers of the merged Bosnia and Herzegovina State Ombudsperson’s Office, which is supposed to perform the very same function.”¹¹⁵ Furthermore, although in conflict with the notion of having a strong State Ombudsman that also deals with the issue of children right protection in the whole BiH, the OSCE does not consider it to be “on its face a bad thing”, depending on whether it ends up duplicating the work of the ombudsman institution and not cooperating or coordinating its work with the State ombudsman institution, in which case “action needs to be taken.”¹¹⁶ What that action would look like, they could not tell.¹¹⁷

As for the RS Entity Ombudsman Institution, there was no reduction in personnel or number of field offices as was envisaged by the State Law.¹¹⁸ RS ombudsperson, Nada Grahovac’s mandate expired on December 28th 2008, but she continued to perform this function¹¹⁹ until April 2009 when the RS National Assembly discharged her from the position and appointed her the head of the newly formed RS Ombudsman for children.¹²⁰

¹¹³ “Jedinstvena institucija Ombudsmana u BiH?”, Fena, 18.02.2009.

¹¹⁴ RS Službeni glasnik: 103/ 08, Datum: 15/10/2008

¹¹⁵ CoE Assembly Resolution 1626 (2008) - Honouring of obligations and commitments by Bosnia and Herzegovina, available at: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta08/ERES1626.htm>

¹¹⁶ Populari interview with James Rodehaver, Head of OSCE Human rights Department, conducted on 16.12.2008

¹¹⁷ ibid

¹¹⁸ Populari interview with Nada Grahovac, RS Ombudsman, conducted on 20.02.2008.

¹¹⁹ Based on Law on Republika Srpska Ombudsman, Article 11., Sl.gl.RS 04/00

¹²⁰ RS National Assembly Decision 01-703/09 – not published in the Official gazette yet.

One of her deputies, Mr. Šubarić resigned from this position in April 2008 and the current deputy is Dr. Enes Hašić.¹²¹ At the present time, the RS Entity Ombudsman has twenty one employees, head office in Banja Luka and four regional offices in the RS (Bijeljina, Doboje, Foča and Prijedor).¹²² Depending on whether the law on the transfer of the entity ombudsman competences to the state institution is adopted, a decision will be made on whether there will be new appointments.¹²³

After meeting with the newly appointed State Ombudsman, in February 2009, Principal Deputy HR Raffi Gregorian concluded that “*the merger is awaiting adoption by Republika Srpska of the necessary transitional legislation*”¹²⁴ and told them he believes that “*many supporters of human rights in the Republika Srpska National Assembly will succeed in finally adopting the long overdue transitional legislation.*”¹²⁵

RS Prime minister, Mr. Milorad Dodik, in his speech in the RS national assembly, regarding the transfer of competences from entity to state level, said that “*no further transfers of competences should be allowed, unless based on the RS parliament decision.*”¹²⁶

Conclusion

The Dayton Peace Agreement provides international actors in Bosnia and Herzegovina with ultimate authority, but their policies require approval of three ethnic groups, whose parties often adopt hard line (opposing) positions.¹²⁷ In many cases, the international interventions in BiH have tended to reproduce what has been called the ‘image of the state’,¹²⁸ regardless of all of the

¹²¹ Decision of the RS National assembly on deputy Republika Srpska Ombudsman dismissal, Službeni glasnik RS: 36/ 08, 27/04/2008

¹²² Memo from RS Deputy Ombudsman, Enes Hašić. 12.05.2009

¹²³ Populani interview with Ljiljana Timotija, Secretary of the RS National Assembly Legal Department, conducted on 08.05.2008

¹²⁴ Gregorian: Work of Institution of BiH Ombudsman is of utmost importance, OHR, 11.2.2009. available at: http://www.ohr.int/ohr-dept/presso/pressr/default.asp?content_id=43046

¹²⁵ Ibid.

¹²⁶ “Dodik optužuje OHR”- Radio free Europe, Milorad Milojević, 24.04.2009

¹²⁷ Crocker, Chester, Fen O. Hampson, and Pamela Aall, *Taming Intractable Conflicts: Mediation in the Hardest Cases*. (Washington D.C.: United States Institute of Peace, 2005)

¹²⁸ The author is referring to Schlichte and Migdal’s conception is the differentiation between the ‘image of the state’ (or ‘seeing the state’) and the ‘practices of the state’ The ‘image of the state’ represents a specific vision of what the state is which is prevalent globally and exerts its power in the minds of political actors all over the world.

unintended effects.¹²⁹ Sometimes these unintended effects prevail over the intended results of international strategies, due to national actors in response to the dominant international influence.¹³⁰ The reform of the BiH Ombudsman institutions is a good example of this. It nicely displays, there are no quick fixes in Bosnia. It also shows, what happens when the efforts to ensure the State building are channeled up erroneously, without having in depth understanding what is the real impact of it and more importantly long term aftermath.

What this means is that at the present time is that BiH has been left with three poorly-functioning Ombudsman offices and a lower level of human rights protection for citizens than before the reform process began. The main reason for this has been the aspiration of the multiple stakeholders to implement the reform of the Ombudsman institution in BiH, without properly analyzing the situation and what exactly would be involved in the process of reform. This in turn, meant that no significant planning was done and very little attention was paid to the potential negative consequences of the reform. The focus on being able to “tick the box” of completing the institutional reform of the Ombudsman office resulted in turmoil. Without considering the possible unintended consequences has meant that the citizens of Bosnia and Herzegovina – those who the Ombudsman institutions were actually meant to serve and protect – have been left without anywhere to turn for meaningful human rights protection. As such, they have been disadvantaged in this whole process. Furthermore, the reform of BiH Ombudsman institutions has been placed on the list of preconditions for BiH entering the Schengen White List, which would enable Bosnian citizens to travel freely around Europe.

All of this could have been avoided had a realistic strategy and an action plan been in place prior to implementing the reform. Despite numerous reports warning against rushing the process of reform¹³¹, authorities in charge chose to ignore these warnings, and as a result of a poor understanding of the situation in reality, they proceeded with the reform, muddling through inconsistently and oblivious to the impact this was having for human rights protection in the country. As such, what is required now is a change of strategy by all of those involved to ensure that first and foremost, citizens of BiH are receiving proper human rights protection through the Ombudsman institutions, and secondly, that the process of reform is gradually finalized.

For this to take place, some level of coordination must be established between the three existing Ombudsman institutions, which at the present time does not exist. The likelihood is that this will have to be an informal arrangement because of the absence of a legal basis for this kind of agreement. The agreement should bind the three institutions to uphold close contact with all the remaining branch offices of both entities in order to liaise for the cases that are waiting to be resolved, and for all forthcoming cases.

¹²⁹ Does External State-Building Build States? - The Example of Bosnia and Herzegovina, Bliesemann de Guevara, Berit - Institute for International Politics Helmut Schmidt University Hamburg, March 2006.

¹³⁰ *ibid*

¹³¹ Already in 1999 the Venice Commission pointed out that „The operation of an ombudsman institution in Bosnia and Herzegovina is surrounded by not only technical but also conceptual and therefore political difficulties.”

An issue of immediate significance is the selection of the new Croat Ombudsperson. To ensure that the same mistakes and flawed procedure are not repeated, it is important to incorporate the immediate engagement of multiple stakeholders (media, civil society and other relevant institutions) in the process of monitoring the work of the newly appointed ad hoc commission for the selection of the Croat representative for the State level Ombudsman. Furthermore, it will be necessary to ensure that the BiH Parliament is committed to respecting and adhering to the recommendations of the ad hoc commission when deciding on the new candidate.

The international community needs to begin to look at the process of reform as a long term objective to be achieved in BiH based on realistic and consistent strategies. As such, the conditionality that exists with reforms at the present time needs to be reassessed. Otherwise it can lead to the process being hurried to the extent that the unintended negative consequences of the reform process outweigh the benefits of reform. It must be anticipated that even well-intended concepts may be alienated in the process by local political forces. To avoid this, the international community should either monitor implementation more closely or refrain from imposing reforms, which eventually take place in a different way than envisaged.

Specifically related to the reform of the Ombudsman institutions, this means consideration needs to be given to this being a precondition of Bosnia joining the Schengen White List. A better alternative would be to evaluate the Block 4 requirements of the visa liberalization Roadmap in relation to the merger of the ombudsman institutions, and assess this particular benchmark according to a “functional” level, rather than a political level.

Given the circumstances in which this process has evolved, there is a need to complete it as soon as possible, and to support and monitor the work of the new State institution. This also means reminding the RS Parliament of its obligation to pass the necessary legislation as soon as possible, as its absence is effectively blocking the completion of the reform process.

In conclusion, the example of reform of the BiH Ombudsmen Institution shows that ticking the right boxes is more complex and problematic than anticipated; a lesson to be learned by all actors involved.