

**DRAFT STATUTE OF THE REGIONAL COMMISSION FOR
ESTABLISHING THE FACTS ABOUT WAR CRIMES AND SERIOUS
HUMAN RIGHTS VIOLATIONS COMMITTED ON THE TERRITORY
OF THE FORMER YUGOSLAVIA**



PART V – COMPETENCIES OF THE COMMISSION

Article 14

Time Period and Territory to be Investigated

The Commission establishes the facts about war crimes and other serious human rights violations committed in the period from January 1, 1991 to December 31, 2001 in the states formed on the territory of the former Yugoslavia and it investigates:

[OPTION A: To research political and societal circumstances that directly contributed to the commencement of the war or other forms of armed conflict as well as the commitment of war crimes and other human rights violations]

[OPTION B: To research political and societal circumstances beginning in the 1980s which have directly contributed to the commencement of the war or other forms of armed conflict as well as the commitment of war crimes and other human rights violations];

Comments:

*With respect to the dilemma what time period should be investigated by RECOM, I think that it should be limited to a period between **1980 and 2001** for many reasons. I think that a very complex and extensive task, a very important task is being imposed on RECOM – establishing the facts, and I am afraid that this period is going to be short for all the facts that needs to be established (...) So, I think that RECOM will have much more important things to do instead of going into a very distant past, especially because it is very important to establish the facts from concerning the events that took place so many years ago.* (Fikret Grabovica, Association of the parents of the children killed during the siege of Sarajevo 1992-1995, Sarajevo, BiH, Regional Consultation with victims and victims' family members of the Draft RECOM Statute, Prishtinë/Priština, Kosovo, December 17, 2010).

*I think I would rather opt for an **unlimited approach** when it comes to investigating societal circumstances.* (Aleksandar Todorović, Civil Initiative of Erased Residents, Ljubljana, Slovenia, Regional Consultation with victims and victims' family members of the Draft RECOM Statute, Prishtinë/Priština, Kosovo, December 17, 2010).

*(...) I think it is a **good idea not to limit** the time period when it comes to investigating societal and political circumstances.* (Ružica Stasić, Association of the families of the missing and forcefully taken individuals of Serbian nationality, Vukovar, Croatia, Regional Consultation with victims and victims' family members of the Draft RECOM Statute, Prishtinë/Priština, Kosovo, December 17, 2010).

*(...) **there should absolutely be no time limitation** with respect to investigating societal and political circumstances.* (Atdhe Berisha, non-governmental organization Kalaja, Peć, Kosovo, Regional Consultation with victims and victims' family members of the Draft RECOM Statute, Prishtinë/Priština, Kosovo, December 17, 2010).

(...) I think we should investigate the period starting, let's say in 1985. But I can also accept 1981, too. (Ekrem Hadžić, Association for the protection of the rights of banished and displaced residents of the Priboj municipality, Priboj, Serbia, Regional Consultation with victims and victims' family members of the Draft RECOM Statute, Prishtinë/Priština, Kosovo, December 17, 2010).

(...) I think that going back into a very distant past where there are no more living witnesses would mean going too wide and it would prevent RECOM from focusing on establishing the relevant facts. For that reason I am in favour of investigating the past events only to the extent of their relevance for the events from the period 1991-2001. (Anđelko Kvesić, Croatian Association of former detention camp inmates in the Mid Bosnia Canton and member of the Coordination Council of the Coalition for RECOM, Busovača, BiH, Regional Consultation with victims and victims' family members of the Draft RECOM Statute, Prishtinë/Priština, Kosovo, December 17, 2010).

With respect to the circumstances, if the time period is limited, it may create serious obstacles for the commission. (Prenk Gjetaj, president of the Government Commission for the Missing, Prishtinë/Priština, Kosovo, Regional Consultation with victims and victims' family members of the Draft RECOM Statute, Prishtinë/Priština, Kosovo, December 17, 2010).

*With respect to the period that needs to be investigated – if we want to deal with the victims and war crimes perpetrators, **we really should not go into a very distant past.** Those who are responsible for all those horrible events are no longer alive.* (Lozanka Radoičić, Parent Association *Vera, nada, ljubav* (Faith, Hope, Love), Belgrade, Serbia, Regional Consultation with victims and victims' family members of the Draft RECOM Statute, Prishtinë/Priština, Kosovo, December 17, 2010).

*I am convinced that **the time period should not be limited** when it comes to researching political and societal circumstances.* (Shaban Terziu, non-governmental organization Lansdowne, Gnjilane, Kosovo, Regional Consultation with victims and victims' family members of the Draft RECOM Statute, Prishtinë/Priština, Kosovo, December 17, 2010).

*The time period which is the subject of investigation of the commission should be **limited to 1981.*** (Marinko Đurić, Association of the families of the kidnapped and missing in Kosovo and Metohija, Belgrade, Serbia, Regional Consultation with victims and victims' family members of the Draft RECOM Statute, Prishtinë/Priština, Kosovo, December 17, 2010).

PART VI – AUTHORIZATIONS OF THE COMMISSION

Article 16

Deposition-Taking

1. The Commission takes statements concerning war crimes and serious human rights violations in the area of its competence from victims, witnesses, representatives of institutions and perpetrators of such crimes.
2. Each person invited to testify before the Commission must give a statement to the Commission. Exceptionally, victims are under no obligation to testify about their own suffering or the suffering of their family members.
3. In case a person refuses to give a statement to the Commission, invoking their legal obligation to protect confidential information, provisions contained in Article 11, point 3 and 4 of this Statute, will be applied.
4. Provisions of the Criminal Procedure Law of the member states will be applied to the right to refuse to answer certain questions and to the release of responsibility to testify, as well as other issues concerning the questioning of individuals that have not been regulated by the Statute of the Commission.
5. Identity protection measures can be offered at the personal request of those testifying.
6. The Commission can sign special agreements with member states in order to regulate the manner in which individuals from point 1 of this Article will be invited to testify. If the Commission deems it necessary, the Commission may suggest the competent court to act urgently in determining the measures necessary to secure the appearance of individuals invited to testify, in accordance with the law of the state where the invited individual resides.

Comments:

It is important to establish cooperation with the judiciary in order to secure the participation of as many potential witnesses as possible. It is important that all those who know something testify so that all available information (...) is obtained by RECOM.

(Ružica Spasić, Association of the families of the missing and forcefully taken individuals of Serbian nationality, Vukovar, Croatia, Regional Consultation with victims and victims' family members of the Draft RECOM Statute, Prishtinë/Priština, Kosovo, December 17, 2010).

(...) I think we need to influence courts and make arrangements with courts to invite witnesses to testify.

(Lozanka Radoičić, Parent Association *Vera, nada, ljubav* (Fatih, Hope, Love), Belgrade, Serbia, Regional Consultation with victims and victims' family members of the Draft RECOM Statute, Prishtinë/Priština, Kosovo, December 17, 2010).

(...) an agreement [between the Commission and the member states] (...) I think that's really good.

(Šuhra Sinanović, Association of Women of Podrinje, Sarajevo, BiH, Regional Consultation with victims and victims' family members of the Draft RECOM Statute, Prishtinë/Priština, Kosovo, December 17, 2010).

*When it comes to the agreement with member states providing judicial support in securing the appearance before the Commission of **witnesses such as members of state institutions, government bodies, military or police commanders**, I think that is a key element in RECOM's efforts to establish the facts and discover the truth about the most recent war in the region.* (Fikret Grabovica, Association of the parents of the children killed during the siege of Sarajevo 1992-1995, Sarajevo, BiH, Regional Consultation with victims and victims' family members of the Draft RECOM Statute, Prishtinë/Priština, Kosovo, December 17, 2010).

7. During and after the hearing, the Commission will, as needed, secure the psychological support for the victims.
8. The Commission collects statements:
 - (a) In the place of residence or temporary stay of the witness;
 - (b) In the offices of the Commission;
 - (c) In embassies and consular offices of member states, if the statement is to be taken in third party countries;
 - (d) On the territory of third party countries, if it is not contrary to the legal provisions of these states and if it is not possible for victims, witnesses, or other persons to give statements in the embassies and consular offices of member states at these locations.

Article 20

Holding Themed Sessions

1. The Commission can hold sessions about the activity of state institutions, political organizations, cultural and scientific institutions, churches and religious communities, and the media before and during the war or other form of armed conflict with respect to their role in the commitment of war crimes and other serious human rights violations.
2. State-owned electronic media, i.e. public service TV stations on the territory of the former Yugoslavia will air themed sessions of the Commission in their integral form or their short versions. The way such sessions are going to be aired will be regulated by agreements signed by the Commission and individual TV stations. Commercial electronic media will have equal rights as state-owned media, and they will abide by the same rules applicable to state owned media, i.e. public service TV stations.

Comment:

The attempts of RECOM to sign agreements with public service TV stations can be a very sensitive issue because there's a possibility that they become private in the foreseeable future. (Aleksandar Todorović, Civil Initiative of Erased Residents, Ljubljana, Slovenia, Regional Consultation with victims and victims' family members of the Draft RECOM Statute, Prishtinë/Priština, Kosovo, December 17, 2010).

3. Themed sessions can be held in different locations.

Part XI – FINAL REPORT OF THE COMMISSION

Article 43

Compilation and Publication of the Final Report

1. Shortly before the expiration of its mandate, the Commission will make its Final Report public.
2. The Commission will submit its Final Report to the Heads of State / Presidencies of member states and publish it at the same time in all official languages of the member states.
3. The Commission has an obligation to make public a short version, i.e. an abstract, of the Final Report at the same time that the complete version is made public.

Comment:

It would be a good idea to compile a book of testimonies, so that those who are interested may read it. (Munira Subašić, Association Movement of Mothers of Srebrenica and Žepa Enclaves, Sarajevo, BiH, Regional Consultation with victims and victims' family members of the Draft RECOM Statute, Prishtinë/Priština, Kosovo, December 17, 2010).

Part XII – MISCELLANEOUS

Article 48

The Role of the Commission in the Criminal Prosecution of War Crimes Perpetrators

The Commission is authorized to make suggestions in the following situations:

- (a) if an individual seriously suspected to have committed a war crime or a serious human rights violation shares with the Commission information relevant to the disclosure of locations containing the bodily remains of missing persons and/or information relevant to identifying other war crimes perpetrators or other crimes, the Commission may advise the trial chamber to consider it as an extenuating circumstance in determining a sentence, in the case of criminal prosecution of that individual;

Comment:

Article 48, point a) – since it is a serious crime, I think that we need to add the following text to read: in a direct contact with the family or the family member of the victim of a serious crime. If the family accepts it. (Lozanka Radoičić, Parent Association Vera,

nada, ljubav (Fatih, Hope, Love), Belgrade, Serbia, Regional Consultation with victims and victims' family members of the Draft RECOM Statute, Prishtinë/Priština, Kosovo, December 17, 2010).

- (b) propose a partial pardon for a sentenced war crimes/serious human rights violation perpetrator who shares with the Commission information relevant to the disclosure of locations containing the bodily remains of missing persons and/or information relevant to identifying other war crimes perpetrators or other crimes; and
- (c) propose an extraordinary sentence reduction for a convicted perpetrator, if it is not in contradiction with the legal provisions of that particular state, if he/she shares with the Commission information relevant to the disclosure of locations containing the bodily remains of missing persons and/or information relevant to identifying other war crimes perpetrators and other crimes.

Comments:

(...) I must say that I fully agree with the proposal to reduce the prison sentence of an individual who is tried and sentenced on war crimes charges if that individual disclosed information crucial for finding a mass grave. I fully support that. (Munira Subašić, Association Movement of Mothers of Srebrenica and Žepa Enclaves, Sarajevo, BiH, Regional Consultation with victims and victims' family members of the Draft RECOM Statute, Prishtinë/Priština, Kosovo, December 17, 2010).

I completely agree with the idea to reduce the sentence for individuals who testified and helped discover mass graves because we are all impatiently expecting to learn the truth about our loved ones. (Milorad Trifunović, Association of the families of the kidnapped and missing in Kosovo and Metohija, Office in Mitrovica, Kosovo, Regional Consultation with victims and victims' family members of the Draft RECOM Statute, Prishtinë/Priština, Kosovo, December 17, 2010).

I am completely sure that the families of the victims would support this idea – for RECOM to be able to make recommendations to courts to alleviate punishment for those who help find mass graves. However, I don't think it is going to be easy because that may violate the judiciary of some member states. (Gordana Đikanović, Association of the families of the kidnapped and killed in Kosovo and Metohija, Pančevo, Serbia, Regional Consultation with victims and victims' family members on the Draft RECOM Statute, Prishtinë/Priština, Kosovo, December 17, 2010).

I think that it is not a good idea to reduce the sentence of those who committed a crime if they help uncover the details of the crime. That is contrary to all principles of justice. (Ymer Merlaku, Association of former political prisoners, Klina, Kosovo, Regional Consultation with victims and victims' family members of the Draft RECOM Statute, Prishtinë/Priština, Kosovo, December 17, 2010).

(...) if the families of victims agree, I think we should not hesitate to recommend sentence alleviation for those who help discover individual or mass graves. I believe that there things like that are already happening for witness-collaborators or those who repent. (Ružica Spasić, Association of the families of the missing and forcefully taken individuals of Serbian nationality, Vukovar, Croatia, Regional Consultation with victims and victims' family members of the Draft RECOM Statute, Prishtinë/Priština, Kosovo, December 17, 2010).

According to what we have witnessed in Macedonia, financial rewards do not work because they are obviously too low. They yielded no results. That's why I am a little sceptical with respect to the reward system. (Branislav Jakimovski, Nadež Association, Tetovo, Macedonia, Regional Consultation with victims and victims' family members of the Draft RECOM Statute, Prishtinë/Priština, Kosovo, December 17, 2010).