



Inicijativa za REKOM
Initiative for RECOM
Иницијатива за РЕКОМ
Nisma për KOMRA
Pobuda za REKOM

RECOM Process Update

November 5, 2014

RECOM Statute Amendments in context of constitutional and legal possibilities for establishment of RECOM

On March 26, 2011, the Coalition for RECOM (Coalition) adopted the RECOM Draft Statute as a legal act that will establish the Commission (RECOM). In the campaign for the establishment of RECOM during May and June 2011, the Coalition secured 550,000 citizens' signatures from all post-Yugoslav countries in support of RECOM. Apart from citizens, this regional initiative received open support from the highest representatives of the successor states of the former Yugoslavia. To make the expressed political support concrete, and enable the transfer of the RECOM Initiative to the state level, the Coalition asked the Presidents in the region, and members of the Presidency of Bosnia and Herzegovina, to appoint their respective personal envoys for RECOM (Envoys), who would analyze the proposed RECOM Draft Statute in the context of the legal and constitutional options for the establishment of RECOM in each country of the Former Yugoslavia.

The appointment of Envoys took almost two years. These RECOM Envoys began their work on September 8, 2013 and completed their overview of the Draft Statute on October 28, 2014. They also conducted special consultations with the Presidents and two Members of the Presidency of B&H, in order to determine RECOM's Temporal and Territorial Scope of Inquiry - a question they were unable to decide on their own. Owing to the election of new Members of the Presidency of Bosnia and Herzegovina on October 13, 2014, RECOM's public advocates will conduct consultations with the new Croatian Member after the B&H Presidency has been constituted in mid-November 2014. The consultations will be concerned with whether the new Member of the Presidency agrees with the views of his previous counterpart. The public advocates will also hold consultations with the Serbian Member of the B&H Presidency, regarding the appointment of a RECOM Envoy and on his joining this interstate project.¹

Envoys for RECOM:² Prof. Dr. Zlata Djurdjevic, Law School Professor at the University of Zagreb, personal envoy of the President of Croatia, Ivo Josipovic; Selim Selimi, personal

¹ The Serbian Member of the Presidency Nebojsa Radmanovic, never received the delegation from the Coalition for an interview to discuss the Initiative for RECOM, nor did he respond to the written request of the Coalition to appoint a RECOM delegate.

² Luben Arnaudovski, delegate of the President of Macedonia, Gjorge Ivanov, did not participate in the work of the RECOM delegates. On October 28, 2014, the President of Macedonia informed the Coalition for RECOM that, if a consensus among the Presidents of the countries in the region is reached, he too would initiate the process for the establishment of RECOM.

legal adviser to the President of the Republic of Kosovo, Atifeta Jahjaga; Goran Mihaljevic, a legal expert for cooperation with the Hague Tribunal, personal envoy of the member of the B&H Presidency Zeljko Komsic; Sinisa Vazic, Judge of the Court of Appeals in Belgrade, personal envoyate of the President of the Republic of Serbia, Tomislav Nikolic; Prof.Dr. Sonja Tomovic-Sundic, Dean of the Faculty of Political Sciences in Podgorica and personal adviser for Human and Minority Rights to the President of the Republic of Montenegro, and Aljosa Campara, Deputy Mayor of Sarajevo, personal envoy of the B&H Presidency member Bakir Izetbegovic.

So far, the RECOM Envoys have held four working meetings to analyze each particular provision of the RECOM Draft Statute, using email communication to formulate the amendments to the existing paragraphs of the draft, and to add some new paragraphs. They have also conducted special consultations with the Presidents and the Members of the B&H Presidency concerning the Temporal and Territorial Scope of Inquiry. The results of their work are the **Amendments** to the existing RECOM Statute to be found below, anchored in the constitutional and legal possibilities for the establishment of RECOM in each country of the Former Yugoslavia. As such, they reflect the strong political will on the part of the Presidents and two of the Members of the B&H Presidency to jointly institute a regional commission, designed to provide a comprehensive record of the crimes committed during the wars and in relation to them. Some differences in the Presidents' and the B&H Presidency Members' attitudes—as to whether RECOM should deal with „the socio-political circumstances that decisively contributed to the outbreak of the wars and other forms of armed conflicts, as well as to the commission of the crimes and other serious violations of human rights“ — correspond to the opinions expressed during the consultative process on RECOM's mandate, previously organized by the Coalition. These differences are also included in the Statute proposed by the Coalition.

Preamble

The envoys have reinforced the Preamble by adding a new paragraph on the moral condemnation of all war crimes and their perpetrators. **"Determined to morally condemn all war crimes and their perpetrators, as well as all forms of human rights violations, in the name of ethical principles;** - New paragraph, RECOM Envoys.

PART I – Definition of concepts in this Statute

The Envoys eliminated the definitions that applied to the ministries responsible for human rights and the parliamentary body for human and minority rights, since the amendments render them unnecessary in the process of appointing selection committees and members of the Commission.

PART II – General revisions

The Envoys have specified that the Commission is to be established on the basis of an international agreement, and that the Commission may extend its operations provided that it has adequate financial resources.

„The Regional Commission for establishing the facts about war crimes and other serious violations of human rights in the former Yugoslavia is established by this treaty“. – Amendment, RECOM Envoys. (The Regional Commission for establishing the facts about war crimes and other serious violations of human rights in the territory of the former SFRY is an international organization established by this legal act) – proposed by the Coalition for RECOM, deleted.

PART III – The obligation to cooperate with the Commission

The RECOM Envoys made more precise the formulation that the states will create conditions for cooperation with the Commission.

PART IV – Goals and tasks of the Commission

The RECOM Envoys proposed that the Commission, among other goals (Article 13), should:

(g) „contribute to the advancement of educational programmes in accordance with the facts about war crimes, other serious violations of human rights victims and victims, as established by the Commission“. - new paragraph, RECOM Envoys.

In special consultations of the delegates with the public advocates for RECOM, conducted from June 1 to October 28, 2014, the Bosniak and Croatian Member of the Presidency of B&H, and the Presidents of Croatia, Serbia, Montenegro, and Kosovo expressed the same view of the main objectives of the Commission (Article 13):

"to establish the facts about war crimes and other serious violations of human rights committed during the period from January 1, 1991 to December 31, 2001, on the territory of the former SFRY." - The Bosniak Member of the Presidency of Bosnia and Herzegovina in the previous and the new terms, the Croatian Member of the Presidency of Bosnia and Herzegovina in the previous term, the Presidents of Croatia, Serbia, Montenegro, and Kosovo. In addition to the intention **"to establish the facts about war crimes and other serious violations of human rights committed during the period from January , 1991 to December 31, 2001 on the territory of the former SFRY"** (Article 13), the Bosniak Member of the Presidency of Bosnia and Herzegovina advocated that RECOM **„explore the political and social circumstances that decisively contributed to the outbreak of the wars or other forms of armed conflict, as well as the commission of war crimes and other serious violations of human rights."** (Article 14)

In this way, the proposal of the Coalition for RECOM, as formulated in paragraph (a) of Article 13, „To establish the facts about war crimes and other gross violations of human rights committed on the territory of the former SFRJ in the period from January 1, 1991 until December 31, 2001, the political and societal circumstances that led to the commission of these acts, and the consequences of the crimes and human rights violations" has been changed by the paragraphs proposed by the Presidents and the two Members of the B&H Presidency.

PART V – Powers of the Commission

In special consultations on the the Temporal and Territorial Scope of Inquiry, the Bosniak and Croatian members of the Presidency of B&H, and the Presidents of Croatia, Serbia, Montenegro and Kosovo, independently of each other recommended that RECOM explore the facts about war crimes and other serious violations of human rights committed in the period from January 1, 1991 to December 31, 2001, a period included in the mandate of the ICTY. The Bosniak Member of the Presidency of B&H suggested that the Commission's research area include **"the political and social circumstances that decisively contributed to the outbreak of wars or other forms of armed conflict, as well as the commission of war crimes and other serious violations of human rights."**

PART VI – Powers of the Komisije

The REKOM Envoys deleted the repressive powers of the Commission proposed by Articles 17 and 21.

PART VII – Selection of Commission Members

The RECOM Envoys greatly simplified the procedures for the appointment of the selection committees and Commission Members. The central role in the appointments of the selection committees and Members of the Commission were given to the Presidents/Members of the BH Presidency, with technical support from the Coalition for RECOM

PART VIII –Rights and Obligations of Members of the Commission

The RECOM Envoys specified the manner of protecting the sources and confidential information collected by the Commission during its operation. The new paragraph proposed by the delegates is that **"the Commission is not authorized to disclose to the Prosecutor's Office the identity of the person who gave the information without the consent of that person."**

PART IX – The Structure of the Commission

The RECOM Envoys have simplified the establishing of the Commission's investigative teams.

PART X – Funding of the Commission

The RECOM Envoys took donations, as well as international organizations, as the main source of funding for the Commission, rather than what the Coalition for RECOM proposed, a stipulation that obliged the signatory states to fund the activities of the Commission from their respective budgets.

PART XI – The Commission's Final Report

The RECOM Envoys specified the possibility that persons to whom responsibility for war crimes or serious human rights violations have been ascribed can respond to the allegations. The President, together with the President of the Parliament, would convene a parliamentary session to address this possibility.

The Bosniak Member of the Presidency of B&H amended Article 44, on the contents of the Commission's final report, recommending that the final report **"include the political and social circumstances that decisively contributed to the outbreak of wars or other forms of armed conflict, as well as the commission of war crimes and other serious violations of human rights."**

PART XII – Miscellaneous

The RECOM Envoys have dispensed with penalty provisions (Article 48) and Article 49, relating to the Commission's role in the prosecution of war crimes. Envoys had previously dispensed with the repressive powers of the Commission.

PART XIII – Final Provisions

The RECOM Envoys stipulated that the signatory parties decide on ways of acceptance or ratification of the Statute of RECOM, and inform other signatories of the acceptance or ratification of this document.

The RECOM Envoys recommended that the Coalition for RECOM participate in the technical, professional and organizational preparations for the establishment of selection committees and the Commission itself.