

Second meeting of the “Structured Dialogue on Justice between the European Union and Bosnia and Herzegovina”

Sarajevo (Bosnia and Herzegovina), 10-11 November 2011

Recommendations from the European Commission

On the backlog of cases, the European Commission:

- Encourages the High Judicial and Prosecutorial Council of BiH (HJPC) to continue its initiatives to increase efficiency through proposals for legislative changes, monitoring of backlog reduction through the available IT management tools, management training, changes of the internal working procedures at courts, as well as renovation and modernisation of buildings.
- Recommends that a set of measures be put in place to decrease the huge influx of cases of unpaid utility bills, such as, removing the processing of utility cases from courts, transferring the non-judicial part of their enforcement to private or public enforcement agencies, and transferring non-contested inheritance cases to notaries.
- Recommends that a plan for the introduction of a functional system for in-court and out-of-court mediation throughout BiH be prepared on the basis of the preliminary assessment conducted by the HJPC.

- Encourages all stakeholders to organise a regional workshop for the exchange of good practices on the reduction of the backlog of cases, as well as on the execution of criminal sanctions.

On the Law on Prosecutor's Offices in the Federation of Bosnia and Herzegovina (FBiH), the European Commission:

- Welcomes the initiative to advance on the adoption of a single Law, with a view to guarantee a harmonisation throughout FBiH.
- Particularly welcomes the scheduled initiation of the adoption procedure by 17 February 2012, as per the action plan announced by the FBiH Minister of Justice.

On the Law on Execution of Criminal Sanctions in FBiH, the European Commission:

- Welcomes the commitment by the FBiH Minister of Justice to promptly pursue the adoption of a new law on execution of criminal sanctions.
- Urges FBiH authorities to undertake all possible measures to reduce the backlog in the execution of criminal sanctions.

On the Framework Law on Free Legal Aid, the European Commission:

- Requests that BiH authorities adopt a Framework Law on Legal Aid, in view of ensuring equal rights of citizens before the law throughout the country.
- Expresses concern for a lack of specific provisions on free legal aid in some Cantons of the FBiH.

On the establishment of a High Security State Prison and Special hospital for forensic psychiatry, the European Commission:

- Expresses concern about the delays in opening the forensic psychiatric hospital located in Sokolac.
- Encourages all competent authorities in Republika Srpska (RS) to complete the remaining works and all other preparatory activities by June 2012, as planned and announced.
- Expresses serious concerns for the protracted delays in the construction of the High-Security State Prison and calls on the Ministry of Justice of BiH to do its utmost to speed up this important project.
- Recommends that the BiH Ministry of Justice holds an urgent information meeting with stakeholders of the High-Security State Prison in order to ensure full understanding of the design and budget.

On police/prosecutors cooperation, the European Commission:

- Encourages further joint training initiatives.
- Underscoring the need to implement the policies on preventing and fighting financial crimes without further delays, recommends that specific joint training modules for members of the judiciary and representative of law enforcement agencies are scheduled on money laundering, cyber crimes, asset seizure and expanded confiscation of assets. Such trainings shall take place regularly.

On pre-trial detention, the European Commission:

- Recalls that BiH authorities are bound by a general obligation to maintain pre-trial detention for the shortest possible time.
- Insists that relevant authorities complement the available figures with more specific data on length and grounds for pre-trial custody. These shall be submitted before the next meeting of the Structured Dialogue.

On prison administration, the European Commission:

- Urges that coordination between prison administrations is guaranteed, especially with a view to develop a systematic and coherent approach to training of prison staff throughout the country, in line with the relevant EU standards.
- Strongly reiterates that an overview of all measures envisaged to strengthen the training programmes for prison guards and other prison staff, including a dedicated curriculum on integrity and anti-corruption, be agreed and provided.

On regional cooperation, the European Commission:

- Expects that the protocol on exchange of evidence in war crimes cases between the Prosecutor's Office of BiH and the War Crimes Prosecutor's Office of Serbia be signed by the end of November 2011.
- Recommends that serious efforts are made by law enforcement agencies to locate all current fugitives, and suggests that more proactive and regionally agreed measures are initiated in order to locate these fugitives, including by coordinating operational plans.

- Expresses strong support to the conclusion of bilateral agreements with neighbouring countries for the extradition of own nationals.

On the functioning of judicial institutions, for issues related to structural resources, the European Commission:

- Recommends that no new Courts or Prosecutors' Offices be opened without a proper needs-assessment, as well as without serious consideration of the financial implications and long term sustainability.
- Recommends that competent authorities from both Entities maintain a constructive dialogue with the HJPC, in order to establish a better systematization of posts rather than opening new Courts and Prosecutors' Offices.
- Recommends that all justice sector authorities engage constructively in the programming process of the Instrument for Pre-Accession (IPA) assistance 2012-2013, to support their medium and long term needs can be met, in terms of both institution building and investments.
- Encourages further use of the Technical Assistance and Information Exchange instrument (TAIEX) for short term initiatives, advice, training and peer assistance.

On the overall National War Crimes Strategy (NWCS) implementation, the European Commission:

- Reiterates that effective processing of war crimes cases is fundamental for truth and national reconciliation. Delays and inefficiencies cannot be accepted, since they represent negation of justice for victims and victims' families, as well as for the citizens of BiH in general.

- Reminds that the lack of effective developments in this field seriously undermines the overall credibility of the judiciary; therefore, all deadlocks shall be overcome as a matter of priority.
- Expresses concerns about the lack of proper implementation of most strategic objectives of the NWCS.
- Recommends that sufficient funds and human resources be allocated to the Prosecutor's Office of BiH to effectively perform its tasks related to exhumations.

On the referral of cases, the European Commission:

- Notes with preoccupation the recent discussion at the NWCS Supervisory Board and the identification of difficulties in guaranteeing an objective, efficient, and transparent referral of cases.
- Urges the Court of BiH and the Prosecutor's Office of BiH to undertake all possible measures to address the outlined concerns without further delays.
- Welcomes the commitment by the Prosecutor's Office of BiH and the Court of BiH to finalise the procedures of the referral of cases as matter of urgency, in compliance with the strategic goals of the NWCS.
- At the same time, requests the HJPC to submit all its technical recommendations on further definition of the current legal framework, as concluded at its session of 9 November 2011. These can be considered as an additional corrective option and therefore will be technically assessed by the Commission to propose, only if relevant, further recommendations on the matter at the next meeting of the structured dialogue.

On the Equality of citizens before the law and application of criminal codes to war crimes, the European Commission:

- Pending the judgement of the ECtHR on the case Maktouf vs. BiH, commends the leadership of the NWCS Supervisory Board in launching systematic consultations, open to all levels of the judiciary, the academic and professional communities, as well as international and EU expertise.
- Urges the initiation of periodic meetings between the President of the Court of BiH, the Presidents of the Entity Supreme Courts and the President of the Brcko District Appellate Court in order to engage in expert discussions towards a harmonisation of practices on the use of the substantive criminal codes in war crimes cases.

On the Witness Protection and support mechanisms: legal framework and implementation, the European Commission:

- Calls on all competent institutions to coordinate and communicate their needs for the improvement of witness protection and support, with the aim of ensuring sustainable integrated mechanisms in all relevant institutions, including the police, the judiciary and the social assistance.
- Expects that a sound needs-assessment be coordinated amongst all competent institutions and be finalised well in advance of the next meeting of the structured dialogue.

On the institutional reform of the appellate system at the Court of BiH, the European Commission:

- Notes with concern the lack of any progress by the BiH Ministry of Justice in the implementation of the conclusions of the working group on the establishment of the Appellate court of BiH.
- Expects that the proposals adopted in 2008, also reiterated by the HJPC at its session on 9 November, be put into Parliamentary procedure before the next meeting of the structured dialogue.

On coordination between the Court of BiH and other judicial instances in BiH, the European Commission:

- Requests the HJPC to coordinate the identification of ways to strengthen objectivity of the parameters set in Article 7.2 of the Law on the Court of Bosnia and Herzegovina, so as to eliminate the perspective of misuse or inappropriate application of this article, especially in relation to the principle of the natural judge.

On the RS Draft Law on Courts, the European Commission:

- Expects the RS Ministry of Justice to continue its close coordination with the HJPC in relation to the draft Law on Courts of Republika Srpska.
- Expects that the Law shall be mindful of the independence of the judiciary and fully coherent with the prerogatives and recommendations of the HJPC.

On the Consolidation of HJPC functions, including by revision of the relevant law, the European Commission:

- Requests the HJPC to provide a set of draft legislative amendments in order to ameliorate its working procedures, as well as to further consolidate its functionality, independence and accountability. A draft revision of the Law on the HJPC shall be provided by the next meeting of the Structured Dialogue.

On the Constitutional Court, the European Commission:

- Draws the attention of the Constitutional Court of BiH that its rules of procedures do not allow judges who do not belong to one of the Constituent Peoples to be elected as President.

On professionalism in the justice sector, the European Commission:

- Underlines that a number of improvements are necessary, especially to increase accountability, efficiency and effectiveness throughout the sector.
- Amongst others, priority shall be assigned to the following steps: introduction of qualitative criteria for appraisal processes; identification of adequate measures to guarantee further mobility in the sector; reform of the procedures to access judicial careers, related reform of the Bar exam.

On the presence of international staff in judicial institutions across BiH, the European Commission:

- Recalling the principle of ownership, reiterates that it is important to continue phasing out international staff, particularly with executive powers, towards fully handing over all responsibilities to national practitioners.

- In this regard, welcomes the announcement made by both the Prosecutor's Office of BiH and the Court of BiH that the international staff in their ranks, including those with executive powers, will be fully transitioned by the end of 2012.
- Confirms its readiness to provide capacity-building which will be deemed necessary to support this transition.

On the financing of the justice sector, the European Commission:

- Reiterates that an independent, efficient, impartial, accountable and professional judiciary cannot be fully achieved unless adequate financial means are at the disposal of judicial institutions.
- Requests competent authorities to agree on a set of possible measures to streamline budgetary competences in respect of the constitutional order of BiH, to be submitted in advance of the next meeting of the structured dialogue.

On follow up to the second meeting of the Structured Dialogue, the European Commission:

- Encourages all relevant authorities to maintain constructive and consistent consultations.
- Recalls that the Structured Dialogue is a comprehensive platform for reforms in the justice sector, which will allow BiH to make important steps on its path towards EU integration.
- Reiterates that every legislative and institutional reform shall be guided by one main objective: to consolidate the rule of law throughout BiH by

establishing an independent, efficient, impartial, accountable and professional judicial system for the benefit of all citizens.

- Reminds that high level consensus was reached at the inauguration of the Structured Dialogue on the idea that amendments to key judicial legislation shall not be put into procedure prior to coordination with the EU and domestic consultations, to ensure consistency with the overall structure and EU accession requirements.
- Requests to receive, at least two weeks prior to each meeting of the Structured Dialogue, the official acceptance by the Delegation of BiH to the proposed agenda, as well as an agreed list of participants. These shall also be complemented by the submission of a position paper on progress made on the implementation of the recommendations.
- Takes note that BiH authorities have welcomed the perspective preparation by the Venice Commission of an opinion on how the judicial framework, the division of powers and the existing co-ordination mechanisms affect legal certainty and the independence of the judiciary in BiH.
- In relation to this exercise, requests that all relevant authorities in BiH provide experts from the Venice Commission with the necessary information, support and assistance.