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SPECIAL MISSION TO BOSNIA AND HERZEGOVINA

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**Issue of Decertified Police Officers
in Bosnia and Herzegovina**

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EXECUTIVE SUMMARY

The Council of Europe Commissioner for Human Rights, Mr. Thomas HAMMARBERG, visited Sarajevo on 20-22 December 2006 to discuss complaints by some 260 police officers who had been barred from police service (decertified) through a vetting procedure organised by the UN International Police Task Force (IPTF) until the end of 2002. He met with the Presidency, the Government, the Constitutional Court, representatives of the international organisations and spokespersons of the complaining police officers.

The Commissioner concluded that there is a human rights problem. The possibility for the police officers to challenge the merits of the IPTF decisions had been very limited as there had not been an appropriate legal remedy. The consequences of this shortcoming was regarded as serious, in particular as the decision of not granting a certification was for life and had detrimental social consequences for the individual.

Though decisions under the authority of the Security Council should be seen as definite and be implemented, the Commissioner came to the conclusion that the Security Council would be wise to give attention to this problem again. In the meanwhile the domestic authorities should refrain from taking unilateral action through organising their own review procedures. The Commissioner is of the opinion that there are possibilities of finding a solution to this problem which would give justice to the individuals without undermining the authority of the UN decisions. This would, however, require a constructive approach by all those involved.

INTRODUCTION

1. The Commissioner for Human Rights of the Council of Europe, Mr. Thomas HAMMARBERG, visited Bosnia and Herzegovina (BiH) on 20-22 December 2006 with a view to assessing the situation of a number of former police officers, who were negatively affected by the consequences of the vetting process followed by the United Nations International Police Task Force (IPTF), which concluded at the end of 2002.
2. The Commissioner had been invited by the Government and had been informed about the ongoing hunger strike of a large number of police officers who had been decertified by the IPTF.
3. He was accompanied by Mr. Alp Ay, member of his Office and benefited from the assistance of Mr. Tim Cartwright, Special Representative of the Secretary General in BiH. The Commissioner would like to express his warm gratitude to Mr. Cartwright and his team for their valuable contribution to the preparation of the visit, elaboration and implementation of the program, gathering of quality information and documentation.
4. During the visit, organized at very short notice, the Commissioner met with Mr. Zeljko Komsic and Mr. Haris Slajdzic, Members of the BiH Presidency; Mr. Adnan Terzic, Chairman of the BiH Council of Ministers; Mr. Mirsad Kebo, BiH Minister of Human Rights and Refugees; Mr. Mladen Ivanic, BiH Minister of Foreign Affairs; representatives of the BiH Constitutional Court; representatives of the two associations of the decertified police officers, as well as with several representatives of the international community in Sarajevo, including Mr. Peter Bas-Backer, Senior Deputy High Representative; Brigadier General Vincenzo Coppola, Head of the European Union Police Mission and representatives of the Office of UN High Commissioner for Human Rights. The programme of the visit is appended to the present report.
5. The Commissioner expresses appreciation for the generous co-operation and support granted by the BiH authorities, including the Presidency and the Ministry for Human Rights and Refugees, the OHR and the representatives of international organisations present in Sarajevo. He extends his gratitude to all those he met during the visit for their help and for their transparent and constructive attitude.

BACKGROUND

6. Under Annex 11 to the Dayton Peace Accords (General Framework Agreement for Peace in BiH), the United Nations International Police Task Force (IPTF) was established for the reorganization of the police forces in BiH, covering both the Federation of Bosnia and Herzegovina and the Republic Srpska during the period 1996 – 2002. IPTF constituted one of the major components of the UN Mission in Bosnia and Herzegovina (UNMIBH).
7. IPTF's main institutional features, jurisdiction, powers and responsibilities were defined in Annex 11 to the Dayton Peace Accords and in subsequent agreements. According to Article I of the Annex, the Parties undertook "to provide a safe and

secure environment for all persons in their respective jurisdictions". In order to "assist them in meeting their obligations, the United Nations was requested to establish...a UN International Task Force (IPTF) to carry out, throughout Bosnia and Herzegovina, the programme of assistance described in Article III of the Annex."

8. According to Article II of the Annex, "IPTF shall at all times act in accordance with internationally recognised standards and with respect for internationally recognised human rights and fundamental freedoms, and shall respect, consistent with the IPTF's responsibilities, the laws and customs of the host country".
9. The Parties committed themselves to full cooperation with the IPTF and to instruct all their law enforcement agencies in this direction (Article IV). Article V stated that any obstruction of or interference with IPTF activities, failure or refusal to comply with an IPTF request, or other failure to meet the Parties' responsibilities or other obligations in this Agreement, would constitute a failure to cooperate with the IPTF.
10. In the Bonn-Petersberg Agreement of 1996 the Parties agreed that those persons who would not be selected to serve as police officers in the re-structured Federation police force would not be allowed to perform law enforcement duties and would not be permitted to carry arms.
11. According to UN Security Council Resolution 1088 (1996), the Secretary-General was to report on the IPTF, "in particular its work in assisting the re-structuring of law enforcement agencies...investigating or assisting with investigations into human rights abuses by law enforcement personnel, as well as to report on progress by the authorities in Bosnia and Herzegovina in regard to such issues, in particular their compliance with IPTF-prescribed guidelines including their taking prompt and effective action, which could include dismissal where appropriate, in respect of any officer notified to them by the IPTF Commissioner as failing to cooperate with the IPTF or adhere to democratic policing principles..." (Para 28).
12. The Madrid Peace Implementation Council Declaration (1998) welcomed efforts by the High Representative and UNMIBH to speed up implementation by Federation officials of their commitments, called on the High Representative to use his authority to ensure compliance with obligations in cooperation with the parties, welcomed the determination of the UN IPTF Commissioner to apply strictly the IPTF's non-compliance reporting and certification procedures, to make robust use of its powers to decertify police officers who violate provisions of the General Framework Agreement and related documents and made clear that decertified officers may be deprived of the right to serve in any public function in BiH.
13. Vetting process was seen as an important part of the IPTF's wider programme on police reform, which had to take place in a context of ethnical and political polarization. In fact, it was intended to send a clear and strong message to the BiH society that the new, post-conflict, police force would enjoy a high standard of competence, integrity and loyalty to the new administration.
14. Pursuant to its mandate, the IPTF conducted the vetting process of the police officers in BiH. The process included several phases: a comprehensive investigation of the background of every police officer, a verification of his/her past criminal record and of his or her war-time experience, checking whether the officer was illegally

occupying property, completion of IPTF training, checking citizenship and verifying educational credentials.

15. Following their registration by the IPTF, police officers were provisionally authorized to work, pending the final decision on decertification. Once their files had been reviewed, at the close of the vetting process, police officers were either certified or decertified. The details of the process were defined by the IPTF Policies No. P10-2002 and P11-2002.
16. Policy P-11 (Certification of Law Enforcement Agencies Personnel) defined, inter alia, those requirements which needed to be met in order to obtain a final certification. These requirements were divided into two groups, namely “positive” and “negative” criteria.
17. All the positive criteria had to be complied with: demonstrated ability to perform police powers; proof of citizenship of Bosnia and Herzegovina; valid educational credentials; completed Human Dignity and Transitional Course; proof that no criminal case is pending; compliance with the property legislation.
18. If any of the negative criteria applied the decision would be negative: failure to have demonstrated ability to uphold human rights and/or abide by the law; officer made a deceptive statement in the context of the registration process and/or certification process; criminal proceedings against the officer have been commenced by a domestic court, in case of war crimes; non-compliance with the property legislation.
19. Policy P-10 (Removal of Provisional Authorisation and Disqualification of Law Enforcement Agency Personnel in BiH) further defined the criteria that would form “the substantive basis for the permanent removal of provisional authorisation”:
 - Conviction of a serious breach of law, and the law enforcement agency in which the officer is employed has failed to take appropriate actions/sanctions in conformity with domestic law;
 - Conviction of a disciplinary panel of a serious breach of duty, and the penalty assigned does not correspond to the severity of the misconduct of the officer;
 - In the context of investigations conducted under Security Council Resolution 1088, UNMIBH/IPTF has obtained independent evidence that an officer has committed a serious breach of duty that would obligate a law enforcement agency and the judiciary to take action under domestic law;
 - An officer has committed a pattern of minor offences that demonstrate disregard for upholding the law;
 - In the context of investigations conducted under Security Council Resolution 1088, UNMIBH/IPTF has obtained independent evidence that an officer committed a serious breach of duty that would obligate a law enforcement agency to take action under domestic law and rulebooks on disciplinary procedure;
 - An officer has been issued two substantive non-compliance reports as outlined in UNMIBH/IPTF “Performance Assessment Policy” (IPTF-P05/2001);
 - An officer has been issued a material misrepresentation to UNMIBH that fundamentally affects consideration of suitability to exercise police powers;

- An officer, whose acts and/or omissions, and/or functions from the period of April 1992 to December 1995, demonstrate inability or unwillingness to uphold internationally recognised human rights standards.”

20. IPTF decisions were subsequently implemented by the relevant law enforcement agency in BiH.

21. The decision not to certify or to de-certify a police officer could be challenged before the UN IPTF Commissioner. In this respect, Policy P11-2002 provided for an internal review procedure, as follows:

“Within eight days of the Commissioner’s decision on non-certification or decertification, an appeal could be lodged before a panel composed of UNMBiH staff members. The applicant could challenge the reasons for the refusal to certify or for de-certifying him or her but would not be granted access to the file and the evidence. Neither the applicant nor a representative was allowed to appear before the panel. The panel would make its recommendation to the IPTF Commissioner who would then make his/her final and binding decision.” (Opinion of the Venice Commission, para. 17).

22. Policy P10-2002 specified that the “removal of provisional authorisation or disqualification by the IPTF Commissioner precludes the officer from holding any position within any law enforcement agency in BiH. ‘Any position’ includes, also, those positions that do not require the authority to exercise police powers and are considered administrative in nature.”

23. When the UN Mission in BiH concluded its work – together with the vetting process – on 31 December 2002 (Security Council Resolution 1423-2002), the European Union Police Mission ensured its continuation as of 1 January 2003.

24. According to information coming from the Office of High Representative (OHR), the results of the vetting process were as follows:

- 16,764 police officers received certification (95.9%)
- 687 police officers were denied certification (3.9%)
- 37 police officers cases were pending (0.2%)
- **263 Police officers challenged IPTF decisions (1.5%)**

25. According to a study of the Office of the High Commissioner for Human Rights in BiH (OHCHR), the decertification decisions were taken on the basis of different motivations, which can be divided into the following categories: lack of education credentials, violations of property legislation, failure to uphold human rights and rule of law, war crimes, commission of criminal acts, suspicion of criminal acts, citizenship requirements and performance failure.

DOMESTIC COURTS

26. Subsequently, a group (approximately 30%) of those police officers who were decertified by IPTF applied to courts in BiH against the decisions of the domestic

authorities (e.g. the Ministry of Interior) terminating their employment. Nevertheless, in the allegations submitted to the courts they indirectly challenge the process followed by IPTF, which lead to the adoption of the decision in question as well as the legal foundations underlying such decision.

27. Some applications were also lodged before the Human Rights Commission of the Constitutional Court of BiH, claiming breaches of basic rights provided under the European Convention on Human Rights.
28. On the other hand, the Office of the High Commissioner for Human Rights (OHCHR) in BiH has also received a number of complaints from decertified police officers or their legal representatives by which they are claiming violations of their human rights during the process of decertification.
29. According to the information provided by the OHCHR, the general arguments in these complaints can be summarized as follows:
 - Applicants were not informed about the investigations conducted against them by IPTF;
 - applicants were not informed about the evidence, which supported the decision to decertify them;
 - applicants were neither heard nor had they the opportunity to defend themselves,
 - no effective remedy was available to applicants against first instance decisions as review procedures were below standards, (some police officers were not informed about the existence of this remedy, review requests were not examined by an independent body)
 - decisions on review request lacked motivation (they did not contain explanation of evidence)
 - national legislation was not applied,
 - international standards were not respected,
 - lack of legal protection.
30. According to the information obtained by the Commissioner during his visit, domestic courts have taken different positions with regard to the applications filed by decertified police officers complaining against their dismissal. Certain courts recalled that IPTF decisions, taken within its mandate, were not subject to review by domestic courts and considered, consequently, that they lacked jurisdiction to review decisions taken by the law enforcement agency to terminate employment, as these simply endorsed a prior IPTF decision to the same effect.
31. Other courts found that decisions on termination of employment taken by BiH authorities were unlawful in the domestic legal order. However, since IPTF had exclusive jurisdiction to authorise the exercise of police functions, both the relevant Ministry and the Courts were prevented from dealing with the merits of the issue.
32. The Human Rights Commission of the Constitutional Court of BiH, as the highest human rights authority in the country, also addressed this issue. Two important points deserve to be highlighted from its decision in the case of Rusmir Dzaferovic vs. the Federation of BiH (case no: CH/03/12932) on 7 May 2004:

“The Commission notes that all decisions in relation to the applicant were issued in administrative or quasi-administrative procedures, without allowing the applicant to challenge them on the merits. It is therefore obvious that IPTF and MUP (Ministry of Interior of the Sarajevo Canton) have not provided the applicant with a public, adversarial, impartial and independent examination of his rights, as required by Article 6 of the Convention. Thus, neither IPTF nor MUP satisfied the requirements of Article 6. paragraph 1 of the Convention.” (Para 72)

“The Commission considers that it is in the very nature of the established certification process that IPTF decisions issued in the process of vetting police officers are final and binding and cannot be reviewed by national authorities...” (Para 87)

OPINION OF THE VENICE COMMISSION

33. On December 2004, BiH Government requested the assistance of the European Commission for Democracy Through Law (“the Venice Commission”) “in finding an adequate solution to the issue of a possible review of some decisions taken by UNMIBH until 2002 on decertification of police officers in BiH.”
34. The Venice Commission adopted its “Opinion on a possible solution to the issue of decertification of police officers in BiH” at its 64th Plenary Session on October 2005. (Opinion no 326/2004)
35. In its Opinion, the Venice Commission stated that in the framework of the vetting process, IPTF had failed to provide the “relevant police officers with a public, adversarial, impartial, and independent examination of their rights, while the review mechanism appeared to be abortive for the larger part.” (Para 47 of the Opinion).
36. Moreover, the Opinion underlined that IPTF had carried out tasks which were more similar to those of a State administration than those of an international organisation proper. In view of this, “it is inconceivable and incompatible with the principles of democracy, the rule of law and respect for human rights that it could act or have acted as a State authority and at the same time be exempted from any independent legal review.”
37. The conclusions reached by the Venice Commission could be summarized as follows:
 - Neither the Bosnian courts nor any other Bosnian authority are competent to review or reverse the decertification decisions. (Para 61)
 - It is highly appropriate that the decertification cases that have been challenged before the Bosnian courts be reviewed by the United Nations. (Para 62)
 - A special body might be set up by the Security Council to review these decertification cases. This body might be composed of three independent experts, appointed by the UN Secretary-General. (Para 63-64)

ANALYSIS

38. During his stay in Sarajevo, the Commissioner observed that all his interlocutors – be they Bosnian or international – recognized the existence of a problem relating to the vetting process of the IPTF. Though nobody voiced any criticism against the very decision to review the suitability of the police officers or against the criteria determined by the IPTF for the vetting process, several expressed concern about the procedure for applying those criteria to the individual cases.
39. The main concern relates to the limited possibility for the individuals concerned to challenge the merits of the IPTF decision and the absence of an appropriate legal remedy.
40. The consequences of these shortcomings were seen as serious since the IPTF decision of not granting a certification was *for life*. Furthermore, such a decision tended to cause a certain stigma on the individual which had detrimental social consequences. A great number of decertified police officers still remain unemployed.
41. The Commissioner also met repeated remarks that some IPTF decisions had been arbitrary. Some of his interlocutors stated that not only had some innocent and otherwise suitable police officers been rejected but some others had been certified in spite of their having a criminal background. There were also some allegations of simple misidentification based on name/file confusion. These perceptions, right or wrong, seem to illustrate a tendency of distrust towards the vetting process as such which the Commissioner finds unfortunate.
42. Nonetheless, the Commissioner believes that the UN Security Council would be wise to give attention to this problem again. The main reason is the fact that the absence of a genuine review possibility is a human rights problem. The Commissioner shares the analysis presented by the Venice Commission in this regard. He feels the problem is serious in the sense that it has had significant repercussions on the life of the affected police officers.
43. In accordance with the principle that “justice must not only be done but seen to be done” it would be important that the United Nations is perceived to act with utmost prudence in applying international standards of due process. Also, the UN should be seen as an organisation which stands ready to listen to well-founded and reasonable criticism and suggestions.
44. At the same time, Security Council decisions should be implemented and seen as definite. This relates to BiH but also to all other scenarios where the UN is or has been involved in peace-keeping and peace-building operations. In fact, the Commissioner noted that many in BiH still do recognize the importance for the UN to remain cautious about the wider implications of going back on previous decisions.
45. The Commissioner was also made aware of the view that any new move on the decertification issue was a matter for the UN, regardless of the recent governmental decision to set up a domestic review mechanism. The Commissioner asked the Government not to take any further unilateral steps and instead give the Security Council time to consider finding a solution. In the same spirit, the hunger strike of the

two organizations representing the complaining decertified police officers was terminated.

46. The problem is urgent for a number of reasons. One is the forthcoming closure of the Office of the High Representative and the termination of the executive powers of the High Representative which underpin the enforcement of the IPTF decisions. The Commissioner's reading of the situation is that it is highly desirable that a solution to this issue be found before these changes take place.
47. The Commissioner got the impression that it would not be a sufficient solution to suggest that those decertified would be free to take employment in *private* policing structures. The point was made that if someone is clearly unsuitable for police functions in one setting he should not be free to do the same work under another umbrella.
48. The Commissioner also met scepticism towards the proposal that those decertified be allowed to work in the police forces but not in certain sensitive functions. This suggested solution would seem difficult to implement in practice. In any case, it would not really be an acceptable solution to the problem for those who are of the opinion that they have been unfairly stigmatized and therefore demand a chance to prove their innocence or suitability.
49. A solution to the underlying dilemma is, admittedly, not easy. It is, however, the opinion of the Commissioner that doing nothing would be a mistake entailing negative consequences for the UN, and could have a damaging effect on the reputation and credibility of the international community.
50. In its report referred to above, the Venice Commission suggested an international expert panel to review appeal cases. Another possible approach would be to re-interpret the understanding regarding an officer being barred "for life" in the sense that decertified police officers would be entitled to apply for employment in the new police forces, it being understood that during the recruitment procedure they would be given a chance to prove their suitability and clean background.
51. There are also other possible approaches for the Security Council to bring this issue to a solution – either by a clarifying declaration or through delegating authority. Some of these options might entail international components in their practical implementation.
52. After many discussions in Sarajevo, the Commissioner is optimistic about the possibility of solving the problem in a manner which would give justice to the individuals without undermining the authority of the UN decisions (and, indeed, even enhance the credibility of the international community). One basic requirement would be a constructive approach by all those involved.
53. It is not the task of the Commissioner to suggest a concrete formula for the precise solution of this human rights problem, though he stands ready to share his views and ideas with the Security Council members and the UN Secretariat if so requested.