

Decision on the establishment of municipal courts in Herzegovina-Neretva Canton

The Herzegovina-Neretva Canton is the only Canton in the Federation of Bosnia and Herzegovina, which has not yet established a functioning cantonal judiciary. Thus, on 10 October 1997 and 3 December 1997 this Office, in a joint initiative with the OSCE Mission in Bosnia and Herzegovina, held two meetings with the Minister and Deputy Minister of Justice of the Herzegovina-Neretva Canton as well as the Governor and the Deputy Governor of the Herzegovina-Neretva Canton with the goal to enact the necessary Law on Courts for the Herzegovina-Neretva Canton as soon as possible.

Despite the Peace Implementation Council's conclusions in Bonn, on 6 December 1997, to pass the necessary legislation by the end of 1997, the Law on Courts, as of today, is not yet in force since no agreement could be reached on the number of municipal courts in the Canton, and in particular in Mostar. After several attempts to facilitate a consensus had failed, this Office, in presence of the Senior Deputy High Representative, held a hearing on 10 March 1998 on the establishment of municipal courts in the Herzegovina-Neretva Canton, asking for the detailed view of all parties affected by this issue. Following this hearing and on the basis of the statements made by the different representatives, I hereby issue the following

DECISION

Each municipality in the Herzegovina-Neretva Canton has the right to have its own Municipal Court. Thus, each municipality of the City of Mostar also has the right to establish its own Municipal Court. As a result, the City of Mostar shall have six municipal courts.

With respect to the Central Zone, the City of Mostar shall establish a separate City Court, exclusively competent for all legal matters occurring in the Central Zone, for as long as the Central Zone exists.

Each municipal court has to reflect the ethnic composition of the municipality according to the 1991 Census. The same principle shall apply to the City Court to be established for the Central Zone of the City of Mostar.

According to Article VI.7 (1) of the Constitution of the Federation of Bosnia and Herzegovina (hereinafter: "Federation Constitution"), which reads "each municipality shall have courts, which may be established in cooperation with other municipalities,...", each municipality has the constitutional right to have its own municipal court. If two or more municipalities want to exercise this right, and instead wish to have one joint court for practical or other reasons, these municipalities themselves will then decide to cooperate of their own free will. Cooperate in this context means to act jointly toward having a common court.

Article VI.7 (2) of the Federation Constitution, however, provides that municipalities cannot establish courts themselves; rather, this is the competence of the cantonal Government. The cantonal Government's competence to establish and fund courts does not, however, affect a municipality's right to have its own court or to cooperate with other municipalities in having a common court. Thus, when setting up municipal courts, the Cantonal Government must respect the above-mentioned constitutional right of each municipality, under Article VI.7 (1) of the Federation Constitution, to have its own municipal court, if it does not express its will to cooperate. In such cases, the Cantonal Government cannot override the municipality's will whether to cooperate with other municipalities or not; rather, the Cantonal Government must establish a court structure which is in compliance with the expressed will of all municipalities of the Canton.

In so far as Article 80 of the Constitution of the Herzegovina-Neretva Canton provides, "the municipal court is established for the territory of the municipality. One municipal court is established for the territory of the municipality. One municipal court can be established for two or more municipalities", the aforementioned overriding principle from the Federation Constitution must be respected.

With respect to the establishment of municipal courts in Mostar, the same principle applies. The fact that Mostar forms a City does not impair the right of each of its municipalities to establish its own municipal court. According to Amendment I, Article 64.b. of the Constitution of the Herzegovina-Neretva Canton, "the city of Mostar is comprised

of six municipalities...” and does not have any responsibilities in the field of the municipal judiciary. Neither Amendment XVI (1) to the Federation Constitution nor Amendment I, Article 64.b.(2) of the Constitution of the Herzegovina-Neretva Canton attribute any of the municipalities’ competence to the City, unless the municipalities constituting the City have expressly transferred any responsibility to the City. A City is according to Amendment XVI (1) to the Federation Constitution “a local autonomy and administration unit’, which under Article 7 (1) of the Interim Statute of the City of Mostar has the “obligation to provide the necessary public institutions and facilities... The rights and obligations of the City Municipalities remain...intact”. Thus, Article 7 (3) of the Interim Statute of the City of Mostar expressly provides that “the City Municipalities are responsible for all other issues which must be regulated within the municipal competence”. One of the rights of the City Municipalities is their constitutional right to establish their own municipal court.”

As for the Central Zone, Amendment I, Article 64.b.(1) of the Constitution of the Herzegovina-Neretva Canton stipulates that “the Central Zone...is not a municipality, but is under the administration of the City Council..”. Accordingly, none of the six municipalities comprising the City of Mostar have the competence to establish a municipal court for the Central Zone or any other responsibility related to the exercise of judicial powers in this area. Since the Central Zone is under the administration of the City Council, and as a result under the immediate administration of the City of Mostar, it is rather the City’s responsibility to establish a court fore the Central Zone, competent for all legal matters occurring in this area. In this sense, Article 7 (1) of the Interim Statute of the City of Mostar has to be interpreted in a way that “the City has the..obligation to provide the necessary public institutions..for its citizens”, where this does not conflict with the municipalities’ responsibilities.

Therefore, in the absence of any particular provision for the establishment and structure of such a court for the Central Zone of the City of Mostar (hereinafter: “City Court”), the rules and regulations for the establishment of municipal courts in the Herzegovina-Neretva Canton, based on the relevant provisions of the Federation Constitution, shall apply analogously.

Pursuant to Article IX.7 of the Federation Constitution, the ethnic structure of each municipal court in the Herzegovina-Neretva Canton has to reflect the ethnic composition of the concerned municipality according to the published results of the 1991 census. This principle, by analogy, also has to be applied to the City Court to be established for the Central Zone of the City of Mostar.

Sarajevo, 7 May 1998

Carlos Westendorp
High Representative

Office of the High Representative