

INTRODUCTION: Implementation of right on justly procedure and effective legal remedy for the Association of Decertified Police Officers of Bosnia and Herzegovina (“UDCP F BiH” and “UDCP RS”)...

In accordance with the provisions of Annex 11 (Agreement on International operating Police Force) of the General Framework Agreement for Peace in Bosnia and Herzegovina (hereinafter Dayton Agreement) in the time period from 1996 to 2002 the International Police Force (“IPTF”) in Bosnia and Herzegovina implemented the reorganization process of Police and Law Enforcement Agencies in BaH. This process should have been implemented by the strict implementation of Annex 10 and Annex 11 of the Dayton Agreement, in accordance with the UN Security Council Resolution no. 1088/1996, the Bonn-Petersburg Agreement from 1996 and the Decision of the Peace Implementation Council (PIC) from London 04th-5th December 1996.

The mandate of IPTF in Bosnia and Herzegovina in accordance with the provision of Article 11, point 5, implied the obligation of IPTF to “operate in accordance with the internationally acknowledged standards respecting the internationally acknowledged human rights and fundamental freedoms, respecting the law and tradition of the host country”!!! Internationally acknowledged human rights and fundamental freedoms are closely defined in the provisions of the Constitution of Bosnia and Herzegovina (Annex 4 of the Dayton Agreement) and the European Convention for the Protection of Human Rights and Fundamental Freedoms...

The certification/non-certification of police officials in Bosnia and Herzegovina should have been implemented in accordance with the IPTF policy (Policies of the IPTF issued by the IPTF Commissioner):

Policy IPTF P02/2000 (Registration, Provisional Authorisations and Certification);

Policy IPTF- P10/2002 (Removal of Provisional Authorization and Disqualification of Law Enforcement Agency Personnel in BiH);

Policy IPTF- P11/2002 (Certification of Law Enforcement Agencies Personnel in BiH in which the positive and negative criteria for the process of certification/non-certification was defined; see: www.venice.coe.int, points 10 and 11 of the Opinion of the Venetian Commission number: 326/2004 CDL-AD(2005)024)...

In May 2002, the mechanism for the revision of the Decisions on decertification/non-certification was introduced (see www.venice.coe.int, point 17 of the Opinion of the Venetian Commission number: 326/2004 CDL-AD(2005)024)... The procedure for the revision of decisions came down to the possibility of submitting appeals within eight days against the IPTF Commissioner’s decision on non-certification. Appeal and its alleged settlement were assigned allegedly to an “independent” Panel which consisted of members of the UNMIBH/IPTF Personnel. The appeal could have been submitted because of refusal of certification but without the possibility of any access to the procedure, files or evidence. None of the applicants or their legal representatives was allowed to appear before the “independent” Panel. The jurisdiction of the Panel came down to the alleged giving of recommendations to the UNMIBH/IPTF Commissioner who, in the capacity of a physical person, as a first instance authority reached the first instance decisions on non-certification, was authorized for the reaching of final and “binding”?! decisions.

On the basis of official information received by the UNMIBH/IPTF the certification process of the BH Police involved 16.762 police officers of which 598 were non-certificated. In the moment of deprivation of certificates, approximately 150 police officers appealed the Decision on non-certification before the competent domestic courts (see www.venice.coe.int, point 18 of the Opinion of the Venetian Commission number: 326/2004 CDL-AD(2005)024)...

The UNMIBH mission ended on December 31, 2002, and from January 1, 2003 the further reform of BH Police was passed on to the jurisdiction of EU that is European Union police Mission (EUPM) whose 70% of the personnel was the personnel of the former UNMIBH/IPTF. Even the EUPM Commissioner was the earlier UNMIBH/IPTF Commissioner and on this way the stability of the decisions of the UNMIBH/IPTF and the axiom “infallibility of UN” remained for the following year!

Consequences of the non-certification process and the resulting problems

Immediately after refusal of certification, the BH Law Enforcement Agencies illegally cancelled working relations with all non-certificated officers except those which the local police Commissioner approved to work in the police or a special status so called “cases waiting” which relates to police officers with ongoing crime procedures and whose working-legal status depended on the outcome of the criminal procedures lead against them. With this, the existence of crime procedures became a privilege instead aggravating circumstances in accordance with the determined negative criteria for non-certification.

As a consequence of “final and binding” decisions of the IPTF Commissioner, all non-certificated BH police officers were lifelong/permanently refused the right on any position within any Law Enforcement Agency in BiH?! All decisions of the UNMIBH/IPTF Commissioner were reached in direct contrariety with the IPTF mandate defined by the provisions of Annex 11 of the Dayton Agreement and in contrariety with international standards on human rights and fundamental freedoms (this caused a violation of the provisions of the EU Convention on Human Rights and Fundamental Freedoms with accompanying protocols (ECHR) which are the constituent part of the Dayton Constitution of BiH-Annex 4- specifically, provisions of Article 6, right to a fair trial; Article 7, punishment only according to law; Article 13, right to effective legal remedy; Article 14, prohibition of discrimination; Article 17, prohibition of right abuse; Protocol 7 Article 2, right to appeal, Protocol 12, prohibition of discrimination, and according to our opinion as a more adequate legal qualification, violated were the provisions of Article 10 of the Universal Declaration on Human Rights and Article 14 of the UN International Pact on Civil and Political Rights as well as certain provisions of the Convention on the Elimination of all Forms of Racial Discrimination...

The European Convention on Human Rights and Fundamental Freedoms with the accompanying protocols is the most important regional (European) instrument on human rights which is legally binding in all European countries (46 members of the European Council) with the legal force upon the domestic legislature. The European Convention is inspired by the Universal Declaration on Human Rights which was proclaimed and adopted by the General Assembly of the UN on December 10, 1948, while the enforcement of certain rights mentioned in the Universal Declaration on Human Rights for all countries of the European Council represents a joint tendency and joint legacy of political tradition, ideals, freedom and rule of law..

The decisions of the UNMIBH/IPTF Commissioner created as “final and binding”, and because of the allegedly “international obligations of BiH”, a legal absurd because they allegedly deprived the judicial authority of BiH (regular domestic courts on all instances as well as BH judicial authorities whose members are international judges) the right and possibility to reassess the decisions (conduction of revision), legality of the reached decisions within the duration of the mandate of UNMIBH/IPTF in the time interval from 1996 to 2002.

The aforementioned anomalies created as a consequence extremely serious violations of fundamental human rights and freedoms and lawsuit right, and this view was confirmed by the independent expert legal body of the European Council (Venetian Commission) which also unmistakably in the Opinion number: 326/2004 CDL-AD(2005)024) confirms the violation of numerous provisions of the European Convention on Human Rights and Fundamental Freedoms through the non-certification process of BH order keepers. The Venetian Commission reached an independent expert legal opinion with the legal qualification that: “**the decertification procedure performed by IPTF and the Ministry of Internal Affairs did not satisfy the requirements of Article 6 of EHCR, because of lack of publicly, impartiality and independent examination of applicant’s rights, with the hearing of both sides.**” (according to www.venice.coe.int, point 33 of the Opinion of the Venetian Commission number: 326/2004 CDL-AD(2005)024)...

The competent BH Government Institutions in the last seven calendar years independently and with the cooperation with the competent bodies of UN did not want nor did they succeed to ensure the mechanisms for protection of fundamental human rights and freedoms from the working-legal relations, political rights of decertified BH police officers, which caused serious consequences to these individuals and their families in the private sphere as well in the social sphere of life. A consequence of this were seven (7) deadly cases of these individuals of which few suicides and a large number of health problems and disorders.

Because of the inconsistency of domestic legal regulations and the alleged supremacy of all decisions of the International Community in BiH with regard to the national legislature, and on the basis of pressure by UN and OHR through Letters/Declarations by the chairman of the SC UN from June 25, 2004 as well as the official note of OHR (SDHR-F/BF/55/03) from June 6, 2003 an unremembered pressure was performed on the BH Governmental Institutions and on the allegedly “independently and reformed” BH judicature with the aim to maintain the decisions of UNMIBH/IPTF and to protect “axiom of infallibility of UN and the institutions of the International Community in Bosnia and Herzegovina at any cost.

As a consequence of the aforementioned, and because of the alleged “**international obligations of Bosnia and Herzegovina**”, at the request of the BH presidency initiated to all governmental levels (state, entities, cantons, District Brčko), the anti-constitutional and discriminating Law on police officers of Bosnia and Herzegovina; Decision on amendments of the Election Law of Bosnia and Herzegovina and the Law on Agencies for protection of buildings and persons were brought and which continued with the violation of fundamental human rights and freedoms, labour rights, civil and political rights of decertified BH police officers as well as the continued political persecution and discrimination of this category of BH civilians even though with the Dayton Constitution Bosnia and Herzegovina has taken over very high UN and EU international standards on human rights with the obligations of harmonization of the same with the domestic legislature;

The Opinion of the Venetian Commission number: 326/2004 CDL-AD(2005)024)... unmistakably points to the liability of UN for the violation of the provisions of the international law and international standards in the process of certification and reform of the BH Police (see www.venice.coe.int, point 20, point 23, point 46, point 47, point 48, point 50, point 51, point 52, point 62.), simultaneously pointing to the liability of BH Governmental Institutions to ensure the mechanisms for protection of fundamental human rights of these individuals/citizens;

According to the rights and obligations of the contracting parties of the Dayton Agreement that is Bosnia and Herzegovina and the institutions and organizations of the International Community legitimately engaged in Bosnia and Herzegovina for restoring peace and enforcement of the Dayton Agreement, all sides without difference are obliged to respect human rights and freedoms according to the highest international standards without difference towards race, language, sex or religion which represents one of the fundamental aims of the UN Charter (Article 1, point 3) and with the UN Charter the Universal Declaration on Human Rights(UDHR) is the most important international

instrument on human rights incurred in the 20th century. Most countries of the democratic world including Bosnia and Herzegovina, through their Constitutions, and at most through the acts of national legislature invoke the Declaration which proclaims the fundamental human rights and freedoms internationally. Beside the fact that it is considered as an authentic interpretation of human rights of the UN Charter, the Universal Declaration represents the fundamental starting point and inspiration in the interpretation and formulation of basic international legal standards on human rights and fundamental freedoms emerged within the SC UN together with the International Pact on Economic and Social and Cultural Rights from 1966, International Pact on Civil and Political Rights from 1966 and the Optional Protocol from 1966 where all together form the fundamental documents on human rights (Bill on Human Rights) which contain universal principles and standards on human rights and fundamental freedoms. All together are fundamental source instruments for every international contract on human rights so that all international legal documents of UN, emerged from these fundamental documents, together with the Universal Declaration on human rights represent an authoritative guide in the interpretation of the UN Charter and are the fundamental part of the legal legislative of the United Nations.

According to the aforementioned, “the right on fair and public trial before independent and impartial court which has the obligation to decide on rights and obligations of non-certificated BH police officers” (right to appear before court and the right on fair trial) is one of the fundamental human rights guaranteed by the Declaration.. its Article 10 and the International Pact on Civil and Political Rights in Article 14, where amongst everything else it is guaranteed that:...”**everyone has the right that the by law determined, competent, independent and impartial court impartially and publicly examines his subject-matter and decides on the justification of each criminal charge which is raised against him or each lawsuit in the civil-law rights and obligations**” and to guarantee everybody pronounced guilty:... “**to have the right that the pronouncement of his punishment and guilt is examined by a higher court in accordance with the law**”. These inviolable UN international legal grounds, which are incorporated in the lawsuit-law national legislatures and constitutions of all countries, guarantee the right on appeal before: ... “**competent, independent and impartial courts**”. All human beings should be: .. “**free and equal in dignity and right**” and nobody should be discriminated because.. “**everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status**”(Article 1 and Article 2 of the Declaration). The right to appeal is an inalienable right guaranteed to every man and is protected by the legal system of each country, and also with the Dayton Constitution of Bosnia and Herzegovina in which the Declaration and the UN pacts on political and civil and economic, social and cultural rights are its constituent part (General Framework Agreement for Peace in Bosnia and Herzegovina – Dayton Agreement, Annex 4, Constitution of Bosnia and Herzegovina)!!!.

In most cases of the non-certification of BH police officers it came to a violation of the provisions and the violation of Article 6, paragraph 1, 2 and 3, point a, b, c and d – Right on fair trial; Article 7 – Punishment only according to law; Article 13 – Right on effective legal remedy and Article 17 – prohibition of abuse of the rights of the European Convention on Protection of Human Rights and Fundamental Freedoms and Article 4 – Right not to be judged or punished twice according to the same law that is for the same act of the Protocol number 7 with the European Convention on Protection of Human Rights and Fundamental Freedoms.

Withholding of all mentioned rights guaranteed by the aforementioned legal instruments of the International Community, UN, EU and national legislature of Bosnia and Herzegovina, has produced immeasurable material and immaterial damage to this citizen category for seven full calendar years, caused by illegal action of authorized UNMIBH/IPTF employees which were directly or indirectly involved in the process of certification/non-certification of BH police officers by acting in contrariety to provisions of international and national law, by acting beyond their

mandate's scope provided by provisions of Annex 11 and Annex 10 of the Dayton Peace Agreement.

By taking into consideration the aforementioned irrefutable facts, we believe it is an open possibility that finally, after seven years, through international supervision over complying with the human rights in Bosnia and Herzegovina, the issue of BH law and order keepers' decertification can be reviewed and reexamined, and the quickest and most just way of rehabilitation of these individuals, as well as preserving of seriously disrupted credibility of UN, can be found.

Any attempt of denial of mentioned arguments and attempt to persist the „infallibility axiom of UN“, represents a direct and/or indirect attack against human rights and democracy in Bosnia and Herzegovina, as well as its moving away from European and international integrations, for which we express our biggest concern and invite all domestic and international democratic forces to make the necessary moves in order to protect human rights, democracy and law in BaH.

Some individual officials of international community institutions in BaH have abused their immunities, thus in BaH has been established autocratic rule of terror and force, rather than the rule of justice and law, all through the malformed uncontrolled absolute rule of OHR. “The most comprehensive police reform” in the history of UN (as it was presented in favored report to the UN Security Council upon conclusion of UN mission in B&H), has transformed into the biggest scandal in the history of UN and has significantly disrupted its credibility in the world. Under the mantle of democracy and protection of human rights and fundamental freedoms, the UNIPTF, with the approval of OHR, massively violated fundamental human rights, accompanied by the most brutal forms of discrimination, although the human rights as a Constitutional category should have been protected by domestic laws, the Constitution of BaH, BaH Peace Agreement, and EU Convention on human rights and fundamental freedoms...

We also stress that we, since the very beginning of this issue, have meticulously and with continuity documented this scandalous process, which is soon going to be publicized and made available to the whole democratic public of the world. This is an invitation for urgent action for protection of fundamental human rights and freedoms of these individuals, which served a purpose as a cover for illegal acting and violating of human rights by the international institutions in BaH (see Report of the Commissioner for Human Rights of European Council CommDH(2007)2 from January 17, 2006 Special Mission in BaH/The issue of decertified police officers, as well as analytical study ESI-The independent institute for stability in Europe “on the Olympus mountain” from February 10, 2007).

Summary:

Violation of human rights and freedoms over 598 decertified BH police officers;

Time period: from November 2002 continuing till today;

Violators: BH Governmental Institutions with the involvement of individuals and institutions of the International Community (UNMIBH/IPTF; OHR;...)

Proposal of problem solution: establishment of an independent expert group and revision of all cases individually with the entire rehabilitation of illegally decertified individuals/groups....