

**DRAFT STATUTE OF THE REGIONAL COMMISSION FOR
ESTABLISHING THE FACTS ABOUT WAR CRIMES AND SERIOUS
HUMAN RIGHTS VIOLATIONS COMMITTED ON THE TERRITORY
OF THE FORMER YUGOSLAVIA**



PART VI – GOALS AND ASSIGNMENTS OF THE COMMISSION

Article 12

The Goals of the Commission

The Commission has the following goals:

- (a) To establish the facts about the wars/armed conflicts and war crimes and serious human rights violations 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 commitment of the acts, and the impact of those crimes and human rights violations;
- (b) To help make political elites and societies in the member states accept the facts about war crimes and human rights violations;
- (c) To help clarify the fate of the missing;
- (d) To acknowledge injustices inflicted upon victims in order to establish mechanisms and build strategies for developing a sense of compassion and solidarity with victims;
- (e) To help victims exercise their rights; and
- (f) To help prevent the recurrence of war crimes and serious human rights violations in the future.

Comment:

*What I believe is **missing** in Article 12 of the Draft Statute is the way **RECOM perceives politicians who bear the responsibility** for the events that are to be investigated. It seems to me that by defining the goals and assignments we are taking this story to a level of individual responsibility and individual guilt, which I absolutely salute, but I have a feeling that there is a missing link between that story and the so-called political responsibility (...) In other words, **they are not the ones who should accept the facts, they created the facts and therefore they need to be held responsible for their actions.** (Marija Vuksanović, Center for the Development of Non-Governmental Organizations, Podgorica, Montenegro, National Consultation with Young People on the Draft RECOM Statute, Podgorica, Montenegro, December 15, 2010).*

PART V – COMPETENCIES OF THE COMMISSION

Article 14

Time Period and Territory the Commission is Mandated to Investigate

The Commission establishes the facts about war crimes and other serious human rights violations committed in the period from January 1, 1991 to December 31, 2001 in the states formed on the territory of the former Yugoslavia and it investigates:

- [OPTION A: the political and societal circumstances that directly instigated the war or other forms of armed conflict as well as the commitment of war crimes and other human rights violations]
- [OPTION B: the political and societal circumstances, beginning in the 1980s, which have directly instigated the war or other forms of armed conflict as well as the commitment of war crimes and other human rights violations]

Comment:

(...) it says here that RECOM will investigate the events that took place on the territory of the former Yugoslavia in the period from January 1, 1991 until December 31, 2001. I have heard on the news that some people in Serbia and Montenegro think that the time mandate of RECOM should be extended to include the March 2004 violence in Kosovo aimed at the destruction of a large number of churches and the creation of a new wave of refugees of non-Albanian origin from Kosovo. (Stevan Kandić, student, Faculty of Law, member of the Association of Law Professionals of Montenegro and the European Association of Law Students of Montenegro, Podgorica, Montenegro, National Consultation with Young People on the Draft RECOM Statute, Podgorica, Montenegro, December 15, 2010).

PART VI – AUTHORIZATIONS OF THE COMMISSION

Article 16

Deposition-Taking

1. The Commission takes statements concerning war crimes and serious human rights violations in the area of its competence from victims, witnesses, and perpetrators of such crimes, and other persons deemed by the Commission to be able to provide relevant facts about those events.
2. Each person invited to testify before the Commission must give a statement to the Commission. Exceptionally, victims are under no obligation to testify about their own suffering or the suffering of their family members.
3. In case a person refuses to give a statement to the Commission, invoking their legal obligation to protect confidential information, provisions contained in Article 11, point 3 and 4 of this Statute, will be applied.
4. Provisions of the Criminal Procedure Law of the member states will be applied to the right to refuse to answer certain questions and to the release of responsibility to testify, as well as other issues concerning the questioning of individuals that have not been regulated by the Statute of the Commission.
5. Identity protection measures can be offered at the personal request of those testifying.
6. The Commission invites witnesses from point 1 of this Article to testify in accordance with the Criminal Procedure Law of the member state(s) in which the individual resides. As proposed by the Commission, the competent court of jurisdiction, in an urgent procedure, decides on the measures to be used for the purpose of securing the presence of

the individual, including using procedural sentencing for a failure to respond to the invitation of the Commission, as stipulated by the Criminal Procedure Law of the member state where the witness was invited to testify. The Commission can sign special agreements with member states with respect to cooperation with governmental organs in matters of inviting private individuals to testify and in securing their presence.

7. The Commission collects statements:

- (a) In the place of residence or temporary stay of the witness;
- (b) In the offices of the Commission;
- (c) In embassies and consular offices of member states, if the statement is to be taken in third party countries;
- (d) On the territory of third party countries, if it is not contrary to the legal provisions of these states and it is not possible for victims, witnesses, or other persons to give statements in the embassies and consular offices of member states at these locations.

Comment:

*(...) Article 16, point 6 reads: “The Commission can sign **special agreements** with member states with respect to cooperation with governmental organs in matters of inviting private individuals to testify and in securing their presence”. My suggestion would be to exclude the alternative because if there is an alternative, there is an opportunity for choosing a less difficult way of doing something. Therefore, I think that it should be defined as **an obligation**.* (Valentina Krća, Faculty for State and European Studies, Podgorica, Montenegro, National Consultation with Young People on the Draft RECOM Statute, Podgorica, Montenegro, December 15, 2010).

Article 19

Public Hearing of Victims and Other Persons

- 1. The Commission holds public hearings in order to provide a platform for victims to speak about their suffering and the suffering of their family members.
- 2. Public hearings may also include perpetrators who committed war crimes or serious human rights violations, witnesses, as well as those individuals who helped victims.
- 3. Testifying in a public hearing is voluntary.
- 4. The Commission may decide to apply identity protection measures during public hearings, as well as other measures to protect the psychological and physical integrity of individuals.
- 5. State-owned electronic media, i.e. public services, on the territory of the former Yugoslavia are required to air public hearings. Commercial electronic media can air public hearings under the same terms and conditions as the state-owned media, i.e. public services.

6. Public hearings can be held in different locations.

Comments:

(...) all those veterans, combatants, they all strike me as victims. They are all victims of stupid horrible indoctrination, poisoned by wrong ideologies. I think that RECOM should organize similar hearings for veterans, too. (Ana Bogavac, journalist, Podgorica, Montenegro, National Consultation with Young People on the Draft RECOM Statute, Podgorica, Montenegro, December 15, 2010).

(...) where are the public hearings going to be held? I think that maybe it should be specified in the Statute. Once it is known in advance a much better planning of these events can be made. Plus, I think public hearings should be held at universities, in places visited by a lot of people who are not necessarily interested in this topic. (Ana Bogavac, journalist, Podgorica, Montenegro, National Consultation with Young People on the Draft RECOM Statute, Podgorica, Montenegro, December 15, 2010).

PART VII – ELECTION PROCEDURE OF MEMBERS OF THE COMMISSION

Article 28

Election of Members of the Commission by the Head of State / Presidency of Member States

1. Heads of state or the Presidency of member states make the final decision on the members of the Commission to be elected in that member state from the shortlist that was submitted to them by the Election Panel.
2. Heads of state or the Presidency of member states inform each other about their choices on the thirtieth day from the day they received the short lists of candidates from the Election Panels, and they will inform each other before informing the public about their decisions.
3. Heads of state or the Presidency of member states publicly announce the names of the members of the Commission on the fifteenth day from the day all member state parties, as determined in point 2 of this Article, are informed thereof.

Comment:

I would like to know to what extent the members are going to be politically independent, given the fact that they are going to be elected by Presidents of Presidencies of member states? I think that they will most likely choose the members who are loyal to them. I'd like to know how that can be avoided. (Admir Adrović, Bosniak Party Young Members Forum, Rožaje, Montenegro,

National Consultation with Young People on the Draft RECOM Statute, Podgorica, Montenegro, December 15, 2010).

With respect to everything that Darko said, the involvement of the media and political establishments during the war waged on the territory of the former Yugoslavia, what are the specific methods that can be employed by RECOM for the purpose of securing the independence of its members since in Montenegro, for example, it is clear that the current political elite is almost identical as 20 years ago. The Socialist Party of Serbia (SPS) is in power again in Serbia, and the Croatian Democratic Union (HDZ) is again in power in Croatia. (Stevan Kandić, student, Faculty of Law, member of the Association of Law Professionals of Montenegro and the European Association of Law Students of Montenegro, Podgorica, Montenegro, National Consultation with Young People on the Draft RECOM Statute, Podgorica, Montenegro, December 15, 2010).