



BHDCA COMMENTS

on the Final Report on an investigation into the accident of the Republic of Macedonia Government aircraft Beechcraft, Super King Air B200, with registration marks Z3-BAB, which occurred on 26/02/2004 in Mostar, BIH, published by a Commission led by Mr Omer Kulić

15.01.2015

Having performed a detailed analysis of the Final Report on an investigation into the accident of the Republic of Macedonia Government aircraft Beechcraft, Super King Air B200, with registration marks Z3-BAB, which occurred on 26/02/2004 in Mostar, BIH“, published by a Commission led by Mr Omer Kulić,

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For the sake of complete truth, and with the goal of protecting the dignity of the Commission that had investigated the accident in the period from 26/02 to 05/05/2004 and published its Report on 05/05/2004, HEREBY PROVIDES COMMENTS, developed by the BHDCA's expert staff, on the discovered omissions and illegal practices in the preparation of the Report of the Commission led by Mr Omer Kulić:

1. The accident of the aircraft, bearing registration marks Z3-BAB, was investigated immediately following its occurrence in 2004, by a very competent international Commission that comprised renowned aviation experts from BIH, Serbia, Croatia, Macedonia, USA and the SFOR, and this Commission's Report was published on 05/05/2014 and can be obtained from the BHDCA's website. This very important fact should have been stated in the Introduction section of the Final Report prepared by the Commission led by Mr Omer Kulić.
2. The Final Report prepared by the Commission led by Mr Omer Kulić is an act of plagiarism of the „Final Report on an investigation into the accident of a Beechcraft Super King Air 200 aircraft, with registration marks Z3-BAB, Mostar, 26/02/2004“ that was published on 05/05/2004, and the cause of the accident is the same one that we have known for more than ten years.
3. The Commission led by Mr Omer Kulić failed to observe any standards specified in ICAO Annex 13, starting with standard 5.13 that stipulates that an investigation can be re-opened only if new and significant evidence becomes available after the investigation has been closed (cumulative requirement), but also standards relating to notification of a re-opened investigation to stakeholders; observation of the rights and obligations of the State of Occurrence; observation of the rights and obligations of the aircraft's manufacturer and designer to represent their interests in a re-opened investigation and to participate in the investigation; evidence processing procedures; preparing a draft Report; and providing a possibility to comment on the Report.
4. The Commission violated the provisions of Article 109 (2) of the Aviation Law of Bosnia and Herzegovina by failing to allow stakeholders to participate in the investigation by means of their accredited representatives.
5. A particular precedent and a piece of legal nonsense in the history of aircraft accidents investigation to this date, is the Commission's reference to Regulation 996/2010 of the European Parliament and of the Council due to the fact that this Regulation was adopted six years after the accident had occurred, thus making it against law to apply it to the said investigation retroactively.
6. It is an unprecedented fact in the history of aircraft accidents investigation that the Final Report had been first made public at a press conference in the Republic of Macedonia, on 27 December 2014, and after that at a press conference in Bosnia and Herzegovina, 06 January 2015, (the country that leads the investigation - Bosnia and Herzegovina - publishes the Final report in another country - Macedonia).

7. The conducted procedure and the afore-mentioned practice by chief investigator Mr Omer Kulić have significantly violated the provisions of international standards, which has harmed the reputation of Bosnia and Herzegovina in international aviation institutions.
8. Page iv of the Final Report lists the members of the Commission that prepared the Final Report, and the document states that this Commission was “appointed by decision of the Minister of Communications and Transport of BIH, ref. number 01-29-8-1915/13 of 13/05/2013”, but **this decision was not enclosed with the Report**, which makes it impossible to determine whether this is the same Commission that was established by said Decision, nor is possible to determine the accuracy of the allegations in paragraph 3 on page 11 that claim that the Commission was appointed by the Minister's decree, ref. number 01-29-8-1915/13 of 13/05/2013, in order to examine new, significant and available evidence pertaining to this accident. As it is impossible to determine, based on the statements in the document, whether the Commission was appointed by means of the Minister's decision or it was established by the Minister's decree (both statements have the same ref. number and date), all stakeholders should be presented with the content of the original document that established the Commission, because only then would it be possible to determine the mandate or task of the Commission, and to evaluate if the Commission acted in accordance with the document that had established it.
9. Due to the unavailability of the Minister's decree establishing the Commission, ref. number 01-29-8-1915/13 of 13/05/2013, **it is not possible to determine**, based on the alleged names and qualifications of the members of the Commission, whether accredited representatives of the following entities participated in the work of the Commission:
 - a) State of the Aircraft's Registry and of the Operator (Republic of Macedonia),
 - b) State of the Aircraft's Design and of Manufacture (USA), and
 - c) SFOR, as a stakeholder.
10. The Commission **did not include representatives of the BHDCA** (as a representative of the State of Occurrence and a stakeholder that conducted all the relevant activities to ensure good working conditions for the Commission that investigated the said accident in the period from 26 February to 5 May 2004), **nor was such participation requested** of the BHDCA in the investigation that was conducted by Mr Omer Kulić, which violated the provisions of Article 17 (2) of the Regulation on aircraft accident/incident investigation.
11. On the basis of the presented list of the members of the Commission led by Mr Omer Kulić, it is unclear whether the **5 (five) of the Commission's members from the Republic of Macedonia** were involved in the Commission's work based on their expertise or based on their status as Accredited representatives of the Republic of Macedonia. According to international standards, the Republic of Macedonia may have one Accredited representative to the Commission, who may have any number of advisors at his/her discretion, but the Accredited representative and Advisors to the Accredited representatives do not have a vote in the Commission's decision-making process; however, their reports, if in disagreement with the positions of the Commission, must be a part of the Final Report. The inclusion of the 5 members from the Republic of Macedonia into the Commission's composition, which includes only 4 members from Bosnia and Herzegovina, allowed for the BIH representatives to the

Commission to be outvoted, which is very unusual in the general practice of members nomination for this kind of Commission.

12. Out of the 4 Commission members from BIH, two members (Omer Kulić i Edis Muratović) were also members of the Commission that investigated the accident of the aircraft E7-SEX that occurred at the Zalužani Airfield, Banja Luka, on 20/05/2012, whose Commission Report, which has been provided to the Minister of Communication and Transport of BIH, was described by the Prosecutor's Office of BIH in a document ref. number T20 0 KTN 0007871 13 of 22/01/2014, as not usable as evidence in the pertinent criminal procedure, and they said that a new Commission should be established that would re-investigate the said accident. The above facts are enough to demonstrate **their competences for conducting a civil aviation accident investigation**.
13. On page iii of the Report of the Commission led by Mr Omer Kulić, the chapter "Document information" declaratively states: "The investigation has been opened based on the availability of new and significant evidence provided by official representatives of the Republic of Macedonia Government", and on page 11: "The Commission was established to examine new, significant and available evidence pertaining to this accident...". In regard to those statements, it is not evident from the Report **whether the BIH Prosecutor's Office was informed of the existence of new and significant evidence immediately after they had learned of them**, or the statements are merely clichés aimed to impress the reader that new and significant evidence does exist. Having analysed the Final Report, the BHDCA's expert staff **were unable to find that any new and significant evidence existed** nor that this evidence had been examined. Based on this fact, it is clear that the Commission led by Mr Omer Kulić actually REVISED the "Final Report on an investigation into the accident of a Beechcraft Super King Air 200 aircraft, with registration marks Z3-BAB, Mostar, 26/02/2004" that was published on 05/05/2004, which is not envisaged by any international standards.
14. For the sake of truth, a portion of the evidence, that had been properly processed and presented in line with international standards in the "Final Report on an investigation into the accident of a Beechcraft Super King Air 200 aircraft, with registration marks Z3-BAB, Mostar, 26/02/2004" that was published on 05/05/2004, **was declared as new and significant** by the Commission led by Mr Omer Kulić, **but it is neither new nor significant**. It is quite clear to any averagely educated citizen of BIH that the following points **cannot be accepted as new evidence**:
 - i. crew training and their advancement – because this evidence was **processed and presented** on pages 17,18, 19, 20, 35, 42 and 43 of the "Final Report on an investigation into the accident of a Beechcraft Super King Air 200 aircraft, with registration marks Z3-BAB, Mostar, 26/02/2004" that was published on 05/05/2004;
 - ii. supervision and oversight of the Sector for Passengers Transportation by Republic of Macedonia Government Aircraft – because this evidence was **processed and presented** on pages 21, 22, 23, 33, 34, 39, 40, 42 and 43 of the "Final Report on an investigation into the accident of a Beechcraft Super King Air 200 aircraft, with registration marks Z3-BAB, Mostar, 26/02/2004" that was published on 05/05/2004; and
 - iii. development and approval of the landing procedure for the Mostar Airport, and performance of the Mostar VOR/DME device – because this evidence was **processed and presented** on pages 27, 33, 38, 42 and 43 of the

„Final Report on an investigation into the accident of a Beechcraft Super King Air 200 aircraft, with registration marks Z3-BAB, Mostar, 26/02/2004” that was published on 05/05/2004.

From the standpoint of investigating the said accident, the above-stated evidence, besides **not being new evidence, does not constitute significant evidence either**, as it does not change the already determined cause of the accident that was stated in the “Final Report on an investigation into the accident of a Beechcraft Super King Air 200 aircraft, with registration marks Z3-BAB, Mostar, 26/02/2004” that was published on 05/05/2004. The cause of the accident was worded as follows: **“a procedural error while approaching for landing, at the altitude and position, at the Mostar Airport in a controlled flight into terrain – CFIT”**.

- i. Based on the quoted wording, the probe that was launched into the crew's training and their advancement was completely pointless and unnecessary, as it had been accurately determined that the airplane's crew members gained 6,958 and 1,323 hours of flight experience, respectively, following completion of their training.
- ii. A particular piece of legal nonsense are the additional analyses aimed at determining the airplane's airworthiness, in which the findings of fact from 2004 were analysed and compared against the regulatory requirements published in EU-OPS and PART-M (international standards that were published several years after the accident had occurred).
- iii. It is also clear that the aircraft, at the moment the accident occurred, was not positioned at a prescribed altitude and distance from the runway threshold, as defined in the relevant landing procedure for the Mostar Airport, so it was completely pointless and unnecessary to carry out an additional probe into who published the said procedure, and how it was published.

15. International standard 5.10 of ICAO Annex 13 stipulates the obligation of the Commission to coordinate efforts with the relevant Prosecutor's Office, with a particular emphasis on evidence which requires prompt recording and analysis for the investigation to be successful, such as examination and identification of victims and **read-outs of flight recorder recordings**. It is not evident in the Report that the Commission led by Mr Omer Kulić coordinated with the Prosecutor's Office in examining the data, which questions the legality of the recordings read-out procedure.

16. The fact that the Final Report of the Commission led by Mr Omer Kulić is by no means based on international standards and national legislation it refers to, as well as its **sensationalistic nature** – which is strictly forbidden by said international standards and legislation, is corroborated also by the fact that the cockpit voice recordings – conversations between the pilot and co-pilot – were read out publicly in the media. Read-outs of the recordings without the presence of the Prosecutor's Office, as well as their presentation to the media is absolutely contrary to standard 5.12 of ICAO Annex 13, which stipulates that “the State conducting the investigation of an accident or incident shall not make the records available for purposes other than accident investigation, **unless the appropriate authority for the administration of justice** in that State determines that their disclosure outweighs the adverse domestic and international impact such action may have on that or any future investigations”. It is obvious that the Commission acted illegally, for which it must bear the consequences for illegal proceedings.

17. The disclosure of the cockpit conversation between the pilot and co-pilot is not only illegal but also inconsiderate to both the deceased and their families. Also, the disclosure of the recordings – cockpit conversations, is nothing else than plain sensationalism, just like the **plagiarised Final Report** that was published by the Commission led by Mr Omer Kulić. This plagiarised Final Report was developed with a single goal – to discredit the Commission that had previously conducted the investigation, whose results were literally copied in certain segments, while in other segments they were re-formulated and as such can be found in 80% of the new Report. The key difference between the plagiarised Final Report and the Final Report that was published on 05/05/2004 lies in the public disclosure of the evidence and data by a “sensationalistic commission”, which is completely in contrast with international standards and national legislation.
18. The culmination of the said act of plagiarism is reflected in the very title of the reports – both bear the title ‘Final Report’, and this very fact shows this was aimed at disregarding the original Report that was published on 05/05/2004, as if it had never existed. Elementary logic suggests that the second Report cannot have the title ‘Final Report ...’ because such a report has existed since 2004. The new Report could have been named ‘**Report on a revisited ...**’ or ‘**A Corrected Final Report ...**’. Any aviation-knowledgeable person will, after parallel reading of the first and second report, find it quite clear why the second report could not be titled ‘A Corrected Final Report...’ – it is because it corrected nothing.
19. **The cause of the accident that was stated in the second report is essentially an act of plagiarism as well**, because it was only re-worded in comparison to what was stated in the “Final Report on an investigation into the accident of a Beechcraft Super King Air 200 aircraft, with registration marks Z3-BAB, Mostar, 26/02/2004” that was published on 05/05/2004: “*A procedural error while approaching for landing, at the altitude and position, at the Mostar Airport in a controlled flight into terrain – CFIT*”, while the Final Report that was published by the Commission led by Mr Omer Kulić formulates it as follows: “*Descent below the minimum descent altitude (MDA) of 1810 ft, published for the non-precision approach procedure for landing at the Mostar Airport: 1.06 Mostar-LQMO, VOR/DME RWY 34 (Jeppesen 13-1), in a Controlled Flight Into Terrain - CFIT*”.
20. All other comments, that could be listed on many more pages, would only reinforce the fact that the original report was expanded on and that the existing facts that had been analysed a long time ago, such as the comments and analyses on how the procedure was developed, were made public for sensationalistic reasons. Unfortunately, the Commission, led by Mr Omer Kulić, succumbed to its frustration and completely failed to recognize the fact that IF THE Z3-BAB FLIGHT ON 26 FEBRUARY 2004 IN ITS APPROACH TOWARDS THE MOSTAR AIRPORT HAD BEEN CARRIED OUT IN ACCORDANCE WITH THE PROCEDURE, THE ACCIDENT WOULD NOT HAVE OCCURRED. However, to the grief of all of us, the said flight was flown at altitudes significantly lower than the altitudes prescribed in the procedure.
21. Considering the fact that both Reports **determined the same cause of the accident**, it is unclear what the Commission that was led by Mr Omer Kulić actually investigated, why this investigation took so inappropriately long to complete (from



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13/05/2013 to 29/11/2014), and why the investigation cost 160,000 Euros, as chief investigator Mr Omer Kulić told the media.

22. It is unknown **who has paid or is going to pay the 160,000 Euros** for the costs, **to whom** the amount has been or is going to be paid, **and for which costs** exactly. If this amount has been paid or is going to be paid from the Budget of Bosnia and Herzegovina, the question arises – why, as we have learned the same thing that has been known for more than 10 yers (since 05 May 2004).