

Decision suspending Omer BOROVIĆ from his position as a judge of the Municipal Court Gorazde

In the exercise of the powers vested in me by Article V of Annex 10 (Agreement on Civilian Implementation of the Peace Settlement) to the General Framework Agreement for Peace in Bosnia and Herzegovina, according to which the High Representative is the final authority in theatre regarding interpretation of the said Agreement on the Civilian Implementation of the Peace Settlement; and considering in particular Article II.1. (d) of the last said Agreement, according to the terms of which the High Representative shall "Facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation";

Recalling paragraph XI.2 of the Conclusions of the Peace Implementation Conference held in Bonn on 9 and 10 December 1997, in which the Peace Implementation Council welcomed the High Representative's intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement in order to facilitate the resolution of any difficulties as aforesaid "by making binding decisions, as he judges necessary" on certain issues including (under sub-paragraph (c) thereof) "measures to ensure implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities" which "may include actions against persons holding public office or officials ... who are found by the High Representative to be in violation of legal commitments made under the Peace Agreement or the terms for its implementation";

Noting Annex 6 (Agreement on Human Rights) to the General Framework Agreement for Peace in Bosnia and Herzegovina, according to which all persons within the jurisdiction of Bosnia and Herzegovina shall be secured the highest level of internationally recognised human rights and fundamental freedoms, including the right to a fair hearing in civil and criminal matters;

Further noting the Constitution of Bosnia and Herzegovina, contained in Annex 4 to the General Framework Agreement for Peace in Bosnia and Herzegovina, which states at Article I.2, under the heading "Democratic Principles", that "Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law....";

Emphasizing the fact that the establishment of the rule of law is an essential part of the peace process;

Bearing in mind that the rule of law requires that justice must not only be done but be seen to be done, and that for justice to be seen to be done public confidence must exist in the fairness, impartiality, honesty, integrity and incorruptibility of the judiciary, and that like standards are maintained as to prosecutors;

Taking into account the current judicial reform programme in Bosnia and Herzegovina which involves the establishment of a High Judicial and Prosecutorial Council for Bosnia and Herzegovina as well as inter entity High Judicial and Prosecutorial Councils designed to ensure the institution and maintenance of the highest professional standards among judges and prosecutors by means of efficient and functioning processes, *inter alia*, as to discipline and dismissal;

Noting that the establishment and bringing into operation of such Councils will inevitably involve some period of delay but that the restoration of public confidence in the judiciary and in the prosecutorial service requires immediate action;

Considering that it is in the interest of those against whom substantial accusations have been made, as well as of those whose affairs and cases may be influenced or decided by such persons, that doubt should not be permitted to cloud the esteem and respect necessary for the confident conduct of legal proceedings;

Bearing in mind that public confidence in the current period before the setting up of such Councils requires that the exercise of judicial and prosecutorial functions by those against whom accusations have been made should cease pending scrutiny of such accusations by such Councils;

Further bearing in mind the concern that any action which may be taken against persons holding public office or officials is proportionate and that the matters hereinafter set out contain allegations not as yet tested before the

appropriate disciplinary or other body.

Having considered, borne in mind and noted all the matters aforesaid, I hereby issue the following:

DECISION

To suspend Omer BOROvac from his position as a judge of the Municipal Court Gorazde pending a further determination by the High Judicial and Prosecutorial Council of the Federation of Bosnia and Herzegovina.

The President of the Gorazde Municipal Court will without delay make arrangements for the taking over of any cases which were the responsibility of Mr. Omer BOROvac, and shall make arrangements for the administration of those cases.

This Decision has immediate effect and without the necessity for any further procedural steps to be taken.

The decision made herein is issued pursuant to the international mandate of the High Representative and shall not be justiciable before any court in Bosnia and Herzegovina.

Reasons for Suspension

It is alleged that Omer BOROvac has seriously violated the rule of law by allowing persons suspected of serious crime in the Gorazde area to effectively act with impunity.

The allegations against Omer BOROvac relate to his conduct as a judge in criminal cases concerning a particular individual. In particular, it is alleged that he acted improperly in two cases in early 2000 involving alleged illegal possession and use of weapons by this person. The cases arose from the alleged assault of a petrol-station attendant and firing of an automatic weapon. The individual concerned was found by police to be in possession of five rifles and was charged with, *inter alia*, illegal possession of weapons. He claimed that he had captured some of the weapons, and that he had been given some of the others as a gift from the Army of BiH. Omer BOROvac accepted this defence, which is clearly contrary to the relevant law, acquitted the person concerned of all charges and procured the return of the weapons to him.

It is also alleged that Omer BOROvac, as Investigative Judge, acted in a similarly improper fashion in another case involving the discharge by the individual concerned of weapons and the threatening by him of police officers with such weapons. In this case, he again decided that the weapons at issue were held legally, contrary to the relevant law.

Sarajevo May 2002.

Wolfgang Petritsch

High Representative