

Decision suspending Nedjo DRASKOVIC from his position as a judge of the Republika Srpska Supreme Court

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....";

Mindful of Annex 7 (Agreement on Refugees and Displaced Persons) to the General Framework Agreement for Peace in Bosnia and Herzegovina, wherein at Article I.1 it is stated "All refugees and displaced persons have the right freely to return to their homes of origin....";

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 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 Nedjo DRASKOVIC from his position as a judge of the Republika Srpska Supreme Court pending a further determination by the High Judicial and Prosecutorial Council of the Republika Srpska.

The President of the Republika Srpska Supreme Court will without delay make arrangements for the taking over of any cases which were the responsibility of Mr. DRASKOVIC, 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 the Suspension

It is alleged that Nedjo DRASKOVIC has seriously violated the rule of law by:

- (a) refusing to attend sessions of the Supreme Court of the Republika Srpska in Banja Luka, over a period of almost 4 years. It is alleged that he has therefore effectively refused to do his job, and demonstrated that he is unfit to hold the office of judge;
- (b) failing to decide upon the number of cases required for him to decide the required number of cases as established by his quota for deciding cases. In 1999, he decided a total of 59 cases (52% of his quota), in 2000 he decided 71 (65% of his quota) and only 1 single case in the first 9 months of 2001. In response to an inquiry from the Republika Srpska High Judicial Council, Nedjo DRASKOVIC stated that he would be willing to attend the Supreme Court sessions if he was provided with a three-room apartment there, stating that he was entitled to this as a judge. There is no legal basis for such a request.
- (c) contrary to the relevant law, was allocated an apartment from the previous Republika Srpska Government in Bijeljina, worth over KM 120,000. This apartment was paid for by the Government of the Republika Srpska out of public funds. It is alleged that the legal basis for the allocation of this apartment to Nedjo DRASKOVIC was not a proper one and that therefore public funds were improperly used for this purpose.

Sarajevo, 23 May 2002

Wolfgang Petritsch

High Representative