

Decision suspending Nenad GVOZDIC from his position as a judge of the Municipal Court I Mostar

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 Nenad GVOZDIC from his position as a judge of the Municipal Court I Mostar pending a further determination by the High Judicial and Prosecutorial Council of the Federation of Bosnia and Herzegovina.

The President of the Mostar Municipal Court I will without delay make arrangements for the taking over of any cases which were the responsibility of Mr. Nenad GVOZDIC, and shall make arrangements for the administration of those cases.

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.

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

Reasons for the Suspension

It is alleged that Nenad GVOZDIC, acting in his judicial capacity, facilitated a massive fraud which was perpetrated at the expense of the Federation Pension and Invalid Insurance Fund, "FPIO".

In particular, it is alleged that Nenad GVOZDIC facilitated the illegal transfer of the legal ownership of Hotel Ero for an unjustifiably low price, from the apparent owner, the Mostar Pension Fund (which was subsequently amalgamated with the Sarajevo Pension Fund to form the FPIO), to "TUH-Invest", a shell company. The outcome of this transaction was that approximately KM 8,000,000 was effectively stolen from the Mostar Pension Fund. The (then) Sarajevo Pension Fund claimed that it was the rightful owner of the Hotel Ero as it had originally provided the funds for the construction of the Hotel Ero.

At a public hearing on 7 May 2001 relating to the public auction of the Hotel Ero, he allegedly violated his duty to act impartially by: (a) obstructing the legitimate representative of the Sarajevo PIO from challenging the validity of the auction proceedings, pursuant to proceedings they had initiated on 4 May 2001, and (b) in improperly preventing them from attending the auction. Nenad GVOZDIC willfully ignored proceedings initiated by the Sarajevo PIO and proceeded with the auction, regardless of the fact that the legal challenge initiated by the Sarajevo PIO raised serious issues concerning the validity of the auction and the transfer of ownership of the Hotel Ero in general.

It is alleged that Nenad GVOZDIC violated his duty to act impartially by not informing the representatives of the Sarajevo PIO of developments which had serious consequences for the case and which was of direct relevance to its ongoing proceedings relating to the establishment of the ownership of the Hotel Ero. On 28 September 2001, Nenad GVOZDIC, as judge of the Municipal Court I in Mostar, allegedly issued a decision confirming "TUH-Invest" as the owner of the Hotel Ero, based on a direct negotiation between "TUH-Invest" and the Mostar Pension Fund, without hearing from legal agents on behalf of Sarajevo PIO. This decision allowed the registration in the Land Registry of "TUH-Invest" as the owner of the Hotel Ero, irrespective of the pending legal proceedings brought by the Sarajevo PIO relating to the right of ownership over the Hotel Ero.

It is also alleged that he obstructed the investigation of the Federation Prosecutor's Office into this matter, by failing to submit complete documentation concerning the matter when requested to do so by that office.

Sarajevo May 2002.

Wolfgang Petritsch

High Representative