

Decision Enacting the Law on the High Judicial and Prosecutorial Council of the Federation of Bosnia and Herzegovina

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”;

Bearing in mind the communiqué of the Steering Board of the Peace Implementation Council issued at Brussels on 28 February 2002 wherein it recognised “the importance of the creation of a High Judicial Council for BiH”;

Further bearing in mind the communiqué of the Steering Board of the Peace Implementation Council issued at Sarajevo on 7 May 2002 wherein it was stated that the establishment of a single High Judicial Council would “lay the foundations for further reform of the judiciary, such as the re-structuring of the court and prosecutorial systems”;

Conscious of the necessity to pursue such re-structuring and selection process following upon the establishment of the High Judicial and Prosecutorial Council for the Federation of Bosnia and Herzegovina and of the High Judicial and Prosecutorial Council of the Republika Srpska which shall together compose an inter-entity level High Judicial and Prosecutorial Council structure for Bosnia and Herzegovina;

Recalling Article III: 5 (b) of the Constitution of Bosnia and Herzegovina which provides that “Within six months of the entry into force of this Constitution, the Entities shall begin negotiations with a view to including in the responsibilities of the institutions of Bosnia and Herzegovina other matters ... “;

Recalling Article I: 2. of the Constitution of Bosnia and Herzegovina which provides that: “Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law ... “;

Observing that in order to strengthen democratic principles and the rule of law it is essential that the State Institutions of Bosnia and Herzegovina should have the power *inter alia* to legislate in regard to judicial bodies throughout Bosnia and Herzegovina ;

Considering that Article IV.C.4 subparagraph 4 the Constitution of the Federation of Bosnia and Herzegovina, as amended by my Decision 161/02 of 23 May 2002, provides *inter alia* that “the High Judicial and Prosecutorial Council shall ensure the autonomy, independence, impartiality, competence and efficiency of the judiciary and the prosecutorial service in the Federation” and that “the composition and the additional responsibilities of the High Judicial and Prosecutorial Council shall be defined by law”; and

Further taking into account the totality of the matters aforesaid I hereby issue the following Directive and Decision:

DIRECTIVE

The Prime Ministers of the Federation of Bosnia and Herzegovina and the Republika Srpska are hereby directed to make draft proposals within thirty (30) days for negotiations pursuant to Article III: 5 (b) of the Constitution of Bosnia and Herzegovina with a view to transferring to the State Institutions of Bosnia and Herzegovina full competence in regard to the judiciary of Bosnia and Herzegovina to enable a single High Judicial and Prosecutorial Council for Bosnia and Herzegovina which is being created at the State level, to be fully competent as aforesaid.

Such draft proposals must be exchanged within such period of thirty (30) days with a view to the required negotiations commencing no later than a further thirty (30) days thereafter.

DECISION

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The Law which follows shall come into effect as provided for in Article 87 thereof on an interim basis, until such time as the Parliament of the Federation of Bosnia and Herzegovina adopts this Law in due form, without amendment and with no conditions attached.

This Decision shall come into effect forthwith and shall be published without delay in the official Gazettes of the Federation of Bosnia and Herzegovina and its Cantons.

Sarajevo, 23 May, 2002

Wolfgang Petritsch

High Representative