

Decision on the mandate of the Independent Judicial Commission

In the exercise of the powers vested in the High Representative 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 Article II, 8 of the last said Agreement according to the terms of which the High Representative may, in addition to the Civilian Commissions referred to specifically in Article II thereof, establish other civilian commissions to facilitate the execution of his mandate;

Recalling further 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 the Peace Agreement throughout Bosnia and Herzegovina and its Entities;

Mindful of paragraph I.2.a. of the Conclusions of the said Bonn Conference which recognised “that an impartial and independent judiciary” was “essential to the rule of law and reconciliation within Bosnia and Herzegovina”, that the judicial appointment process must be based on merit, that a judicial training facility must be established, and that the monitoring of the judicial system was an essential element of the aforesaid process;

Guided by paragraph II.2 of the Annex to the Declaration of the Peace Implementation Council (Madrid, 16 December 1998) which “emphasize[d] the importance of intensified judicial reform efforts, co-ordinated by the High Representative, to support the efforts of the authorities in BiH [Bosnia and Herzegovina]” and “urge[d] the High Representative to further develop a comprehensive judicial reform strategic plan, identifying short and longer-term priorities, in consultation with the authorities, the Council of Europe, OSCE, UNMIBH and other organizations”;

Considering the Declaration of the Peace Implementation Council (Brussels, 23/24 May 2000) calling for a truly independent and impartial judiciary to ensure the Rule of Law in all criminal, civil and commercial matters and noting “the continued need for an international oversight institution for judicial reform pending OHR’s solution of the Judicial Reform programme” and that the Council “supports the continuing efforts of the High Representative to lead the Judicial Reform effort and co-ordinate the efforts of the international community on the issue”;

Taking into account the Communiqué of the Steering Board of the Peace Implementation Council (Sarajevo, 13 July 2000) where the “Steering Board and the High Representative agreed that the issue of judicial reform and the promotion of the rule of law needed a sustained effort by the International Community. To this end, the High Representative will establish the Independent Judicial Commission which will be tasked with the supervision of the entity and cantonal commissions/council responsible for selecting and disciplining judges and prosecutors and to continue the monitoring and assessment of courts and prosecutor’s offices in line with the closing mandate of JSAP”;

Further noting the Communiqué by the Steering Board of the Peace Implementation Council of 28 February 2002, in which the Steering Board endorsed the reinvigorated strategy for judicial reform proposed by the Independent Judicial Commission for 2002/03, among other things recognising the importance of the creation of a High Judicial Council for BiH and the restructuring of the court system, sentiments that were reiterated in a further Communiqué of 7 May 2002;

Recalling the decision number 94/01 of the High Representative establishing the Independent Judicial Commission and in particular paragraph 5 of the said decision which states that “the High Representative reserves the right to provide additional responsibilities to the Independent Judicial Commission, as may be required to carry out its mandate”.

Having considered the foregoing matters, I hereby issue the following

DECISION

On the mandate of the Independent Judicial Commission

1. This Decision revises the mandate of the Independent Judicial Commission and vests the Independent Judicial Commission with responsibilities and authorities in line with the mandate set forth below.
2. The mandate of the Independent Judicial Commission shall include the following:
 - to support the work of the High Judicial and Prosecutorial Council of Republika Srpska, of the High Judicial and Prosecutorial Council of the Federation of BiH and of the High Judicial and Prosecutorial Council of BiH during the transitional period;
 - to support the Disciplinary Prosecutor in disciplinary matters before the afore mentioned Councils;
 - to provide advice to local authorities and professional legal organizations on all issues affecting the court system and its restructuring;
 - to undertake such further responsibilities as may be assigned by the High Representative from time to time;
 - to report to the Senior Deputy High Representative in charge of Rule of Law matters on a regular basis on matters concerning the above mandate;
 - to brief relevant members of the International Community (IC) on matters concerning its mandate.
3. In carrying out its mandate and responsibilities, the Independent Judicial Commission shall have the authority to initiate contacts with international organizations and domestic bodies, agencies, institutions, or organizations to promote rule of law projects affecting the court system, its restructuring, and its support of the High Judicial and Prosecutorial Councils.
4. All courts, prosecutors' offices and governmental agencies at all levels, including all judges, prosecutors, court staff and government officials are obliged to co-operate with the IJC and to disclose any information that the IJC considers necessary for it to carry out its responsibilities under paragraph 2 of this Decision.
5. The mandate of the Independent Judicial Commission shall expire on 31 December 2003. The High Representative retains the authority to decide on the principles and timeframes, including the authority and number of remaining international staff, for a possible continuation of the Independent Judicial Commission.
6. This decision supercedes the decision 94/01 of the High Representative establishing the Independent Judicial Commission.

Sarajevo, 6 August 2002

*Paddy Ashdown,
High Representative*