

Decision Enacting amendments to the Constitution of the Federation of Bosnia and Herzegovina

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 “[f]acilitate, 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 that the Steering Board, at its meeting held at Political Directors’ level on 26 September 2003, considered the resolution of the Mostar question as crucial to the sustainable and peaceful development of Bosnia and Herzegovina;

Bearing in mind the special status given to Mostar under the Dayton Agreement on Implementing the Federation of Bosnia and Herzegovina, signed on 10 November 1995, and in the Annex thereto which establishes principles for the Interim Statute for the City of Mostar;

Further bearing in mind that the political authorities at the “City” and the “City-Municipality” levels have hitherto failed to unify the City of Mostar under the said Interim Statute, and have, rather, used the City-Municipalities to create parallel institutions and divide the City;

Mindful of the need to consolidate the administrative, functional and legal unity of the City of Mostar in a manner that promotes efficiency in the delivery of services, guarantees the fundamental rights of all citizens, ensures the collective rights of the constituent peoples and prevents dominance by one segment of the population of Mostar;

Acknowledging the work of the Commission for Reforming the City of Mostar established by the High Representative on 17 September 2003 (hereinafter: “the Commission”);

Welcoming the efforts undertaken by the political parties involved in the said Commission which culminated in concrete proposed solutions to various key issues relating to the reorganization of the City of Mostar;

Convinced that said proposed solutions provide a sound basis for the establishment of the aforementioned guarantees and safeguards, and, further contain carefully negotiated power-sharing provisions aimed at enabling the citizens of Mostar to build a foundation for a progressive future predicated upon, *inter alia*, protection of national vital interests;

Encouraged that said proposed solutions emerged from the broadest possible consensus with respect to the reorganization of the City of Mostar;

Regretting that the parties involved in the Commission failed to reach a consensus on two outstanding issues and convinced that the resolution of said issues would significantly improve applied standards of governance in the City while maintaining an electoral architecture reflective of the *sui generis* circumstances in Mostar arising from profoundly conflicting interests among its constituent peoples.

Bearing in mind that the Steering Board of the Peace Implementation Council, at its meeting held in Brussels on

11 December 2003, "committed itself to give its full support to the implementation of a solution to the issue of Mostar based on a single coherent city administration with effective guaranteed power-sharing mechanisms which prevent any one people having majority control of the City Council and to act to ensure that implementation of the plan in the coming months has the necessary political and economic support";

Stressing the need to hold democratic elections at local level in Mostar as well as throughout Bosnia and Herzegovina on the first Saturday of October 2004 and bearing in mind the need to start preparing those elections;

Having considered, borne in mind and noted all the matters aforesaid, the High Representative hereby issues the following

DECISION

Enacting amendments to the Constitution of the Federation of Bosnia and Herzegovina

The Amendments set out hereunder forms an integral part of this Decision and shall enter into force on March 15, 2004.

Such amendments shall have precedence over any inconsistent provisions of laws, regulations and acts. No further normative act is required to ensure the legal effect of such amendments. The said amendments shall be in force on an interim basis until adopted by the Parliament of the Federation of Bosnia and Herzegovina, in due form, without amendments and with no conditions attached.

This Decision shall come into force forthwith and shall be published without delay in the Official Gazette of the Federation of Bosnia and Herzegovina.

Amendment XCV

In Article II.B.5, the word "City" shall be added before the words "or Municipality";

Amendment XCVI

In Article IV.C.10 after paragraph (2), a new paragraph (3) shall be added and read as follows:

"(3) The protection of the right to local self-government shall be ensured by the Constitutional Court. Such procedure before the Constitutional Court may be initiated by the municipalities and the cities, as well as by the Association of municipalities and cities of the Federation of Bosnia and Herzegovina. The Constitutional Court shall decide upon disputes between a unit of local self-government and a canton or the Federation at the request of a municipal or city council, municipal or city mayor, or the Association of Municipalities and Cities of the Federation of Bosnia and Herzegovina."

The existing paragraphs (3) and (4) shall become paragraphs (4) and (5);

Amendment XCVII

In Article IV.C.12 (b), the words "City or of any" shall be added before the word "Municipality";

Amendment XCVIII

In Article V.1 (b), the words "City or" shall be added before the word "Municipality";

Amendment XCIX

Article V.10 shall be repealed and replaced by a new Article V.10 which shall read as follows:

In exercising its responsibilities in respect to the cantonal police, the Cantonal Government shall ensure that the national structure of the police reflects the national structure of the population of the Canton, provided that the national structure of the police of each municipality or city, where applicable, reflects the national structure of the population of that city or municipality.

Amendment C

Article VI.A, paragraph (4) shall be repealed and replaced by a new paragraph (4) which shall read as follows:

“(4) Unless otherwise provided by this Constitution, the city shall have a city council consisting of an equal number of councilors from each municipality, and the number of councilors, election procedure and duration of mandate shall be specified in the Statute. The City council may not have less than 15 or more than 31 councilors.”;

Amendment CI

A new Article VI.C shall be added and read as follows:

“VI. C. Organisation of Mostar

- 1) In the Herzegovina-Neretva Canton, the City of Mostar shall be organised as a single territorial unit of administration and local self-government.
- 2) The City of Mostar shall have the competencies of a Municipality, unless otherwise provided by law.
- 3) The organisation of the City of Mostar shall be regulated by law and by its Statute. The Statute shall establish City Areas, in which the City administration shall have branch offices for the sole purpose of delivering services to the citizens within their neighbourhood. The Statute shall define the number of City Areas.
- 4) The City Areas shall be electoral constituencies. The composition of the City Council and the modalities of election shall be regulated respectively by the Statute and the Election Law of Bosnia and Herzegovina in a manner that may derogate from the requirements prescribed in Article VI.A of this Constitution.
- 5) Decision making procedures shall be defined by the Statute of the City of Mostar. Notwithstanding any laws providing for voting procedures, the Statute of the City of Mostar may define special voting procedures for the adoption of certain decisions within the City Council.
- 6) Vital national interests of constituent peoples shall be protected in the City of Mostar. Issues of vital national interest shall be those defined in Article IV.A.17.a of this Constitution, provided that the caucuses referred to under that Article shall, for the purpose of the City of Mostar, be the caucuses established by the Statute of the City of Mostar. The procedure for the protection of national vital interest shall be regulated under the Statute of the City of Mostar. Such procedure shall include the possibility to refer a question of vital interest to the Constitutional Court of the Federation in accordance with the procedure foreseen in Article IV.A. 18 a) item 5 through 8 of this Constitution, if no agreed solution can be reached.
- 7) Only Councilors elected to the Council of the City may be elected as Mayor of the City of Mostar. The Mayor is elected and removed from office by a majority of two-thirds of elected councilors, in accordance with the Statute of the City of Mostar.
- 8) Constituent peoples and Others shall be proportionately represented in the City administration. Such representation shall follow the 1991 census until Annex 7 is fully implemented, in accordance with Article IX.11.a of this Constitution.”

Amendment CII

Articles IX.10 and IX.11 paragraph 3 shall be repealed.

Sarajevo, 28 January 2004

*Paddy Ashdown
High Representative*