

Decision on certain issues related to the HJPC of BiH, the HJPC of RS and the HJPC of the Federation of BiH

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 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”;

Convinced of the vital importance to Bosnia and Herzegovina of ensuring that the rule of law is strengthened and followed in order to create the ground for economic growth and foreign investment;

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-coordinated 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 -”;

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 enactment of the laws on the High Judicial and Prosecutorial Council for the Federation of Bosnia and Herzegovina, the High Judicial and Prosecutorial Council of Republika Srpska, the High Judicial and Prosecutorial Council of Bosnia and Herzegovina and the Directive of 23 May 2002, in order to strengthen the independence of the judiciary and provide for the re-appointment of judges and prosecutors in line with the restructuring of courts and prosecutors’ offices;

Noting the Communiqué by the Steering Board of the Peace Implementation Council of 25-26 September 2003, in which the Steering Board: “agreed to extend the Independent Judicial Commission’s mandate, as well as the transitional period of the High Judicial and Prosecutorial Councils, until 31 March 2004. The Steering Board strongly supported the establishment of one single HJPC at the State level and urged the BiH authorities to contribute to this without delay”;

Recalling the Decision of the High Representative number 167/03 authorizing the Independent Judicial Commission to take “all necessary measures to ensure the appropriate downsizing and transition of the remaining Independent Judicial Commission staff into a secretariat for the High Judicial and Prosecutorial Council, if established at state level pursuant to High Representative’s Directive dated 23 May 2002”;

Welcoming that the Entities have reached an Agreement on the transfer of certain responsibilities relating to the judiciary to the level of Bosnia and Herzegovina, facilitating the creation of a single High Judicial and Prosecutorial Council at the level of Bosnia and Herzegovina;

Cognizant of the fact that the law on the single High Judicial and Prosecutorial Council at the level of Bosnia and Herzegovina will not be in force by 1 April 2004 and being aware of the necessity to secure continuous operation and a later transition into the single High Judicial and Prosecutorial Council at the level of Bosnia and Herzegovina as provided by the Agreement as referred to in the previous paragraph;

I hereby issue the following

DECISION

On certain issues related to the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, the High Judicial and Prosecutorial Council of Republika Srpska and the High Judicial and Prosecutorial Council of the Federation of Bosnia and Herzegovina

1. The mandate of the following international members of the High Judicial and Prosecutorial Councils of Bosnia and Herzegovina and/or the Federation of Bosnia and Herzegovina and/or of Republika Srpska are terminated, effective 31 March 2004:

Dr. Axel Schwarz

Mr. Jorge Ribeiro

Ms. Susanne Moeller

Ms. Sylvie Pantz

2. The function of the Disciplinary Prosecutor of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, shall continue to be performed by an international lawyer, Mr. David Upcher, or his Deputy, until 31 May 2004 or until a national Disciplinary Prosecutor has been appointed, whichever comes first.

3. This Decision shall come into force forthwith and shall be published in the “Official Gazette of Bosnia and Herzegovina” the “Official Gazette of the Federation of Bosnia and Herzegovina”, the “Official Gazette of Republika Srpska” and the “Official Gazette of the Brcko District”.

Sarajevo, 31 March 2004

*Paddy Ashdown
High Representative*