

Decision on Appointment of an International Judge to the Court 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 “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”;

Considering paragraph 12.1 of the Declaration of the Peace Implementation Council which met in Madrid on 15 and 16 December 1998, which made clear that the said Council considered that the establishment of the rule of law, in which all citizens had confidence, was a prerequisite for a lasting peace, and for a self-sustaining economy capable of attracting and retaining international and domestic investors;

Considering further paragraph 3 of Annex II (Rule of Law and Human Rights) to the last said Declaration, according to which the establishment of judicial institutions at the State level, which meet an established constitutional need to deal with criminal offences perpetrated by public officials of Bosnia and Herzegovina in the course of their duties, and with administrative and electoral matters, is a precondition for the establishment of the rule of law in Bosnia and Herzegovina;

Recalling the Declaration of the Peace Implementation Council, which met in Brussels on 23 and 24 May 2000, and the Annex thereto, pursuant to which the adoption of a Law on a Court of Bosnia and Herzegovina was envisaged by September 2000;

Bearing in mind the reinvigorated strategy for judicial reform to strengthen the Rule of Law efforts in Bosnia and Herzegovina in 2002/03 which was endorsed by the Steering Board of the Peace Implementation Council on 28 February 2002 and noting that the aforementioned strategy was devised in response to calls by the authorities in Bosnia and Herzegovina for firmer International Community actions to tackle economic crime, corruption and problems inherent in the judicial system;

Noting further that the communiqué of the Steering Board of the Peace Implementation Council issued at Sarajevo on 31 July 2002 stated that the Board welcomed the creation of Special Chambers of the Court of Bosnia and endorsed the proposal of the High Representative to include national and international Judges and Prosecutors in a Special Panel/Department for Organized Crime, Economic Crime and Corruption in the Court of Bosnia and Herzegovina and the Prosecutor’s Office of Bosnia and Herzegovina;

Bearing in mind that criminal activities continue to infringe on the democratic, economic, fiscal, commercial and other social rights and interests of the citizens of Bosnia and Herzegovina and that the establishment of Special Panels for Organized Crime, Economic Crime and Corruption within the aforesaid Court of Bosnia and Herzegovina and of a Special department within the prosecutor’s Office of Bosnia and Herzegovina will advance the efficient and effective fight against crime in Bosnia and Herzegovina;

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 therefore both of the urgency and of the need to establish the Special Panels and to strengthen the

Special Department for Organized Crime, Economic Crime and Corruption in the Court of Bosnia and Herzegovina and the Prosecutor's Office of Bosnia and Herzegovina, and to appoint the international judges and prosecutors to the Court of Bosnia and Herzegovina and to the prosecutor's office of Bosnia and Herzegovina and for all the reasons as aforesaid,

The High Representative hereby issues the following

DECISION

On Appointment of an International Judge to the Court of Bosnia and Herzegovina

1. As provided by Article 65, as amended, of the Law on Court of Bosnia and Herzegovina "Official Gazette of Bosnia and Herzegovina", 29/00, 24/02, 3/03, 37/03, 4/4 (hereinafter: the law), the following person is hereby appointed as international judge of the Special Panels for Organized Crime, Economic Crime and Corruption within both the Criminal Division and Appellate Division of the Court of Bosnia and Herzegovina:

Malcolm Simmons

2. The initial term of appointment of the International Judge shall be for two years, subject to reappointment pursuant to the Law. In the event of resignation by or inability of an international judge or prosecutor to complete his mandate, the High Representative will appoint a successor to complete the above-mentioned term of office.

3. The appointment made pursuant to this Decision shall take effect on 5 May 2004.

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

Sarajevo, 5 May 2004

Paddy Ashdown
High Representative