

Decision Suspending the Power to Grant Pardons for Criminal Sentences

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”;

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 that the positive laws on pardon in Bosnia and Herzegovina are not respectful of the State jurisdiction in criminal matters and do not provide for a transparent procedure through which a pardon may be granted;

Noting further that such situation may result in a number of discretionarily granted pardons that alter the result of judicial process, which further erode the confidence of the public in the rule of law;

Mindful therefore of the need to ensure the coherence, transparency and necessary publicity in the process of pardoning, which process will incorporate standards to prevent that decisions of the executive authority affect decisions of judicial institutions without due reason;

Convinced of the vital importance to Bosnia and Herzegovina of ensuring that the rule of law is strengthened and adhered to;

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

DECISION

Suspending the Power to Grant Pardons for Criminal Sentences

Article 1

The power of all executive authority in Bosnia and Herzegovina to grant, in accordance with the relevant Constitutions and/or laws, any type of pardon with respect to criminal offences and criminal sentences pronounced by any court in Bosnia and Herzegovina or executed in Bosnia and Herzegovina is hereby suspended.

Article 2

The pardon referred to in Article 1 of this Decision shall include, *inter alia*, the complete or partial release from the execution of a punishment, the substitution of an imposed punishment by a less severe one or by a suspended sentence, the annulment or shortening of an imposed security measure, the revocation of a certain legal consequence incident to the conviction or the shortening of its duration or the deletion of the conviction.

Article 3

As a consequence of the suspension of the power of pardon, no pardon for any criminal offence and criminal sentence pronounced by any court in Bosnia and Herzegovina or executed in Bosnia and Herzegovina may be granted from the date of entry into force of this Decision until the law on pardon at each particular level of government, which duly respects Bosnia and Herzegovina's jurisdiction in criminal matters, and which ensures transparency, publicity and public scrutiny over such extraordinary decisions of executive clemency enters into force.

Article 4

This Decision shall enter into force forthwith and shall be published without delay in the "Official Gazette of the Bosnia and Herzegovina", "Official Gazette of the Federation of Bosnia and Herzegovina", "Official Gazette of the Republika Srpska" and the "Official Gazette of the District of Brčko of Bosnia and Herzegovina".

Sarajevo, 6 September 2005

*Paddy Ashdown
High Representative*