

Decision removing Mr. Milovan R. Pecelj from his position as Minister of Education and Culture of Republika Srpska

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 (hereinafter "GFAP"), 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";

Noting that in paragraph X.4 of the Annex to the Declaration of the Peace Implementation Council made at Madrid on 16 December 1998, the Council acknowledged that leaders whom the High Representative bars from official office "may also be barred from running in elections and from any other elective or appointive public office and from office within political parties until further notice";

Referring to the High Representative's *Decision to Remove Radomir Lukic From His Position as Member of the Main Board of the SDS and From Other Public and Party Positions*, no. 243/04 of 30 June 2004 (RS O.G. no. 63/04) (hereinafter *Decision 243/04*) which, *inter alia*, barred Mr. Radomir Lukic from holding any official, elective or appointive public office and ordered him to vacate his office immediately;

Recalling the letter of the High Representative of 5 August 2005 to the Prime Minister of Republika Srpska indicating that Mr. Radomir Lukic's continued employment at the Faculty of Law of the University of Eastern Sarajevo was in direct contravention of the terms of Decision 243/04 and urging the Government of Republika Srpska, the Minister of Finance and the Minister of Education and Culture of Republika Srpska to cease all remuneration to Mr. Lukic;

Welcoming the Prime Minister's and the Minister of Finance's positive responsive efforts to implement Decision 243/04, as evidenced by the 7 October 2005 "Conclusion" of the Government of Republika Srpska which acknowledged the Government's responsibility to adopt all measures necessary to ensure implementation of Decision 243/04 and by the 13 October 2005 "Instruction" of the Republika Srpska Ministry of Finance which, *inter alia*, halted salary payment to Mr. Lukic;

Recalling further the letter of the High Representative of 26 September 2005 to the Prime Minister of Republika Srpska expressing serious concerns in relation to the failure of the Minister of Education and Culture of Republika Srpska to fulfill his clear legal duties with respect to Mr. Lukic's continued illegal employment by the Faculty of Law of the University of Eastern Sarajevo;

Recalling also that, on 6 October 2005, Senior Deputy High Representative, Ambassador Martin Ney, sent a letter to Prime Minister Bukejlovic reminding him of Mr. Pecelj's persistent failure to redress the continuing violation of Decision 243/04 as he was obliged to do under applicable law which entrusted him with the mandate of overall and administrative supervision of the University of Eastern Sarajevo;

Recalling further that, on 18 October 2005, the Senior Deputy High Representative sent to Mr. Pecelj a letter reiterating the latter's personal responsibility as Minister of Education and Culture to ensure that specific steps were taken to give effect to Decision 243/04, which steps included the issuance of a public statement declaring that Mr. Lukic is barred by law from holding his current posts and that, in consequence, any accreditation of students emanating from him would be null and void as a matter of course;

Noting that Mr. Pecelj failed materially in implementing this specific measure;

Recalling further the letter of the High Representative of 27 October 2005 to the Mr. Pecelj stressing that said failure constituted a dereliction of his duty to uphold the laws of Republika Srpska as well as the GFAP and instructing him, yet again, to take certain measures in order to fully and effectively fulfill the said duties,

Reminding Mr. Pecelj specifically in the said letter of his duty under Articles 9 and 120 of the Republika Srpska Law on University to supervise the work of the "Universities and Higher Education Institutions", which duty could only be discharged by informing all concerned of his legal obligation to declare the invalidation of student accreditation rendered by an individual lacking the competence to issue such accreditation, *i.e.*, Mr. Lukic;

Noting that Mr. Pecelj has not done so by the required deadline of 28 October 2005, leaving in place instead a misleading public statement which distorts the legal effect and substance of Decision 243/04 and which fails to impress upon the faculty and student body of the University the gravity of Mr. Lukic's continued presence in the University;

Noting that, pursuant to Article 97 of the Constitution of Republika Srpska, the ministries of Republika Srpska have an obligation to implement the laws of the National Assembly of Republika Srpska, including the Law on University;

Noting further that, pursuant to Article IV of Annex 10 to the GFAP, the authorities of Republika Srpska have the obligation to fully cooperate with the High Representative;

Concluding that Mr. Pecelj's failure to comply with his ministerial duties and his obligations under the GFAP stands in stark contrast to the cooperation demonstrated hitherto by Prime Minister Bukejlovic and Minister of Finance Cenic in this matter, as outlined above;

Deeming this as evidence of Mr. Pecelj's willful intent to obstruct the process designed to bring this matter to resolution;

Ever conscious of the need to balance in due proportion the public good with the rights of individuals;

For the reasons hereinafter set out the High Representative hereby issues the following:

DECISION

To remove Mr. Milovan R. Pecelj from his position as Minister of Education and Culture of Republika Srpska

and to bar him from holding any official, elective or appointive office and from running in elections unless or until such time as High Representative may expressly authorize him so to do or to hold the same. Any entitlement to receive remuneration or any form of post-removal compensation or to any privileges or status arising out his post as a minister ceases forthwith.

This Decision has immediate effect and will not require any further procedural steps. Mr. Milovan R. Pecelj must vacate his office immediately and is barred from the date hereof from further entering the same.

This Decision shall be published without delay in the Official Gazette of the Republika Srpska.

Reasons for Removal

Mr. Milovan R. Pecelj holds the position of Minister of Education and Culture of Republika Srpska. This office is one in which the holder assumes ministerial responsibility for: (1) the implementation of the Constitution and the laws of Republika Srpska; (2) the administrative oversight of the work of universities and institutions of higher education in Republika Srpska; (3) implementation of the laws of Bosnia and Herzegovina, which include Decisions of the High Representative; and (4) cooperation with the High Representative, in accordance with Article IV of Annex 10 to the GFAP.

Mr. Pecelj has failed on all counts. As described in the preamble hereof, Mr. Pecelj has repeatedly and steadfastly resisted implementation of Decision 243/04. In doing so, he has not only violated several laws of Bosnia and Herzegovina, including Decision 243/04 and Article 97 of the Constitution of Republika Srpska; he has also demonstrated his flagrant disregard of his duty under the GFAP to cooperate fully with the High Representative. Under the circumstances, Mr. Pecelj, the principal minister charged by law with the resolution of this matter, has demonstrated his disregard for the rule of law and his active obstruction of the implementation process of the GFAP.

The autonomous status of the University of Eastern Sarajevo does not alter this conclusion. While such autonomy is recognized, it does not confer on the Government of Republika Srpska or the authorities of the University license to countenance and abate blatant violations of law within the University's precincts. This is precisely what Mr. Pecelj has done.

The principles of proper governance and ministerial responsibility, particularly in this case, are essential to the peace implementation process, the consolidation of the rule of law and Bosnia and Herzegovina's institutional integrity. Every public official is strictly charged to faithfully observe them. Regrettably, these principles have been undermined by Mr. Pecelj's conduct. He must himself now be removed from public office.

Sarajevo, 28 October 2005

*Paddy Ashdown
High Representative*