

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 “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”;

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 ”;

Noting the Annex to the Declaration of the Peace Implementation Council of 16 December 1998, in which the Steering Board urged “the adoption by 30 June 1999 of legislation to achieve an independent and impartial judiciary, focusing on judicial and prosecutorial appointments, adequate salaries and objective standards for appointment of judges and prosecutors, consistent with those of European democratic practice, and the promotion of a multi-ethnic judiciary throughout Bosnia and Herzegovina.”

Recognizing that relevant legislation in the Federation was imposed by the High Representative on 17 May 2000 and was later adopted by the Parliament of the Federation of Bosnia and Herzegovina and published in the Official Gazette of the Federation of Bosnia and Herzegovina No. 20/01;

Appreciating the fact that, when the Independent Judicial Commission started its work in the spring of 2001, the financial situation within the judiciary was critical and that the Independent Judicial Commission, in close cooperation with Entity ministries of justice and Entity Parliaments, achieved significant reduction of the yearly costs of the judiciary and prosecution by unifying the prosecutorial services, reducing the number of first instance courts and the number of judges and support staff in the judiciary;

Realizing that the financial situation within the judiciary and the prosecution at all levels in Bosnia and Herzegovina continues to be extremely critical and that the yearly costs of salaries and benefits for judges and prosecutors clearly represents a disproportionate part of the overall budgets;

Realizing further that the current situation is unsustainable and could lead to a collapse of the judiciary in Bosnia and Herzegovina;

Mindful that the courts and prosecutors offices have accrued significant debt due to lack of funds to pay operational expenses and salaries on time, that the total debt at the end of 2004 was 16 million KM and that many courts have had and continue at this very moment to have their basic services – such as post and telephone – cut off and therefore are not operational and able to deliver the services required by the citizens of Bosnia and Herzegovina;

Cognisant of the fact that judges and prosecutors in Bosnia and Herzegovina had – due to the mechanisms provided for in the current legislation – their salaries increased by approximately 40% from the initial increase in 2000 until the salaries were frozen in December 2004 while at the same time the inflation in Bosnia and Herzegovina has been minimal;

Noting the Communiqué by the Steering Board of the Peace Implementation Council of 3 December 2004, in

which the Steering Board underlined that “the efficient administration of justice, a core plank of Bosnia and Herzegovina’s postwar rehabilitation, depends on a properly functioning and appropriately remunerated judiciary” and in which it fully supported “the urgent need to review judicial salaries in order to ensure the proper allocation of funds to enable the judicial system to work effectively.”

Noting further that to avoid a further deterioration of the situation the High Representative froze judicial salaries by Decision of 13 December, 2004 and that a Working Group, consisting of the representatives from the ministries of justice at Entity and Bosnia and Herzegovina levels, Brcko District Judicial Commission, the High Judicial and Prosecutorial Council of Bosnia and Herzegovina as well as judges and prosecutors associations in both Entities, was established and tasked with reviewing judicial salaries and drafting new legislation;

Welcoming the recommendations of the Working Group that salaries for judges and prosecutors should be harmonized between the Entities, that the benefits that were eliminated by the Entity Parliaments in 2003 should not be reinstated, that salaries for judges and prosecutors should be modestly reduced, that the current salaries should continue to be frozen until the average salary in Bosnia and Herzegovina has reached a certain level, that when the salaries again start to increase they will increase with the same percentage as the average salary in Bosnia and Herzegovina thus securing a fixed ratio between the average salary in Bosnia and Herzegovina and judicial salaries as well as continued harmonization between the Entities;

Welcoming that fact that the High Judicial and Prosecutorial Council of Bosnia and Herzegovina , at its session held on 23 August 2005, has supported the recommendations of the Working Group;

Recalling the Communiqué by the Steering Board of the Peace Implementation Council of 24, June 2005 where it remained worried “over the fiscal sustainability challenge faced by Bosnia and Herzegovina ’s governments, especially at Entity level;

Realizing that implementation of the recommendations of the Working Group is critical for the functioning of the judicial system in Bosnia and Herzegovina and that in this respect it is paramount that they take effect from the beginning of the upcoming budget year starting 1 January 2006;

Realizing that a reduction of salaries and benefits in the judiciary and prosecution which is particularly pertinent, fair and needed – would be impossible without amendments to the Constitution of the Federation of Bosnia and Herzegovina;

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

DECISION

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

The Amendment set out hereunder forms an integral part of this Decision. This amendment shall enter into force on 31 December 2005 unless the said Amendment is adopted in the same text, in due form, without amendment and with no conditions attached by the Parliament of the Federation of Bosnia and Herzegovina before 30 December 2005. Should such an Amendment be adopted by the Parliament of the Federation of Bosnia and Herzegovina in a different text, with amendments or with conditions attached, such Amendment shall not enter into force.

In the event that the Amendment attached as an integral part of this Decision enters into force in accordance with the terms of this Decision, it shall enter into force on an interim basis, until such time as the Parliament of the Federation of Bosnia and Herzegovina adopts this Amendment in due form, without amendment 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.

Sarajevo, 9 December 2005

AMENDMENTS TO THE CONSTITUTION OF THE FEDERATION OF BOSNIA AND HERZEGOVINA

AMENDMENT CVI

After Article IX. 11 e, a new Article IX. 11 f shall be added to read as follows:

“Article 11 f

(1) As a derogation to the principle prescribed in Paragraph 1 of Article IV.C.7, Paragraph 3 of Article V.4.11 and Paragraph 4 of Article VI.7 of this Constitution, salaries and/or other emoluments of judges may be diminished by law before 10 January 2006.

(2) The reduction referred to in Paragraph 1 of this Article may only occur once.

(3) Nothing in Paragraphs 1 and 2 of this Article shall be interpreted as allowing in any manner or form either directly or indirectly any other reduction of salaries and/or emoluments of judges protected by Paragraph 1 of Article IV.C.7, Paragraph 3 of Article V.4.11 and Paragraph 4 of Article VI.7 of this Constitution.”