

Decision Correcting the Translation of the Official Decision of the High Representative 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 by Article II:1(d) of the same Annex which requires the High Representative to facilitate the resolution of any difficulties arising in connection with civilian implementation of the General Framework Agreement for Peace in Bosnia and Herzegovina;

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;

Bearing in mind the High Representative's Decision of 28 January 2004 No.183/04 which enacted the Statute of the City of Mostar ("Official Gazette of the City of Mostar" No. 4/04);

Considering that the said Statute, along with the amendments to the Constitution of the Federation of Bosnia and Herzegovina, the Constitution of the Herzegovina-Neretva Canton and the Election Law of Bosnia and Herzegovina, provides for a legal framework that consolidates the administrative, functional and legal unity of the City of Mostar in a manner that promotes efficiency in the delivery of services, guarantees the fundamental rights of all citizens, ensures the collective rights of the constituent peoples and prevents dominance by one segment of the population of Mostar;

Noting that the Constitutional Court of the Federation of Bosnia and Herzegovina (hereinafter: the FBiH Constitutional Court), deciding on the request of the Prime Minister of the Herzegovina-Neretva Canton for the review of constitutionality of certain provisions of the Statute of the City of Mostar, at its Session held in its Case No. U-31/06 (Official Gazette of the Federation of Bosnia and Herzegovina no. 31/07 of 9 May 2007) that Article 44, Paragraph 1 and 3 of the Statute of the City of Mostar are incompatible with the Constitution of the Federation of Bosnia and Herzegovina, and that Article 16, Article 17, paragraphs 1 and 2, Articles 23 and 24, Article 38, paragraph 1 and Article 44, paragraphs 2, 4, 5 and 6 are compatible with the Constitution of the Federation of Bosnia and Herzegovina;

Interpreting, as the final authority in theatre under Article V of Annex 10 of the General Framework Agreement for Peace in Bosnia and Herzegovina, that Bosnia and Herzegovina is obliged to accord immunities to the High Representative and that acts of the High Representative can consequently not be reviewed by any authority in Bosnia Herzegovina unless the High Representative consents to such a review;

Bearing in mind the theory of functional duality developed by the Constitutional Court of Bosnia and Herzegovina in its Decision U9/00 of 3 November 2000 whereby the said Court opined that acts of the High Representative, when acting in substitution for the authorities of Bosnia and Herzegovina, could be open to review by the Constitutional Court, insofar as those acts would otherwise be subject to review under national law, while the powers exercised solely under Annex 10 are not subject to such review;

Recalling that the High Representative has, based on his powers deriving from Annex 10 of the General Framework Agreement for Peace in Bosnia and Herzegovina, decided in the past to consent to the review of certain of his acts within the framework of the above mentioned domestic theory of functional duality;

Bearing in mind that the High Representative has, with respect to the case at hand, consented to the FBiH Constitutional Court reviewing the constitutionality of his Decision Enacting the Statute of the City of Mostar and that he accordingly forwarded written observations to the FBiH Constitutional Court on 23 February 2007 in order

to assist the Court in its examination of Case No. U-31/06;

Noting that the part of the Court's Judgment in Case No. U-31/06 related to Article 44, Paragraph 1 and 3 of the Statute of the City of Mostar was fully based on Amendment CI to the Constitution of the Federation of Bosnia and Herzegovina which added, *inter alia*, a new Article VI.C Paragraph 7 to the said Constitution;

Noting further that the said Amendment to the Constitution of the Federation of Bosnia and Herzegovina constitutes an integral part of the Decision of the High Representative Enacting Amendments to the Constitution of the Federation of Bosnia and Herzegovina of 28 January 2004 published in the Official Gazette of the Federation of Bosnia and Herzegovina, No. 9/04 of 16 February 2004;

Regretting that an inconsistency has been identified between the official English version of the text of the Decision of the High Representative Enacting Amendments to the Constitution of the Federation of Bosnia and Herzegovina signed by the High Representative on 28 January 2004, and the translated version published in the Official Gazette of the Federation of Bosnia and Herzegovina No. 9/04 of 16 February 2004;

Noting that the Amendments enacted by the said Decision of the High Representative have not yet been adopted by the Parliament of the Federation of Bosnia and Herzegovina;

Mindful that, pending the adoption of the Amendments enacted by the said Decision by the Parliament of the Federation of Bosnia and Herzegovina, the official English version signed by the High Representative prevails over the translated version;

Having considered, borne in mind and noted all the matters aforesaid, conscious of the need to correct the technical mistake in translation therein and willing to implement the decision of the FBiH Constitutional Court, the High Representative hereby issues the following:

DECISION

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Article 1

In Article VI.C, Paragraph 7 of the Constitution of the Federation of Bosnia and Herzegovina, the first sentence which reads as follows: "Svaki građanin Bosne i Hercegovine koji ispunjava uslove za glasanje u Gradu Mostaru može biti izabran za gradonačelnika Grada Mostara", shall be replaced by the following sentence: "Samo vijećnici izabrani u Gradsko vijeće mogu biti birani za gradonačelnika Grada Mostara".

Article 2

For the avoidance of any doubt, it is hereby specifically declared and provided that, the corrected provision referred to in Article 1 of this Decision is deemed to have been in force as of 15 March 2004.

Article 3

For the avoidance of any doubt, it is hereby specifically provided that the Parliament of the Federation of Bosnia and Herzegovina shall, when adopting the Amendments enacted by the Decision of the High Representative Enacting Amendments to the Constitution of the Federation of Bosnia and Herzegovina signed by the High Representative on 28 January 2004, adopt the text of the said Amendments as corrected by this Decision.

Article 4

This Decision shall enter into force forthwith and shall be published in the Official Gazette of the Federation of Bosnia and Herzegovina.

Sarajevo, 04 May 2007

*Dr. Christian Schwarz-Schilling
High Representative*