

Order Temporarily Suspending Certain Decisions of the Central Election Commission of Bosnia and Herzegovina Adopted at its 21st Session Held on 24 March 2011 and any Proceedings Concerning Said Decisions

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”;

Noting that, under Chapter VII of the United Nations Charter, the United Nations Security Council expressly affirmed the aforementioned Conclusions of the Peace Implementation Council in a series of resolutions, including Resolutions 1247 (1999), 1423 (2002), 1491 (2003), 1551 (2004), 1575 (2004), 1639 (2005), 1722 (2006), 1785 (2007), 1845 (2008), 1895 (2009) and 1948 (2010);

Considering, by way of illustration, Paragraph 4 of Resolution 1174 (1998) of the United Nations Security Council of 15 June 1998, by which the Security Council, under Chapter VII of the United Nations Charter “... reaffirms that the High Representative is the final authority in theatre regarding the interpretation of Annex 10 on civilian implementation of the Peace Agreement and that in case of dispute he may give his interpretation and make recommendations, and make binding decisions as he judges necessary on issues as elaborated by the Peace Implementation Council in Bonn on 9 and 10 December 1997”;

Bearing in mind that under the Constitution of the Federation of Bosnia and Herzegovina, the House of Peoples of the Parliament of the Federation of Bosnia and Herzegovina had to be convened “*no later than twenty days after the Cantonal Legislatures were elected*” and that under the Election Law of Bosnia and Herzegovina, the Cantonal Legislatures were obliged to elect delegates to the House of Peoples of the Federation of Bosnia and Herzegovina “*as soon as a cantonal assembly convenes after the elections for the Cantonal Assemblies, and no later than one month after validation of the results.*”

Convinced that the Election Law of Bosnia and Herzegovina neither prevents the certification of the mandates of all those delegates elected in order to give effect to the above mentioned provision of the Election Law of Bosnia and Herzegovina nor the publication in the relevant official gazettes of the results of the elections conducted in cantonal assemblies;

Recalling the Legal Opinion of the Office of the High Representative of 9 February 2001 on “An interpretation of certain provisions of the Constitution of the Federation of Bosnia and Herzegovina and the Constitutions of the Cantons of Bosnia and Herzegovina” and the OHR interpretation of 15 January 2007, which clearly provided *inter alia* that the House of Peoples of the Federation of Bosnia and Herzegovina could hold its constitutive session with a simple majority of delegates elected by the Cantons, approve legislation and begin the process of making nominations to the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina while the vacant posts in the House of Peoples of the Federation of Bosnia and Herzegovina would be filled as subsequent elections are approved;

Emphasizing that the institutional mechanisms provided for by the respective Constitutions at the Cantonal,

Federal or State level cannot be paralyzed through boycott and that a Constitution in a democratic system must be interpreted with a view to ensuring effective institutional functioning;

Considering that almost five months after the official results of the 2010 General Elections in Bosnia and Herzegovina have been published, the cantonal assemblies of the Posavina Canton, Western-Herzegovina Canton and Canton 10 have failed to elect their delegates to the House of Peoples of the Federation of Bosnia and Herzegovina in clear violation of the Constitution of the Federation of Bosnia and Herzegovina and the Election Law of Bosnia and Herzegovina;

Concerned that the failure of the Cantonal Assemblies of the Posavina Canton, Western-Herzegovina Canton and Canton 10 to honor their constitutional and legal obligations prevented the constitution of the House of Peoples of the Federation of Bosnia and Herzegovina and consequently the establishment of vital institutions of the Federation of Bosnia and Herzegovina as well as the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina;

Recalling that the Peace Implementation Council Steering Board requested the Office of the High Representative to undertake a mediation effort in an attempt to facilitate the formation of the authorities of the Federation of Bosnia and Herzegovina and that the Office of the High Representative, with the full support of the Peace Implementation Council, undertook these mediation efforts in the period between 9 and 16 March;

Noting that the Office of the High Representative presented during the mediation effort a compromise proposal, which had the full support of the Peace Implementation Council Steering Board and of a broad range of other international factors in Bosnia and Herzegovina, that would have enabled the establishment of a broad-based coalition in the Federation and the formation of the authorities of the Federation of Bosnia and Herzegovina;

Regretting that the political parties which took part in the mediation effort were not able to reach agreement on the basis of this compromise proposal, despite agreement on a joint political program and on the distribution of the vast majority of senior executive and legislative functions in the Federation of Bosnia and Herzegovina;

Bearing in mind that the constituent session of the House of Peoples of the Parliament of the Federation of Bosnia and Herzegovina was convened on 17 March 2011 by delegates elected by seven cantonal assemblies;

Recalling that the Decision regarding the Election of the Chair and the Vice-Chairmen of the House of Peoples of the Parliament of the Federation of Bosnia and Herzegovina, the Decision on the Election of the President of the Federation of Bosnia and Herzegovina and the Vice-presidents of the Federation of Bosnia and Herzegovina and the Decision on Confirmation of the Decision on Appointment of the Prime Minister/President, Deputy Prime Ministers and Ministers in the Government of the Federation of Bosnia and Herzegovina, all adopted on 17 March 2011, were subsequently published in the "Official Gazette of the Federation of BiH" No. 12/11;

Aware that at least two requests regarding the constitutionality of the constituent session of the House of Peoples of the Parliament of the Federation of Bosnia and Herzegovina and certain acts adopted by the House of Peoples of the Parliament of the Federation of Bosnia and Herzegovina as well as the Decision on the Election of the President and the Vice-presidents of the Federation of Bosnia and Herzegovina adopted on 17 March 2011, have been submitted to the Constitutional Court of the Federation of Bosnia and Herzegovina and that it belongs to the Constitutional Court of the Federation of Bosnia and Herzegovina to pronounce itself on any such requests;

Noting that, until the Constitutional Court of the Federation of Bosnia and Herzegovina pronounces itself on the matter, it is imperative to preserve the stability and the functioning of the institutions, to provide legal certainty, and to ensure the smooth functioning of the authorities of the Federation of Bosnia and Herzegovina for the benefit of all its citizens;

Taking into account that the two decisions adopted by the Central Election Commission of Bosnia and Herzegovina on its 21st Session held on 24 March 2011, *inter alia*, touch upon issues which arise under the Constitution of the Federation of Bosnia and Herzegovina and therefore may be subject to the jurisdiction of the Constitutional Court of the Federation of Bosnia and Herzegovina and therefore go beyond the Election Law of Bosnia and Herzegovina;

Having considered, borne in mind and noted all the matters aforesaid, the High Representative, after having consulted with the Ambassadors of the Steering Board of the Peace Implementation Council, hereby issues the following:

ORDER

Temporarily Suspending Certain Decisions of the Central Election Commission of Bosnia and Herzegovina Adopted at its 21st Session Held on 24 March 2011 and any Proceedings Concerning Said Decisions

Article 1

The Decision of the Central Election Commission of Bosnia and Herzegovina adopted on its 21st Session held on 24 March 2011 that *established that the elections for the House of Peoples of the Federation Parliament have not been conducted in all ten cantons in accordance with the provisions of the Election Law of Bosnia and Herzegovina, and that no conditions were met for its constitution* as well as all proceedings concerning the said Decision are hereby temporarily suspended until such time as the High Representative decides otherwise.

Article 2

The Decision of the Central Election Commission of Bosnia and Herzegovina adopted on its 21st Session held on 24 March 2011 that *established that the election of the President and Vice Presidents of the Federation of Bosnia and Herzegovina made by the Decision of both Houses of the Parliament of the Federation of BiH no. 01,02-05-183/11 of 17/03/2011 published in the („Official Gazette FBiH“, no. 12/11) was not conducted in accordance with the Election Law of Bosnia and Herzegovina and by which the election of the President and Vice Presidents of the Federation of Bosnia and Herzegovina has been made null and void and that once this Decision becomes final and binding it shall be published in the Official Gazette of BiH, the Official Gazette of FBiH, the Official Gazette of the RS and the Official Gazette of the Brcko District of BiH* as well as all proceedings concerning the said Decision are hereby temporarily suspended until such time as the High Representative decides otherwise.

Article 3

This Order is issued pursuant to the international mandate of the High Representative and is not issued by way of substitution for any domestic authority. It shall have precedence over any inconsistent provisions of any law, regulation or act, existing or future. This Order shall be directly applicable and no further act is required to ensure its legal effect.

Article 4

This Order shall enter into force forthwith and shall be published on the official website of the Office of the High Representative.

This Order shall be published without delay in the “Official Gazette of Bosnia and Herzegovina” and the “Official Gazette of the Federation of BiH”.

High Representative