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HR DECISION AMENDING THE CONSTITUTION OF REPUBLIKA SPRSKA

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The High Representative's Decision Amending the Constitution of Republika Srpska

May 23, 2002

No. 162/02

In the exercise of the powers vested in me 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”;

Recalling further paragraph I.2.a. of the Conclusions of the said Bonn Conference which recognized “that an impartial and independent judiciary” was “essential to the rule of law and reconciliation within Bosnia and Herzegovina”, that the judicial appointment process must be based on merit, that a judicial training facility must be established, and that the monitoring of the judicial system was an essential element of the aforesaid process;

Mindful of paragraph II.2 of the Annex to the Declaration of the Peace Implementation Council (Madrid, 16 December 1998) which “emphasize[d] the importance of intensified judicial reform efforts, co-ordinated by the High Representative, to support the efforts of the authorities in BiH [Bosnia and Herzegovina]” and “urge[d] the High Representative to further develop a comprehensive judicial reform strategic plan, identifying short and longer-term priorities, in consultation with the authorities, the Council of Europe, OSCE, UNMIBH and other organizations”;

Bearing in mind that a truly independent and impartial judicial and prosecutorial system is essential to ensure the Rule of Law in all criminal, civil and commercial matters and guarantee the advancement of human rights and freedoms and reconciliation within Bosnia and Herzegovina, and the establishment of a functioning market economy;

With the objective of ensuring that international standards contained in the "Basic Principles of Court Independence" of the UN of 1985, Council of Europe Recommendation No. R (94) 12 of the Committee of Ministers of Member States on the “Independence, Efficiency and the Role of Judges” and the Council of Europe’s European Charter on the “Statute for Judges” are respected and that a professional, efficient and impartial selection, appointment, disciplinary and dismissal process of Judges and Prosecutors in the Republika Srpska is established;

Observing that the Judicial and Prosecutorial appointment, disciplinary and dismissal process must be conducted according to objective criteria based on proper professional qualifications and transparent procedures to ensure a Judiciary that is the legitimate guardian of the Rule of Law in the Republika Srpska;

With the objective of guaranteeing the development of an independent and unbiased judiciary, and of the prosecutorial service in the Republika Srpska;

Having considered and borne in mind all the aforesaid matters, I hereby issue the following:

DECISION AMENDING THE CONSTITUTION OF THE REPUBLIKA SRPSKA

The Constitution of the Republika Srpska is hereby amended as follows:

Amendment XCIII

Item 3 of Paragraph 1 of Article 80 is amended to read:

“3. nominate to the National Assembly candidates for the president and judges of the Constitutional Court upon proposal by the High Judicial and Prosecutorial Council;”

Amendment XCIV

After Article 121., a new Article 121.a. is added and reads:

“The Judiciary is autonomous and independent from the executive and legislative powers of Republika Srpska.

The High Judicial and Prosecutorial Council of Republika Srpska shall ensure the autonomy, independence, impartiality, competence and efficiency of the Republika Srpska judiciary and of the prosecutorial service. The responsibilities of the High Judicial Council shall include, but shall not be limited to, the appointment, discipline and removal of judges, apart from the Judges of the Constitutional Court of the Republika Srpska, and shall also include public prosecutors and deputy public prosecutors in the Republika Srpska. The composition and additional responsibilities of the High Judicial and Prosecutorial Council shall be defined by law.”

Amendment XCV

In Article 126 after the word “responsible” the words: “in criminal or civil procedure” shall be inserted and after the words “after the approval of the” the words “National Assembly” are replaced by the words “ High Judicial and Prosecutorial Council”.

Amendment XCVI

Article 127. is amended to read:

“Judges, apart from reserve judges shall, save as hereinafter set out, be appointed for life subject to resignation, retirement or removal for cause by the High Judicial and Prosecutorial Council in accordance with the law. Judges may likewise exceptionally cease to hold office pursuant to a selection process following court restructuring during the transitional period to be defined in the Law establishing the High Judicial and Prosecutorial Council. The mandatory age for judges shall be determined by Law. Terms of service, including immunity of judges shall be determined by law. The salary and other emoluments of a judge may not be diminished during the period of his/her judicial office except as a result of disciplinary proceedings in accordance with law.

A judge may not hold a public office or pursue any form of gainful employment defined by law as incompatible with the judicial function.”

Amendment XCVII

Article 129 is amended to read:

“Public Prosecutors and Deputy Public Prosecutors shall be appointed for such period as may be determined by Law subject to resignation, retirement or removal for cause by the High Judicial and Prosecutorial Council in accordance with the law. Public Prosecutors and Deputy Public Prosecutors may exceptionally cease to hold office pursuant to a selection process following restructuring of Public Prosecutor’s Offices in the transitional period to be defined in the Law establishing the High Judicial and Prosecutorial Council. The mandatory age for public prosecutors and deputy public prosecutors shall be defined by Law. Terms of service, including immunity of public prosecutors and deputy public prosecutors shall be determined by law.

A Public Prosecutor or a deputy public prosecutor may not hold any office or pursue any form of gainful employment defined by law as incompatible with his function.”

Amendment XCVIII

Article 130 is amended to read:

“Judges, including the Court Presidents, public prosecutors and deputy public prosecutors are selected, appointed, disciplined and removed by the High Judicial Council in accordance with the law.”

Sarajevo, 23 May 2002

Wolfgang Petritsch
High Representative