

Order Suspending the Application of the Law on Immovable Property Used for Functioning of Public Authority

n. 01/22

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”;

Recalling 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”;

Further recalling that the Security Council of the United Nations has repeatedly affirmed, through its resolutions adopted pursuant to Chapter VII of the Charter of the United Nations, that the role of High Representative as final authority in theater regarding the implementation of Annex 10 to the GFAP includes the “authority to make binding decisions as he judges necessary on issues as elaborated by the Peace Implementation Council in Bonn on 9 and 10 December 1997”;

Recalling that the Peace Implementation Council Steering Board, by its Declaration of 24 September 2004 at the level of Political Directors, called for a lasting solution to the issue of State Property;

Recalling further that a Decision of the Council of Ministers of Bosnia and Herzegovina established, in December 2004, the “Commission for State Property, for the Identification and Distribution of State Property, the Specification of Rights and Obligations of Bosnia and Herzegovina, the Entities and the Brcko District of Bosnia-Herzegovina in the Management of State Property” (hereinafter: Commission), comprised of expert representatives from both Entities of Bosnia and Herzegovina, the Brcko District of Bosnia and Herzegovina and institutions of Bosnia and Herzegovina (“Official Gazette of Bosnia and Herzegovina”, Nos. 10/05, 18/05, 69/05 and 70/05);

Reaffirming that, in order to protect the interests of Bosnia and Herzegovina and its subdivisions from the potential prejudice posed by further disposals of State Property prior to the enactment of appropriate legislation, the High Representative enacted laws at the level of the State and the Entities, which temporarily prohibit the disposal of State Property, namely the *Law on the Temporary Prohibition of Disposal of State Property of Bosnia and Herzegovina* (“Official Gazette of Bosnia and Herzegovina”, No. 18/05, 29/06, 85/06, 41/07, 74/07, 99/07 and 58/08), *Law on the Temporary Prohibition of Disposal of State Property of the Federation of Bosnia and Herzegovina* (“Official Gazette of the Federation of Bosnia and Herzegovina”, No. 20/05, 17/06, 62/06, 40/07, 70/07, 94/07 and 41/08), and the *Law on the Temporary Prohibition of Disposal of State Property of Republika Srpska* (“Official Gazette of Republika Srpska”, No. 32/05, 32/06, 100/06, 44/07, 86/07, 113/07 and 64/08), (collectively hereinafter: State Property Disposal Ban);

Recalling that on 27 February 2008 the Peace Implementation Council Steering Board defined the “Acceptable and Sustainable Resolution of the Issue of Apportionment of Property between State and other Levels of

Government” as the first of five objectives that will need to be delivered by the authorities of Bosnia and Herzegovina prior to the Office of the High Representative’s transition, and requested that the “High Representative undertake all appropriate measures to ensure that the above objectives are met”;

Taking into account the Decision of the High Representative Amending the Law on the Temporary Prohibition of Disposal of State Property of Bosnia and Herzegovina enacted on 12 April 2022 by which “Notwithstanding the provisions of any other law or regulation, State Property may be disposed of only by the State of BiH, as its title holder, in accordance with the provisions of this Law” and that the “The temporary prohibition on the disposal of State Property in accordance with this Law shall be in force until entry into force of a state-level legislation regulating rights of ownership and management of State Property, adopted by the BiH Parliamentary Assembly, or the High Representative decides otherwise”;

Recalling that in final and binding decisions (Decisions of the Constitutional Court of BiH in cases No. U 1/11 of 13 July 2012; No. U 8/19 of 6 February 2020, No. U 9/19 of 6 February 2020 and No. U 4/21 of 27 September 2021) the Constitutional Court of Bosnia and Herzegovina determined *among others* that Bosnia and Herzegovina is the titleholder of the State Property and that Bosnia and Herzegovina has the exclusive right to regulate the State property, as its title holder;

Recalling the High Representative’s letter to the Joint Collegium of the BiH Parliamentary Assembly from 3 December 2021, in which he invited the Parliament to take ownership and establish an expert Working Group on State and Defense Property, which would formulate and consider options towards an acceptable and sustainable resolution of these issues;

Noting that in its Communiqué from 8 December 2021 the Steering Board of the Peace Implementation Council reiterated its full support to and commitment to close cooperation with the High Representative in exercising his crucial mandate and to his executive powers, and welcomed his engagement with the political leaders of BiH in fulfilling the 5+2 Agenda, including the formation of the Working Group on State and Defense Property;

Considering that, on 10 February 2022, the National Assembly of Republika Srpska adopted the *Law on Immovable Property Used for Functioning of Public Authority* (“Official Gazette of Republika Srpska”, No. 29/22) and that the scope of “immovable property” as defined under the said Law fails to explicitly exempt State Property assets while including also State Property assets;

Noting further that the *Law on Immovable Property Used for Functioning of Public Authority* by declaring such assets as ownership disregards a number of final and binding Constitution decisions of the Constitutional Court of Bosnia and Herzegovina;

Considering further that that the application of the *Law on Immovable Property Used for Functioning of Public Authority* preclude an acceptable and sustainable resolution of the issue of State Property;

Noting that at least one request for the review of the constitutionality of the *Law on Immovable Property Used for Functioning of Public Authority* (“Official Gazette of Republika Srpska”, No. 29/22), before the Constitutional Court of Bosnia and Herzegovina has been announced;

Mindful that the Constitutional Court of Bosnia and Herzegovina should determine *inter alia* whether a request for the review of the constitutionality of the *Law on Immovable Property Used for Functioning of Public Authority* is admissible, and if so, whether the *Law on Immovable Property Used for Functioning of Public Authority* (“Official Gazette of Republika Srpska”, No. 29/22), is consistent with the Constitution of Bosnia and Herzegovina;

Taking into consideration that, until the Constitutional Court reaches a final decision on the matter concerning the disputed legislation, the preservation of the ownership interests of the State of Bosnia and Herzegovina requires the suspension of the application of legal acts by which new rights of ownership may be established on State Property undermining the State of Bosnia and Herzegovina as the titleholder of State Property as well as the exclusive responsibility of the State of Bosnia and Herzegovina and the Parliamentary Assembly of Bosnia and Herzegovina to regulate the issue of State Property;

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

ORDER

Suspending the Application of the Law on Immovable Property Used for Functioning of Public Authority

Article 1

The application of the Law on Immovable Property Used for Functioning of Public Authority ("Official Gazette of Republika Srpska", No. 29/22), is hereby suspended until a final decision of the Constitutional Court of Bosnia and Herzegovina on said Law enters into force.

Article 2

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 3

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".

Sarajevo, 12 April 2022

Christian Schmidt
High Representative