

Decision Preventing the Entry into Force of the Law on Non-application of Decisions of the Constitutional Court of Bosnia and Herzegovina

14/23

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”;

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;”

Mindful of the most recent Communiqué of the Steering Board of the Peace Implementation Council, which reiterated its full support for the High Representative in ensuring complete respect for the GFAP and in carrying out his mandate under Annex 10 and relevant UN Security Council Resolutions;

Remembering that the UN Security Council, in Resolution 2549 (2020) “urges the parties, in accordance with the Peace Agreement, to abide to their commitment to cooperate fully with all institutions involved in the implementation of this peace settlement, as described in the Peace Agreement;”

Recalling that the Constitutional Court of Bosnia and Herzegovina is a central institution of the State of Bosnia and Herzegovina established by the Constitution of Bosnia and Herzegovina as an independent guardian of the Constitution of Bosnia and Herzegovina vested with exclusive jurisdiction to decide any dispute that arises under the Constitution of Bosnia and Herzegovina between the Entities or between Bosnia and Herzegovina and an Entity or Entities, or between institutions of Bosnia and Herzegovina;

Reminding that under Article I.2 of the Constitution, Bosnia and Herzegovina “shall be a democratic state which shall operate under the rule of law,” that article VI.5 of the Constitution provides that “decisions of the Constitutional Court shall be final and binding,” and that Article III.3(b) requires the Entities and any subdivisions thereof to fully comply with the Constitution of Bosnia and Herzegovina and with the decisions of its institutions;

Emphasizing that the Constitutional Court of Bosnia and Herzegovina is independent of all other governmental bodies in Bosnia and Herzegovina and that all such bodies are obliged to respect its independence;

Reminding that the judiciary is cornerstone to the Rule of Law and that its independence, professionalism and authority require that it is free from external pressure and political influence, and that such a requirement is an integral part of the fundamental democratic principle of the separation of powers;

Stressing that non-implementation of courts’ decisions in general and especially decisions of the Constitutional Court of Bosnia and Herzegovina directly undermines the constitutional order, the rule of law and the division of powers;

Deeply concerned that public officials and public authorities are not only deliberately failing to comply with the decisions of the Constitutional Court of Bosnia and Herzegovina, but call upon and attempt to oblige responsible persons to do so;

Noting in this regard the serious attacks on the Constitutional Court of Bosnia and Herzegovina by the authorities of Republika Srpska, seeking to incapacitate the Constitutional Court of Bosnia and Herzegovina as one of the highest institutions of the land;

Reminding that such attacks on the Constitutional Court of Bosnia and Herzegovina as one of the highest institutions of Bosnia and Herzegovina, and attempts to unlawfully change the constitutional order of Bosnia and Herzegovina, constitute serious violations of the General Framework Agreement for Peace and to peace and stability in the country and the region, and consequently deserve an appropriate response;

Assessing the non-appointment of judges to the Constitutional Court of Bosnia and Herzegovina by the National Assembly of Republika Srpska not as an omission, but as a deliberately adopted policy of the ruling coalition of Republika Srpska to undermine the Constitutional Court of Bosnia and Herzegovina;

Recalling that on 19 June 2023, the Constitutional Court of Bosnia and Herzegovina held an extraordinary session where it considered the political pressure exerted over the judge coming from the Republika Srpska to withdraw from the Constitutional Court of Bosnia and Herzegovina, so the Court would be further sabotaged, and the Court's statement in which it strongly condemned all political pressure and called "on everyone to refrain from it", while underlining that: *"No one, not a single legislative or executive body, has the constitutional authority to 'remove' a judge who has been elected as a judge of the Constitutional Court of Bosnia and Herzegovina. The term of office of a judge in the Constitutional Court can be terminated only in the manner prescribed by the Constitution of Bosnia and Herzegovina"*.;

Deeply concerned about the adoption of the Law on the Non-application of the Decisions of the Constitutional Court of Bosnia and Herzegovina by the Republika Srpska National Assembly at its special session held on 27 June 2023 attempting to provide that decisions taken by the Constitutional Court of Bosnia and Herzegovina shall not be applicable and enforceable in the territory of the Republika Srpska and to exclude from the state jurisdiction in criminal matters and the Criminal Code of Bosnia and Herzegovina, offering political "protection of individuals from possible criminal prosecution due to non-application of the decisions of the Constitutional Court of Bosnia and Herzegovina";

Taking into consideration that the National Assembly of the Republika Srpska included in the attempted legislation a provision that aims at overthrowing the jurisdiction of the state of Bosnia and Herzegovina in criminal matters, by trying to exclude certain persons from the provisions of the Criminal Code of Bosnia and Herzegovina and criminal responsibility under that law;

Reminding that under the Constitution of Bosnia and Herzegovina, the Entities and any subdivisions thereof are obliged to comply fully with the Constitution of BiH and with the state-level legislation and that an entity law may not amend the state level legislation, restricting it or otherwise altering it and that state level authorities' are required to act under the laws regulating their jurisdiction and work;

Convinced that the behavior described above seriously undermines the civilian implementation of the General Framework Agreement for Peace;

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

DECISION

Preventing the Entry into Force of the Law on Non-application of Decisions of the Constitutional Court of Bosnia and Herzegovina

Article 1

The legislative procedure of adoption of the *Law on Non-application of Decisions of the Constitutional Court of Bosnia and Herzegovina* adopted by vote of the National Assembly of Republika Srpska at its Eight Special Session held on 27th June 2023 is hereby terminated.

All acts and procedural steps adopted or finalized within the legislative procedure of adoption of the *Law on Non-application of Decisions of the Constitutional Court of Bosnia and Herzegovina*, including the adoption by vote of the National Assembly of Republika Srpska at its Eight Special Session held on 27th June 2023, are hereby declared null and void *ab initio* and are without any legal effect whatsoever.

The *Law on Non-application of Decisions of the Constitutional Court of Bosnia and Herzegovina* adopted by vote of the National Assembly of Republika Srpska at its Eight Special Session held on 27th June 2023 shall not enter into force.

Article 2

All competent authorities and official persons shall cease any acts and activities purported to enable the entry into force and the application of the Law referred to in Article 1 of this Decision in any manner whatsoever, including the promulgation of the said Law and its publication in the "Official Gazette of Republika Srpska".

Article 3

All acts and activities referred in Article 2 of this Decision or the application in any manner whatsoever of the Law referred to in Article 1 of this Decision fall within the ambit of the provisions of Article 2 of the Law on Amendments to the Criminal Code of Bosnia and Herzegovina and Article 203a (*Failure to Implement Decisions of the High Representative*) of the Criminal Code of Bosnia and Herzegovina and therefore may be subject to criminal prosecution.

Article 4

This Decision shall have precedence over any inconsistent provisions of the Constitution of Republika Srpska, any law, regulation or act, existing or future. This Decision shall be directly applicable and no further act is required to ensure its legal effect.

Article 5

This Decision shall enter into force immediately upon publication on the official website of the Office of the High Representative.

This Decision shall be published on the official website of the Office of the High Representative and shall be published without delay in the "Official Gazette of Bosnia and Herzegovina" and in the "Official Gazette of Republika Srpska".

Sarajevo, 1 July 2023

Christian Schmidt

High Representative