

Decision Preventing the Entry into Force of the Law on Amendments to the Law on Publication of Laws and Other Regulations of Republika Srpska

15/23

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”;

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”;

Mindful of the most recent Communique 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;”

Considering that the obligations assumed by Annex 10 of the GFAP by the parties to the agreement, including Republika Srpska, cover that (Article IV) “the Parties shall fully cooperate with the High Representative and his or her staff, as well as with the international organizations and agencies as provided for in Article IX of the General Framework Agreement” and that “the High Representative is the final authority in theater regarding interpretation of this Agreement on the civilian implementation of the peace settlement”;

Reminding of the Decision of the Constitutional Court of Bosnia and Herzegovina in Case No. U-9/00 of 3 November 2000 which, among others, established that “... Taking into account the overall situation in Bosnia and Herzegovina, the legal status of the High Representative, as a representative of the international community, is not exceptional, similar functions are already known from other countries in special political circumstances. Relevant examples are mandates under the League of Nations Regime, and, in some respects Germany and Austria after the World War II. Although recognized as sovereign, the respective states were subject to international supervision, and foreign authorities acted in those countries on behalf of international community, substituting for domestic

authorities. Acts passed by international authorities were often enacted on behalf of the states under control”;

Reminding further that the above Decision of the Constitutional Court of Bosnia and Herzegovina recognized that substituting the functions of the authority of the land “resulted in a functional duality: one government in one legal system intervenes in another legal system, which makes its functions dual. The same applies to the High Representative: the international community entrusted him with special powers and his mandate is of an international character. (...) the High Representative – whose powers which derive from Annex 10 of the General Framework Agreement, relevant resolutions of the Security Council of the United Nations and the Bonn Declarations, are not subject to the control of the Constitutional Court as well as their implementation powers – intervened in the legal system of Bosnia and Herzegovina, substituting local authorities. In that regard, (...) the law the High Representative enacted was of the nature of domestic law and must be considered the law of Bosnia and Herzegovina”;

Mindful that the position of the Constitutional Court of Bosnia and Herzegovina is that “(...) regardless of the nature of the powers granted to the High Representative by Annex 10 of the General Framework Agreement for Peace in Bosnia and Herzegovina, the fact that the law (...) is enacted by the High Representative, not the Parliamentary Assembly of Bosnia and Herzegovina [or any other authority] does not change the status of the law” neither in its content nor in its status, and is therefore to be considered a law of the land;

Considering further that the subject of the Law on Publication of Laws and Other Regulations of the Republika Srpska (Official Gazette of the Republika Srpska, Nos. 67/05 and 110/08) is the method of publishing the laws and other regulations and the establishment of a public company in charge of publishing laws and other regulations and that this law exhaustively enumerates the bodies whose acts are published by this company, where the decisions of the High Representative are explicitly mentioned;

Being conscious that the Law on Amendments to the Law on the Publication of Laws and Other Regulations of the Republika Srpska which omits the obligation to publish the decisions of the High Representative in the “Official Gazette of Republika Srpska”, although having no effect to the mandate of the High Representative, nor to the status and legal effect of the High Representative’s decisions substituting for domestic authorities nor those enacted pursuant to the High Representative’s international mandate, represent one in the series of activities denying cooperation with the High Representative, thereby acting contrary to Annex 10 of the General Framework Agreement for Peace in Bosnia and Herzegovina;

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

DECISION

Preventing the Entry into Force of the Law on Amendments to the Law on Publication of Laws and Other Regulations of Republika Srpska

Article 1

The legislative procedure of adoption of the *Law on Amendments to the Law on Publication of Laws and Other Regulations of Republika Srpska* adopted by vote of the National Assembly of Republika Srpska at its Session held on 21st June 2023 is hereby terminated.

All acts and procedural steps adopted or finalized within the legislative procedure of adoption of the *Law on Amendments to the Law on Publication of Laws and Other Regulations of Republika Srpska*, including the adoption by vote of the National Assembly of Republika Srpska at its Session held on 21st June 2023 are hereby declared null and void *ab initio* and are without any legal effect whatsoever.

The *Law on Amendments to the Law on Publication of Laws and Other Regulations of Republika Srpska*, adopted by vote of the National Assembly of Republika Srpska at its Session held on 21st 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