

Decision Withdrawing the Authentic Interpretation of Article 3 of the Law on Transfer of Social Property into State Property of Republika Srpska

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 “(f)acilitate, 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, that the Declaration of the Peace Implementation Council Steering Board adopted at the level of Political Directors in Sarajevo on 24 September 2004, called for a “lasting solution” to “the issue of State Property”;

Noting that pursuant to the aforesaid declaration, a 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 and 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 the Institutions of Bosnia and Herzegovina, was formed in December 2004 by a Decision of the Council of Ministers of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina no. 10/05, 18/05, 69/05, 70/05);

Considering that, in accordance with the aforementioned Decision, the Commission is tasked, among other things, with proposing legislation that regulates the identification of which property is owned by Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, Republika Srpska and Brcko District of Bosnia and Herzegovina, and that specifies their respective rights of ownership and management of State Property”;

Recalling, that the Law on the Temporary Prohibition of Disposal of State Property of Republika Srpska (Official Gazette of Republika Srpska 32/05, 32/06, 100/06, 44/07) temporarily prohibits disposals of a State Property until the earlier of either the entry into force of the above-mentioned legislation on ownership rights and management of State Property, or on 30 September 2007;

Considering that the National Assembly of Republika Srpska, on 18 July 2007, adopted an Authentic Interpretation of Article 3 of the Law on Transfer of Social Property into State Property (Official Gazette of Republika Srpska no. 74/07, hereinafter, Authentic Interpretation), prescribing that property which became state property on the basis of Article 3 of the Law on Transfer of Social Property into State Property, shall be registered, *ex officio*, by the land registry offices within the Basic Courts of Republika Srpska, as property of Republika Srpska;

Considering further, that the Law on the Temporary Prohibition of Disposal of State Property of Republika Srpska, in accordance with Article 3 thereof, only exempts assets and rights of enterprises, registered as such, that are subject to privatization in accordance with Law on Privatization of State Capital in Enterprises in Republika Srpska (Official Gazette of Republika Srpska no. 51/06, 01/07, 53/07), and which constitute the approved active balance sheet of enterprises as prescribed by the Law on Opening Balance Sheet in the Privatization Procedure of State Capital in Enterprises (Official Gazette of Republika Srpska no. 24/98); assets that are subject to sale pursuant to the Law on Privatization of State Owned Apartments (Official Gazette of RS no. 11/00, 20/00, 18/01, 23/02, 35/01, 65/01, 47/02, 65/03, 03/04, 70/04 02/05, 67/05, 118/05, 70/06, 38/07, and 60/07), and state property

that is exempted by the aforementioned Commission;

Noting with regret, that the registration of State Property as property of Republika Srpska, as provided for by the aforementioned Authentic Interpretation, falls outside of the scope of exemptions provided for by Article 3 of the Law on Temporary Prohibition of Disposal of State Property of Republika Srpska, and that the prescribed registration has not been expressly exempted from the temporary prohibition by the Commission;

Recalling further that, in accordance Article 2 of the Law on the Temporary Prohibition of Disposal of State Property of Republika Srpska, any decision, act, contract, or other legal instrument, purporting to dispose of State Property in contravention of the aforesaid law is null and void;

Noting, as a result, that the Authentic Interpretation of Article 3 of the Law on Transfer of Social Property into State Property is null and void *ab initio*;

Noting further, that clarity and legal certainty require the Authentic Interpretation to be formally withdrawn, and for the said withdrawal to be published in the Official Gazette of Republika Srpska;

Recognizing, that the protection of 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 requires the continued enforcement of the laws temporarily prohibiting the disposal of State Property by Bosnia and Herzegovina, the Entities or any of its other subdivisions;

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

DECISION

Withdrawing the Authentic Interpretation of Article 3 of the Law on Transfer of Social Property into State Property of Republika Srpska

Article 1

The Authentic Interpretation of Article 3 of the Law on Transfer of Social Property into State Property, adopted by National Assembly of Republika Srpska at its 13th Session, held on 18 July 2007 and published in the Official Gazette of Republika Srpska (no. 74/07), is herewith withdrawn.

Article 2

Any decision, act, contract, registration in the land registers, or any other legal act undertaken on the basis of the authentic interpretation referred to in Article 1 of this Decision, is null and void *ab initio*.

Article 3

The land registry offices within the Basic Courts of Republika Srpska shall delete, *ex officio*, in accordance with this Decision, any registration entered in the land registers on the basis of the authentic interpretation referred to in Article 1 of this Decision.

Article 4

This Decision enters into force with immediate effect and shall be published on the official website of the Office of the High Representative forthwith. This Decision shall also be published without delay in the "Official Gazette of Republika Srpska".

Sarajevo, 14 September 2007

Miroslav Lajčák
High Representative