

Decision further limiting the scope of the ban from public office in the removal decisions issued by the High Representative

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 ("GFAP"), 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 as well as the smooth running of the common institutions" ("Conclusions");

Noting that, pursuant to the GFAP and the Conclusions, the High Representative has exercised his authority to remove officials from public office, thus far, on one hundred sixty (160) occasions;

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" (See, for instance, S/ RES/1247(1999), S/ RES/1305(2000), S/ RES/1357(2001), S/ RES/1396(2002) or S/ RES/1491(2003)) ("Resolutions");

Convinced that the exercise of such power has proved and continues to prove essential in preventing obstruction of the implementation of the GFAP;

Mindful, however, that the sanction of removal imposed against public officials pursuant to the powers vested in the High Representative constitutes an extraordinary measure interfering with certain rights of the persons concerned, and that, given its comprehensive nature, such a sanction can only be justified if: (1) deemed a provisional remedy, deployed at a period and for a period during which it advances the legitimate aims specified in the GFAP and the Conclusions; and (2) issued sparingly and judiciously, following due consideration of all relevant facts and factors;

Noting the conclusions of the General Affairs and External Relations Council of the Council of the European Union in which the Council "applauded the progress that Bosnia and Herzegovina has made in the ten years since the end of the war, [...] warmly welcomed the fact that the progress made by Bosnia and Herzegovina had now made it possible for the [European] Commission to recommend the opening of negotiations on a Stabilisation and Association Agreement" and "authorised the Commission to open negotiations at the earliest opportunity";

Persuaded that the launch of negotiations on a Stabilisation and Association Agreement marks a historic threshold which, when crossed, will enable Bosnia and Herzegovina to become fully part of the community of European nations, as well as provide new instruments and mechanisms for overcoming the lingering legacy of the war;

Further noting, in this connection the statement of the Steering Board of the Peace Implementation Council issued in June 2005 in which it expressed its "intention to continue the process of transferring responsibilities to the BiH authorities [...]. The end point of this process will be an important milestone in BiH's development – the point at which BiH takes its destiny into its own hands, and moves forward towards integration with the EU";

Recalling the Communiqué issued by the Steering Board of the Peace Implementation Council on 15 March 2006 according to which “the High Representative set out his plans for new measures to address the status of officials removed from their positions”;

Further recalling that all decisions removing officials from their public position(s) also include a ban on holding public office in the future;

Profoundly convinced that such a broad prohibition was necessary to meet the challenges confronting Bosnia and Herzegovina in its bid to restore peace, build institutions, consolidate national identity, bridge ethnic divides and work towards regional integration, all at an accelerated pace to overcome the retrograde momentum of the country’s past;

Convinced in equal measure that such prohibition should be imposed sparingly in the future as Bosnia and Herzegovina demonstrates burgeoning political maturity by, *inter alia*, embarking on negotiations with the European Union;

Welcoming the fact that Bosnia and Herzegovina has made substantial progress in this connection, as evidenced by the launch of the Stabilization and Association negotiations;

Recognizing that, given this progress, the provisional extraordinary measure of banning removed officials from public life requires review and reassessment in order to ensure its continued responsiveness to and compatibility with present circumstances;

Having carried out such a review and assessment and concluded that, subject to certain limitations, the ban imposed on removed officials should be lifted (“Lifting of the Ban”);

Reminding that, in November 2005, following the said review and assessment, the High Representative issued the Decision limiting the scope of the ban from public office as a further step in the liberalization of past removals;

Further reminding that pursuant to said Decision, persons falling under the scope of the High Representative’s decisions which barred them from holding public office, have been entitled to apply and, if appointed, hold a position in civil service bodies at all levels of government in Bosnia and Herzegovina with exception of managerial civil servant positions and any type of position in security sector;

Reiterating, however, that the Lifting of the Ban shall not apply to officials removed for undermining the efforts of the International Criminal Tribunal for the Former Yugoslavia (“ICTY”), particularly in the cases relating to individual or collective aid given to war crime indictees Radovan Karadzic and Ratko Mladic;

Convinced that this limitation on the Lifting of the Ban is necessitated by the following considerations: (1) unstinting cooperation with ICTY is indispensable to the country’s further rehabilitation, reconciliation and integration; (2) Bosnia and Herzegovina’s progress in this connection has not been as notable as in other areas; and (3) the reintroduction of such individuals into public life still poses the threat of reversing the limited gains recently made;

Mindful that the General Affairs and External Relations Council of the Council of the European Union, in its conclusions referenced above, echoed this conclusion by underscoring the need for accelerated and robust cooperation with ICTY as a precondition for rapid and satisfactory conclusion of negotiations on a Stabilization and Association Agreement;

Considering that the process of liberalization of past removals is a continuing one and is a process which can be either widened or reversed in the coming period depending on a variety of factors, including BiH’s progress towards Euro-Atlantic integration;

Ever conscious of the need to balance in due proportion the public good with the rights of individuals and of the need for policy to keep pace with changes in political circumstances;

For the reasons hereinafter set out the High Representative hereby issues the following

DECISION

further limiting the scope of the ban from public office in the removal decisions issued by the High Representative

Article 1

Notwithstanding the terms of any Decision issued by the High Representative by which a person is barred from holding public office, any person falling under the scope of any such Decision shall hereby be entitled to apply for and, if appointed, hold, in addition to the positions in civil service bodies referred to in Article 1 of the High Representative Decision of 28 November 2005, a position in a public enterprise, public institution (*javne ustanove*) or any other institution to which the respective laws regulating civil service do not apply but which are partly or fully financed from a budget at any level of government in Bosnia and Herzegovina with exception of positions referred to in Article 4 of this Decision.

Article 2

This Decision does not apply in any manner or form, either directly or indirectly, to any person who is the subject of a Decision issued by the High Representative by which he/she is barred from holding public office for reasons directly or indirectly related to non-compliance with the International Criminal Tribunal for the Former Yugoslavia.

Article 3

When applying for a position to which a person is entitled to pursuant to Article 1 of this Decision, he/she shall inform in writing the appointing and selecting authority of the fact that he/she was the subject of a Decision of the High Representative barring him/her from public office and other office covered by said Decision, and forward a copy of such Decision to the said authority and/or authorities.

Article 4

For the avoidance of doubt, this Decision does not apply in any manner or form to:

- a) Any directly or indirectly elected position within a legislature at any level of government in BiH;
- b) Any executive position at any level of government including the members of the Presidency, the Presidents, the Vice-Presidents, the Chair of Council of Ministers, the Prime Ministers, the Ministers, the Deputy Ministers, the Mayors and Deputy Mayors and members of government of Brcko District;
- c) Any advisor (irrespective of whether or not the position is remunerated) attached to any of the positions referred to in items a) or b) of this Paragraph insofar as these positions are not filled through an open public competition;
- d) Any position in security sector at any level of government in Bosnia and Herzegovina as provided for in the High Representative Decision of 28 November 2005;
- e) Any managerial civil servant position in civil service bodies at all levels of government in Bosnia and Herzegovina as provided for in the High Representative Decision of 28 November 2005.

Article 5

For the avoidance of doubt, no degree of retroactivity is intended. This Decision only enables the concerned persons to apply for and, if appointed, hold public positions falling within the scope of this Decision as of the date hereof. No entitlement to positions occupied in the past in contravention of any removal Decision and the accompanying ban is intended either expressly or impliedly under this Decision.

Article 6

This Decision shall enter into force forthwith and shall be published, without delay, in the Official Gazette of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, Republika Srpska and the District of Brcko.

Sarajevo, 3 April 2006

*Dr. Christian Schwarz-Schilling
High Representative*