

Decision Enacting the Law on Changes and Amendments to the Election Law of Bosnia and Herzegovina

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");

Taking into consideration the ongoing process of transfer to the domestic authorities of the powers of the High Representative with respect to removal and vetting of officials and the fact that such transfer results from Bosnia and Herzegovina substantial progress towards European integration, as evidenced by the launch of the Stabilization and Association negotiations;

Recalling the conclusions of the General Affairs 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 nations, as well as provide new instruments and mechanisms for overcoming the lingering legacy of the war;

Recalling, 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";

Noting that the Peace Implementation Council, in the Annex to its Declaration made in Madrid on 16 December 1998, acknowledged that the leaders whom the High Representative, as well as the Election Appeals Sub-Commission and the Provisional Elections Commission, bar from official office may also be barred from running in elections and from any other elective or appointive public office within political parties until further notice and that the parties which fail to comply with rulings by the High Representative may face consequences including being banned from running in election campaigns.

Further noting that, in the same document, the Peace Implementation Council stated it expects such prohibition to be included in the Election Law.

Recognising that, in consequence, international sanctions carry, under the Election Law of Bosnia and Herzegovina (hereinafter: Election Law), a ban from running for elections and from holding any elected or appointed office;

Bearing in mind that the said ban, contained in Articles 20.9A and 20.9B of the Election Law, has proved and continues to prove essential in preventing obstruction of the implementation of the GFAP;

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, but equally convinced that such prohibition should be imposed more sparingly in the future as Bosnia and Herzegovina demonstrates burgeoning political maturity;

Mindful, that the sanctions imposed against officials pursuant to the powers vested by the GFAP in the Provisional Election Commission, the Election Appeal Sub-Commission, the IFOR and its legal successors under Annex 1A, the High Representative and the International Police Task Force of the United Nation, as well as the sanctions embedded in the Election Law, 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;

Recalling that the International Community has, over the last years, gradually withdrawn from the electoral process and constantly transferred its responsibilities over the electoral process to the domestic authorities and that this process culminated with the complete nationalization of the Election Commission on 30 June 2005;

Further recalling that the Local Elections in 2004 were organized by the Election Commission of Bosnia and Herzegovina and exclusively financed by the authorities of Bosnia and Herzegovina

Having in mind the ongoing process of preparation of changes and amendments to the Election Law of Bosnia and Herzegovina led by the Parliamentary Assembly of BiH and the Election Commission of BiH;

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 hereinbefore set out the High Representative hereby issues the following

DECISION

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which is hereby attached as an integral part of this Decision.

The said Law shall enter into force as a law of the Bosnia and Herzegovina as provided for in Article 4 thereof on an interim basis, until such time as the Parliamentary Assembly of Bosnia and Herzegovina adopts this Law in due form, without amendment and with no conditions attached.

This Decision shall enter into force forthwith and shall be published in the Official Gazette of Bosnia and Herzegovina.

Sarajevo, 27 January 2006

Paddy Ashdown
High Representative

LAW ON CHANGES AND AMENDMENTS TO THE ELECTION LAW OF BOSNIA AND HERZEGOVINA

Article 1

Article 20.9A shall be amended and shall read as follows;

Article 20.9A

Until 31 December 2007, the following exclusions will apply:

- i) No person who has been removed from public office by decision of the High Representative for action or inaction in violation of the commitments made under the General Framework Agreement for Peace in Bosnia and Herzegovina or in connection with the terms of its implementation shall be permitted to be a candidate in direct or indirect elections covered by this law or to hold any mandate gained in direct or indirect elections covered by this law, except as otherwise determined by the High Representative;
- ii) No person who, pursuant to Chapter 14 of the *Instructions to the Parties* issued under Annex 1A to the General Framework Agreement for Peace, has been removed from a military command or office as a result of having engaged in activities that threaten or endanger the peace process, shall be permitted to be a candidate in direct or indirect elections covered by this law or to hold any mandate gained in direct or indirect elections covered by this law;
- iii) No person who has been de-authorized or denied certification by decision of the International Police Task Force Commissioner for having obstructed the implementation of the General Framework Agreement for Peace, shall be permitted to be a candidate in direct or indirect elections covered by this law or to hold any mandate gained in direct or indirect elections covered by this law.

The Election Commission of Bosnia and Herzegovina shall, after determining whether a decision provided for in paragraph 1 of this Article has been taken and whether the conditions prescribed in this Article are met, be responsible for enforcing the prohibition contained in this Article.

Article 2

Article 20.9B shall be amended and shall read as follows:

Article 20.9B

Until 31 December 2007, the Election Commission of Bosnia and Herzegovina shall ensure that the application for certification of any political party and any other documents submitted under Article 4.3 of this Law and under the internal regulations of the Election Commission, do not include a person referred to in Article 20.9A.

Should the documents referred to in paragraph 1 of this Article show that a person referred to under the first item of paragraph 1 of Article 20.9A holds any party position, the Election Commission of Bosnia and Herzegovina shall in a timely manner obtain confirmation from the international agency that issued the decision as to whether it has, by decision or otherwise, expressly provided that the person subject to such decision would be entitled to hold office within a political party.

If the documents referred to in paragraph 1 of this Article show that a person referred to in Article 20.9A holds a central party position and provided that the person is not entitled to hold such office under paragraph 2 of this Article, that political party shall not be eligible for certification.

Article 3

This Law shall be published without delay in the Official Gazette of Bosnia and Herzegovina shall enter into force upon publication.