

Decision on Constitutional Amendments in Republika Srpska

In the exercise of the powers vested in me 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 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 the Peace Agreement throughout Bosnia and Herzegovina and its Entities;

Considering the four partial Decisions of the Constitutional Court of Bosnia and Herzegovina in case no. 5/98 being Constitutional Court Decision of 28, 29 and 30 January 2000 (Official Gazette of Bosnia and Herzegovina, no. 11/00 of 17 April 2000), of 18 and 19 February 2000 (Official Gazette of Bosnia and Herzegovina, no. 17/00 of 30 June 2000), of 30 June and 1 July 2000 (Official Gazette of Bosnia and Herzegovina no. 23/00 of 14 September 2000) and of 18 and 19 August 2000 (Official Gazette of Bosnia and Herzegovina, no. 36/00 of 31 December 2000);

Considering further that these four partial Decisions relate to numerous provisions of the Constitutions of the Entities of Bosnia and Herzegovina which have been found to be in contravention of the Constitution of Bosnia and Herzegovina as contained in Annex 4 to the General Framework Agreement for Peace in Bosnia and Herzegovina of 14 December 1995 (the Constitution of Bosnia and Herzegovina);

Bearing in mind that the Entities of Bosnia and Herzegovina are under an obligation set out in Article XII of Annex 4 to the General Framework Agreement for Peace in Bosnia and Herzegovina of 14 December 1995 (the Constitution of Bosnia and Herzegovina) according to which “(w)ithin three months from the entry into force of this Constitution, the Entities shall amend their respective constitutions to ensure their conformity with this Constitution in accordance with Article III(3)(b) (of this constitution)”;

Further bearing in mind that as at the date hereof full compliance with the obligation contained in the aforesaid Article has not been effected in either Entity;

Noting further that the Constitutional Court ruled in its third partial Decision in case no. 5/98 of 30 June and 1 July 2000 (Official Gazette of Bosnia and Herzegovina no. 23/00 of 14 September 2000) that exclusion of one or other constituent people from the enjoyment not only of citizens’ but also of peoples’ rights throughout Bosnia and Herzegovina was in clear contradiction with the non-discrimination rules contained in the said Annex 4, which rules are designed to re-establish a multi-ethnic society based on equal rights of Bosniacs, Croats and Serbs as constituent peoples and of all citizens;

Bearing in mind that the Entities of Bosnia and Herzegovina have hitherto failed to take any steps to implement the said four partial Decisions of the Constitutional Court of Bosnia and Herzegovina in case no. 5/98;

Recalling that the High Representative adopted a Decision on 11 January 2001 (Decision no. 81/01 Official Gazette of Bosnia and Herzegovina no. 2/01 of 29 January 2001) to establish Constitutional Commissions in the Federation of Bosnia and Herzegovina and in Republika Srpska composed on a parity basis involving Bosniacs, Croats, Serbs and members of the group of Others in order to facilitate the implementation in particular of the said third partial Decision of the Constitutional Court with the participation of the three constituent peoples and the group of Others;

Noting the fruitful work of the said Commissions culminating in their Reports of 21 December 2001 (Constitutional Commission of Republika Srpska) and of 2 February 2002 (Constitutional Commission of the Federation of Bosnia and Herzegovina);

Noting further that a number of the major political parties of the Federation of Bosnia and Herzegovina and of Republika Srpska accepted thereafter the invitation of the High Representative to come together in the course of the month of March 2002 to negotiate under his auspices on a number of sensitive constitutional issues;

Welcoming the efforts undertaken by the political parties involved in the said negotiations which led to an Agreement on 27 March 2002 on various key elements which are necessary to implement the said third partial Decision of the Constitutional Court of Bosnia and Herzegovina;

Convinced that the said Agreement embodies the broadest possible consensus throughout the Federation of Bosnia and Herzegovina and Republika Srpska as to the inclusion of those key elements which provide for the equal protection of the rights of Bosniacs, Croats and Serbs as constituent peoples, and of the Others, and all citizens of Bosnia and Herzegovina in both Entities;

Considering that in the event of any question arising hereafter as to the interpretation or implementation of the language or terminology of the constitutional Amendments henceforth applicable to the Republika Srpska, the language employed in the Sarajevo Agreement of 27 March 2002 shall be referred to in order to resolve issues as to interpretation or implementation related to the matters contained in the said Agreement;

Considering that the said Agreement ensures in addition compliance with the requirement stipulated in the Communiqué issued by the Steering Board of the Peace Implementation Council on 21 June 2001 that there should be symmetry in substance with regard to the protection provided for all peoples and citizens of Bosnia and Herzegovina;

Stressing the need to hold democratic elections in Bosnia and Herzegovina and bearing in mind that such elections have prior heretobeen planned for 5 October 2002 and that logistic provision including security measures have been established by IPTF and SFOR for such date;

Further bearing in mind that under Article 1.14 of the Election Law of Bosnia and Herzegovina as amended by my Decision of 18 April 2002 the Election Commission has to give notice of elections no later than 169 days prior to the election date in respect of the first elections to be held under the provisions of the said law;

Considering the length of time available to the Entity Governments prior to the date hereof to implement the four partial Decisions of the Constitutional Court of Bosnia and Herzegovina in case 5/98;

Noting the fact that changes are required to the text of certain of the amendments to the Republika Srpska Constitution which have been communicated to the High Representative, and that a further amendment relating to the length of presidential and vice presidential mandates requires to be made;

Stressing the necessity of such full implementation of the political consensus reached on 27 March;

Having considered and borne in mind all the matters aforesaid, I hereby issue the following

DECISION AMENDING THE CONSTITUTION OF REPUBLIKA SPRSKA

The amendments to the Constitution of Republika Srpska numbered LXVI to XCI communicated to the High Representative by the President of the National Assembly of the Republika Srpska, Dr Dragan Kalinic, on 18 April 2002 (authenticated with the round seal of the Republika Srpska) are hereby authorised and required to be published with the changes to Amendments LXXI, LXXXII and LXXXV hereinafter set out, together with additional Amendment XCII.

All such Amendments (original, changed and further) shall be deemed duly proclaimed and promulgated by the Republika Srpska National Assembly pursuant to and in full compliance with Article 136 of the Constitution of the Republika Srpska and shall enter into force as at the date hereof, and the full text thereof including the changed text of Amendments LXXI, LXXXII, LXXXV and further Amendment XCII as hereinafter set out shall be published without delay in due form and pursuant to my Decision herein in the Official Gazette of the Republika Srpska.

Amendment LXXI

The official languages of the Republika Srpska are: the language of the Serb people, the language of the Bosniak people and the language of the Croat people. The official scripts are Cyrillic and Latin.

This Amendment shall replace paragraph 1 of Article 7 of the RS Constitution.

Amendment LXXXII

In the last sentence of the third alinea of paragraph a) the term "Article 5.b" shall be replaced by "paragraph b".

Amendment LXXXV

Constituent peoples and members of the group of Others shall be proportionally represented in public institutions in Republika Srpska.

As a constitutional principle, such proportionate representation shall follow the 1991 census until Annex 7 is fully implemented, in line with the Civil Service Law of Bosnia and Herzegovina. Further and concrete specification of this general principle shall be implemented by Entity legislation. Such legislation shall include concrete time lines and shall develop the aforementioned principle in line with the regional ethnic structure in the Entities.

"Public institutions" as mentioned above are the ministries of the RS Government, municipal governments, District courts in Republika Srpska and municipal courts in Republika Srpska.

This Amendment shall be added to Article 97 of the RS Constitution.

Amendment XCII

In paragraph 2 of Article 83 as amended by items 4 and 5 of Amendment XL the term "five-year mandate" shall be replaced by "four-year mandate".

This Amendment shall change Article 83 of the RS Constitution.

Sarajevo, 19 April 2002

Wolfgang Petritsch

The High Representative