

Decision establishing interim procedures to protect vital interests of Constituent Peoples and Others, including freedom from Discrimination

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 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 the Peace Agreement throughout Bosnia and Herzegovina and its Entities;

Recalling further Article I:1 of the said Annex 10, referring explicitly to the promotion of respect for human rights and the return of displaced persons and refugees;

Considering the four partial Decisions of the Constitutional Court of Bosnia and Herzegovina on the constitutionality of certain provisions of the Entities’ constitutions, namely those of 28, 29 and 30 January 2000, of 18 and 19 February 2000, of 30 June and 1 July 2000 (Official Gazette of Bosnia and Herzegovina, 23/00, of 14 September 2000) and of 18 and 19 August 2000, the first three of which have come into force pursuant to their publication in the Official Gazette of Bosnia and Herzegovina;

Considering further the legal obligation thereby imposed upon the Federation of Bosnia and Herzegovina and upon the Republika Srpska to amend their constitutions in accordance with the Constitutional Court’s Decisions as from the coming into force of the same;

Taking into account the sensitivity of the issues relating in particular to the third partial Decision of the Constitutional Court of Bosnia and Herzegovina of 30 June and 1 July 2000, in the so-called “constituent peoples” case, as well as the vital importance of its implementation for the future of Bosnia and Herzegovina and of all its citizens;

Conscious of the need to establish clear time-limits for the implementation of this Decision so as to ensure that such implementation should be completed without needless delay;

Conscious further of the necessity of reassuring all citizens of Bosnia and Herzegovina during the period required for such implementation that vital interests of the constituent peoples along with Others are to be fully protected during such period, and that there should, pursuant to the European Convention on Human Rights and Fundamental Freedoms, be freedom from discrimination throughout Bosnia and Herzegovina and full respect for all such rights enshrined in the said Convention;

Considering that under Article 54 of the Rules of Procedure of the House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, No. 8/97) and that under Article 61 of the Rules of Procedure of the National Assembly of Republika Srpska (Official Gazette of Republika Srpska, No. 10/96), permanent working bodies in the form of Constitutional Commissions have been created;

Considering further that, under the aforesaid Rules of Procedure the said Commissions are tasked not only with the preparation of proposals for constitutional amendment but also with monitoring the implementation thereof in the respective Entities;

Resolved to leave the constitutional role of the Federation House of Peoples and of the Constitutional Commission of the Federation House of Peoples fully in place with powers, duties and responsibilities intact and unaffected by this my Decision herein.

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

DECISION

1. The Constitutional Commission of the House of Representatives of the Parliamentary Assembly of the Federation of Bosnia and Herzegovina, and the Constitutional Commission of the National Assembly of Republika Srpska, shall prepare proposals for the implementation, within their respective Entities, of the said partial Decision of the Constitutional Court of Bosnia and Herzegovina of 30 June and 1 July 2000 no later than 15 March 2001.
2. The Constitutional Commission of the House of Representatives of the Parliamentary Assembly of the Federation of Bosnia and Herzegovina, and the Constitutional Commission of the National Assembly of Republika Srpska, are hereby further required to act to ensure within the Federation of Bosnia and Herzegovina and within the Republika Srpska respectively, during the interim period until such implementation has been effected, that vital interests of the constituent peoples along with Others are to be fully protected during such period, and that there should, pursuant to the European Convention on Human Rights and Fundamental Freedoms, be freedom from discrimination throughout Bosnia and Herzegovina;
3. The said Constitutional Commissions shall be convened in the Federation of Bosnia and Herzegovina and in the Republika Srpska respectively, no later than one week after the publication of this Decision in the Official Gazette of Bosnia and Herzegovina.
4. All such rules and regulations as may currently be in force in the respective Entities concerning the composition of the said Commissions of the House of Representatives of the Federation of Bosnia and Herzegovina and of the National Assembly of the Republika Srpska are hereby revoked. The said Commissions shall, until the said implementation has been effected (whereafter the pre-existing rules concerning composition shall once more take effect subject to their being compliant with the then amended constitutions of the Federation of Bosnia and Herzegovina and of the Republika Srpska respectively) be composed of an equal number of delegates coming from each of the constituent peoples of Bosnia and Herzegovina along with Others.
5. Each such Commission shall consist of 16 delegates who shall be appointed by the High Representative from among those elected to sit in the House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina and in the National Assembly of the Republika Srpska respectively but may include experts who may be appointed from outside their number. The High Representative shall likewise appoint a Chair Person for each such Commission.
6. No later than 10 days before presentation by the Government or any other proponent of laws, regulations and/or decisions for the consideration of the House of Representatives of the Federation of Bosnia and Herzegovina or of the National Assembly of the Republika Srpska, the respective Commissions shall be provided with copies thereof by the Chair of the House of Representatives and of the House of Peoples in the Federation, and by the Speaker of the National Assembly of the Republika Srpska.
7. In the event that any three members of the respective Commissions should consider that a law, regulation or governmental decision hereafter and during the said interim period taken or proposed to be taken within the Entity concerned, was, or threatened to be destructive of a vital interest of a constituent people or of Others, or was in conflict with the principle that there should be freedom from discrimination throughout Bosnia and Herzegovina, or in breach of a provision of the European Convention on Human Rights, a meeting of the relevant constitutional Commission shall be convened by the Chair Person of the Commission concerned no later than

the fifth day after receiving notification in writing of the same.

8. The effect of convening a meeting as aforesaid shall be to stop any further Parliamentary or National Assembly procedure respectively until such time as it may be agreed, pursuant to the procedure hereinafter referred to, that the Parliamentary or Assembly procedure may continue, or, in the alternative, the issue is resolved by a Decision of the High Representative.
9. In the event of a Constitutional Commission being convened as aforesaid, all members of such Commission shall use their best endeavors to reach an Agreement resolving the matter raised, within 3 clear days of the day of such convening.
10. In the event that the Constitutional Commission concerned fails within such period as aforesaid to reach an Agreement supported by a majority of the delegates of each of the constituent peoples and Others, the said Commission shall, through its Chair Person, forthwith lodge with the Office of the High Representative an application for the High Representative to resolve the issue finally in such manner as he deems to be appropriate, in accordance with the mandate given to him by the international community.
11. For the avoidance of ambiguity, the interim changes in respect of the Constitutional Commissions hereinbefore set out shall terminate upon the coming in to force of the amendments to the respective Entity Constitutions as referred to in the first numbered paragraph hereof.
12. The Decision herein is neither intended as, nor shall it in any manner or at any time be treated as an indication, express or implied, as to the way in which the said partial Decision of the Constitutional Court shall be implemented by way of constitutional amendment in the Federation of Bosnia and Herzegovina and in the Republika Srpska respectively.
13. The Decision herein, which concerns Parliamentary and National Assembly procedures respectively, is taken in order to modify such procedures on a temporary basis only and is neither intended as, nor shall it in any manner or at any time be treated as an indication, express or implied, as to the way in which other such bodies or institutions within the body politic of Bosnia and Herzegovina are to be composed or organised.
14. This decision shall be published without delay in the Official Gazette of Bosnia and Herzegovina and shall come into force upon the date of such publication. This Decision shall also be published in the Official Gazette of the Federation of Bosnia and Herzegovina and in the Official Gazette of Republika Srpska.

Sarajevo, 11 January 2001

Wolfgang Petritsch
High Representative

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