Decision establishing the BiH State Court

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 implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities";

Recalling further paragraph 12.1 of the Declaration of the Peace Implementation Council which met in Madrid on 15 and 16 December 1998, which made clear that the said Council considered that the establishment of the rule of law, in which all citizens had confidence, was a prerequisite for a lasting peace, and for a self-sustaining economy capable of attracting and retaining international and domestic investors;

Recalling in addition paragraph 3 of Annex II (Rule of Law and Human Rights) to the last said Declaration, according to which the establishment of judicial institutions at the State level, which meet an established constitutional need to deal with criminal offences perpetrated by public officials of Bosnia and Herzegovina in the course of their duties, and with administrative and electoral matters, is a precondition for the establishment of the rule of law in Bosnia and Herzegovina;

Recalling finally the Declaration of the Peace Implementation Council which met in Brussels on 23 and 24 May 2000, and the Annex thereto, pursuant to which the adoption of a Law on a Court of Bosnia and Herzegovina was envisaged by September 2000;

Noting therefore that a Court of Bosnia and Herzegovina providing for judicial remedies in matters which lie within the competence of the State of Bosnia and Herzegovina under the Constitution of Bosnia and Herzegovina is a pre-condition for the establishment of the rule of law in the State of Bosnia and Herzegovina;

Considering that the guarantee of judicial remedies in fields including citizenship, foreign trade and investment, will ensure legal certainty, and that such certainty is urgently needed for the establishment of a functioning economy throughout Bosnia and Herzegovina, so that new perspectives for the citizens of Bosnia and Herzegovina for their future life in their home country may be opened up;

Stressing the need for judicial remedies to exist at the State level within Bosnia and Herzegovina which comply with guarantees enshrined under the European Convention on Human Rights which itself forms part of the Constitution of Bosnia and Herzegovina and enjoys priority over all other law in Bosnia and Herzegovina;

Considering that a working group, chaired by the Ministry for Civil Affairs and Communication, and composed of members of this Ministry, the Ministries of Justice of the Federation of Bosnia and Herzegovina and of the Republika Srpska, and of the Office of the High Representative, agreed on a draft text of a law on a Court of Bosnia and Herzegovina, on 5 October 2000;

Considering further that the said agreed text was itself based on a Council of Europe Venice Commission draft law on a State Court of Bosnia and Herzegovina, of 16 June 2000, adapted as appropriate by the said working group to the legal framework and requirements peculiar to Bosnia and Herzegovina whilst retaining in substance the said Venice Commission draft;

Regretting that notwithstanding the matters aforesaid, which should have enabled the Council of Ministers of Bosnia and Herzegovina and the Parliamentary Assembly of Bosnia and Herzegovina to have passed the said Law on a Court of Bosnia and Herzegovina through the regular procedure before the elections on 11 November 2000, the said Law has not been adopted;

Mindful both of the urgency and of the need to establish a Court of Bosnia and Herzegovina for all the reasons as aforesaid and in order to protect the interests of the citizens of Bosnia and Herzegovina.

Having considered, borne in mind and noted all the matters aforesaid, I hereby issue the following Decision which shall enter into force with immediate effect on an interim basis, until such time as the Parliamentary Assembly of Bosnia and Herzegovina adopts this Law in due form, without amendments and with no conditions attached.

DECISION

The Law establishing the Court of Bosnia and Herzegovina shall be as set out in the annex to this my Decision herein. This Law shall be published without delay in the Official Gazette

of Bosnia and Herzegovina and in the Official Gazettes of the Federation of Bosnia and Herzegovina and of the Republika Srpska.

The Law on the Court of Bosnia and Herzegovina shall enter into force eight days after its publication in the Official Gazette of Bosnia and Herzegovina.

Sarajevo, 12 November 2000	Wolfgang Petritsch
	High Representative

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