

Decision on the interpretation of Article V.5a of Annex 4 of the GFAP in respect of civilian command over armed forces

In the exercise of the powers vested in me by Article V of Annex 10 of the General Agreement for Peace in Bosnia and Herzegovina, according to which the High Representative is the final authority regarding interpretation of the civilian implementation aspects of the peace agreement, I hereby establish the following

Decision

on the interpretation of Article V(5)(a) of Annex 4 to the General Agreement for Peace in Bosnia and Herzegovina (the Constitution of BiH), in respect of the civilian command over armed forces by each member of the Presidency, by virtue of the office.

The interpretation shall be as follows:

I. As to civilian command

Civilian command authority over all armed forces in Bosnia and Herzegovina is exercised by the Presidency as the competent institution of Bosnia and Herzegovina. Such authority extends to all matters concerning the armed forces, including personnel issues, but its exercise may, for particular matters, be delegated by the Presidency to subordinate authorities in the interests of efficiency. Where this is done, the Presidency always reserves the right to overrule any decisions taken by those subordinate authorities.

II. As to the exercise of civilian command

In sovereign States, civilian command authority over armed forces is normally exercised by the Head of State. In Bosnia and Herzegovina, where the powers of the Head of State are invested in the Presidency, composed of three Members, this is not different. This follows from the above Article V(5)(a) itself, providing that each member of the Presidency, by virtue of the office, has civilian command authority over armed forces in Bosnia and Herzegovina.

Therefore, when the Presidency exercises its authority over armed forces, it does this as an Institution, meaning that each Member is competent to take part in the decision-making process regarding such armed forces. It is not the Chair, but the Presidency, who is the civilian Commander in Chief. The Presidency is to act and take decisions on this issue collectively.

The Constitution of BiH also requires that the Presidency select a Standing Committee on Military Matters as the appropriate body to coordinate the activities of armed forces in Bosnia and Herzegovina. Participants should ensure it is an active forum in which to discuss all military matters.

According to Article III(3)(b) of the Constitution of Bosnia and Herzegovina, the Entities are obliged to respect this Constitution and, therefore, the principle established in Article V(5)(a) according to which the civilian Command over the Armed Forces lies in the hands of the Presidency of Bosnia and Herzegovina. This principle is reinforced by the last sentence of this provision: "All armed forces in Bosnia and Herzegovina shall operate consistently with the sovereignty and territorial integrity of Bosnia and Herzegovina".

As the obligation of the Entities to respect the Presidency's civilian Command over Armed Forces derives directly from the Constitution of Bosnia and Herzegovina, the Entities may not and shall not invoke any provisions of the Entity Constitutions to oppose or fail to comply completely with this obligation. Any act of any authority other than the Presidency of BiH which infringes on the Presidency's civilian Command over Armed Forces is null and void.

The Constitutional Court is currently examining in a pending case, inter alia, to what extent the Constitutions of the Entities must be modified in order to make them compatible with the Constitution of Bosnia and Herzegovina on this matter and will rule accordingly.

III. As to Annex 1A of the GFAP

During the mandate of the Stabilization Force (SFOR) nothing within this Decision shall alter, replace or remove the obligation of Bosnia and Herzegovina and its Entities to cooperate with, provide information to and comply with the Instructions to Parties (ITP) and other SFOR instructions made under Annex 1A to the GFAP.

The Decision will have immediate effect.

Sarajevo, 19 February 1999

Carlos Westendorp
High Representative

Office of the High Representative