

Decision removing Edhem Bicakcic from his position as Director of Elektroprivreda for actions during his term as Prime Minister of the Federation of Bosnia and Herzegovina

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 which “may include actions against persons holding public office or officials who are found by the High Representative to be in violation of legal commitments made under the Peace Agreement or the terms for its implementation”;

Noting that the Peace Implementation Council at its meeting in held Brussels on 23 May 2000, expressed its deep concerns regarding “ingrained corruption in BiH which undermines democratic governance, waste public resources and hinders the development of the market economy”;

Noting that “Elektroprivreda” is a publicly owned company holding a major place in the economic life of Bosnia and Herzegovina. For the reasons hereinafter set out I hereby issue the following:

DECISION

To remove Mr. Edhem Bicakcic from his position of General Manager of the company “Elektroprivreda”, and to bar him from holding any official, elective or appointive public office unless or until such time as I may, by further Decision, expressly authorise him to hold the same. This Decision has immediate effect and will not require any further procedural steps. Mr. Bicakcic must vacate his office immediately.

REASONS FOR REMOVAL

I. Facts

While in office as Prime Minister of the Federation of Bosnia and Herzegovina, Mr. Edhem Bicakcic abused his power and thereby seriously obstructed the implementation of the General Framework Agreement for Peace by the following actions:

A. Prime Minister abused his authority by illegally creating the Federation Employment Agency and permitting the diversion of employment funds for unauthorised purposes

(1) On or about 17 May 1999 former Prime Minister Bicakcic ordered the creation of a Federal Employment Agency and also appointed its Acting Director by decree. This was carried out notwithstanding the fact that an extra-budgetary institution such as the Federation Employment Agency should only be established by a law passed through normal parliamentary procedure, an irregularity which had to be put right by a Decision of the High Representative of 15 December 2000.

(2) The Federation Employment Agency transferred KM 24 million in employment contributions received in the

1999 period to the Federation Ministry for Veteran and Invalid Affairs without legal authorisation. In 1999 the Federation Employment Agency also improperly allocated KM 1 million in short-term loans to 19 businesses. The Federation Employment Agency subsequently wrote these loans off and as a result they are now subject to police investigation.

(3) The activities surrounding the Federation Employment Agency were not only executed on the basis of an illegal mandate, but also led to the diversion of extra-budgetary employment contributions to ministries without parliamentary approval. As a direct result of the actions of Prime Minister Bicakcic, public funds were not accounted for in a legal and transparent manner. These transactions neglected the parliamentary budgetary competency and therefore contradict the principle of democratic parliamentary control over government.

B. Prime Minister abused his authority by illegally authorising the transfer of 825.000 KM from the Federation budget to a private association

(1) In the period March June 2000, former Prime Minister Bicakcic ordered the transfer of Federation Current Reserve funds from the Federation budget to the Association of Families of Fallen Soldiers. He ordered three such transactions in the total amount of KM 825,000 on the respective dates of 31 March, 24 May and 7 June 2000, two of which were in the sum of KM 500,000 and KM 300,000 respectively. These transactions from the Current Reserves were undertaken in disregard of the Law on Budget Execution requirement ensuring governmental approval of such transactions. The transactions also neglect the constitutional principle of Cabinet responsibility to the parliament and undermine intergovernmental control of ministers.

(2) The funds transferred by Prime Minister Bicakcic to the Association of Families of Fallen Soldiers were used for the purpose of a further capitalisation of the private Seh-in Bank. Such an action not only was a misuse of public funds as Government approval for such an action was lacking, but also undermined the consolidation of the banking system which is a critical component of economic reform. At the same time these transactions endanger the confidence in the banking community because such fraudulent manipulation of the bank capitalization risks the revocation of the bank's license. Former Prime Minister Bicakcic was directly instrumental in causing KM 825,000 of public revenues to be contributed to the last said transaction by signing the transfer document concerned.

(3) It was and remains the responsibility at all times of the former Prime Minister Bicakcic, to ensure that public funds intended to be disbursed for social needs were in fact so disbursed for this purpose. In addition, the manner and timing of those transactions together with the connection between the Association of families of Fallen Soldiers and the former Prime Minister's political party evidence an intent to illegally divert public funds.

C. Former Prime Minister improperly established a bank account in the name of the Federation Government and used that account to fund activities at his sole discretion and without accountability or transparency

(1) In about January 2000, former Prime Minister Bicakcic, in the name of the Federation Government but without its explicit approval, established a "commission account" at the BOR Bank, Sarajevo. This account was thereafter credited with the sum of DM 2.5 million authorised by the BiH Embassy in Vienna. The Federation Government did not issue any decision regarding the creation of the said account nor set parameters as to the disbursement of the funds therein, nor were the funds in the said account registered with the Ministry of Finance.

(2) Notwithstanding the matters aforesaid, former Prime Minister Bicakcic subsequently disbursed the sum standing to the credit of this account to three different recipients, namely BRT, the UNIGRADNJA construction company and the Sarajevo Housing Fund.

(2.1) The aforesaid disbursement of funds from the "commission account" to BRT violated the principle of unauthorised public sector involvement in private television broadcasting and provided support to a television station supported by a political party, namely the SDA. By transferring KM 100,000 to this television station, former Prime Minister Bicakcic violates the constitutional principle of political party equality.

(2.2) The UNIGRADNJA transfer, which was allegedly intended as compensation for materials provided for the defence of Sarajevo during the war, was also irregular. A claim for compensation for such a matter should have been addressed to the Ministry of Finance or other competent ministerial institution. Such Ministerial body should then have carried out a review in order to determine its validity. The funds transferred to UNIGRADNJA (700.000 DM) were subsequently transferred to the SDA election campaign.

(2.3) The transfer of the housing funds to the Sarajevo Housing Fund undermines the responsibilities of the Minister of Finance to guarantee the implementation of the Budget Execution Law and to control the financial behavior of public funds.

(3) The irregular establishment of the "commission account" in this case provides yet another example of former Prime Minister Bicakcic's misuse of his position in the Federation Government.

D. Former Prime Minister Bicakcic illegally issued Decision no 261, waiving charges brought against custom evaders by the Custom Administration without legitimate reasons

(1) In January 2000, the Customs Administration at the Ministry of Finance of the Federation of Bosnia and Herzegovina identified more than 900 vehicles which had been cleared by the customs by virtue of the fact that they had been furnished with documents bearing false customs stamps. The importer was thus able to evade the payment of customs duties. During the course of the investigation approximately 150 vehicles were seized and violation proceedings were commenced against the owners.

(2) On 10 October 2000, the Ministry of Finance of the Federation of Bosnia and Herzegovina considered the proposal that an Order be issued that the seized cars concerned should be returned to the owners upon payment by them of the said customs duties. At the same time it was proposed that violation proceedings against the owners should be terminated in cases where first instance decisions had not been issued. However, having received an opinion as to the illegality of the proposed course of action by the Customs Administration dated 11 October 2000, the said proposal was withdrawn. (3) Notwithstanding the matters aforesaid, Mr. Bicakcic, in his capacity as Prime Minister of the Federation of Bosnia and Herzegovina, nevertheless signed, on a day in October 2000 which has not been specified, Decision number 261. In this Decision, the Customs Administration of the Ministry of Finance of the Federation of Bosnia and Herzegovina was ordered to waive all charges against the owners of the said vehicles. Moreover, it was further provided in the said Decision, entirely without legal foundation, that individuals who had repurchased their seized vehicles should be repaid the customs duties and other charges that they had to pay.

(4) In the light of the fact that proceedings had been duly pursued by the Customs Administration, in accordance with Article 16 of the Law on Customs Duties of the Federation of Bosnia and Herzegovina, the said Decision number 261 was illegal.

II. Conclusions

The above series of transactions and matters demonstrate a pattern of conduct on the part of former Prime Minister Bicakcic involving inter alia disregard of fiscal rules and regulations. Through abuse of ministerial power, former Prime Minister Bicakcic was enabled effectively to misappropriate and re-direct public finances through a system of financial diversions which ultimately benefited the SDA. His activities also led to the subversion of democratic institutions as well as to the harming of the democratic process and of the private broadcasting sector.

Having previously held high office in the Federation Government and now holding high office in an important public company, former Prime Minister Bicakcic has in the premises been involved in a series of transactions and matters which demonstrate a consistent pattern of irregularity. Good governance, the rule of law and sound fiscal practice have all been damaged by reason of the totality of the matters aforesaid.

It follows from the above that the law was circumvented, as were government policies all of which taken together are critical to the success of the Dayton Peace Process. In addition media, customs, banking and employment reform policies were directly or indirectly harmed.

To allow former Prime Minister Mr. Bicakcic to remain at his post would undermine the need for there to be full transparency and demonstrable probity in public life. His removal must accordingly be effected in order to ensure that the peace implementation process does not itself become undermined.

Sarajevo, 23 February 2001

Wolfgang Petritsch
High Representative

Office of the High Representative