

Decision annulling the appointment of two Judges from the RS to the BiH Constitutional Court

In the exercise of the powers vested in the High Representative 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”;

The High Representative hereby issues the following

DECISION

1. The decisions of the Republika Srpska National Assembly

taken at the Session on 26 July 2002 to appoint two judges to the Constitutional Court of Bosnia and Herzegovina, namely Prof. Dr. Miodrag Simovic and Prof. Dr. Radomir Lukic, which decisions were later published in the Official Gazette of Republika Srpska (47/02 of 5 August 2002), were taken in breach of the procedures required to be followed pursuant to the Decision of the High Representative of Bosnia and Herzegovina taken on 11 January 2001 (Official Gazette of Bosnia and Herzegovina 2/01, Official Gazette of Republika Srpska 4/01, Official Gazette of the Federation of Bosnia and Herzegovina 3/01).

2. The said appointment decisions (published in the Official Gazette of Republika Srpska (47/02 of 5 August 2002) as hereinbefore referred to) are null and void and without any legal effect whatsoever. Fresh appointment procedures should be initiated and pursued forthwith.

3. This present Decision of the High Representative is taken pursuant to his powers under Article V of Annex 10 (Agreement on Civilian Implementation of the Peace Settlement) to the General Framework Agreement for Peace in Bosnia and Herzegovina (as later interpreted) 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.

4. This present Decision is taken pursuant to the international mandate of the High Representative as aforesaid and shall not be justiciable before any court in Bosnia and Herzegovina or otherwise.

Sarajevo, 16 September 2002

Paddy Ashdown

High Representative