

Decision on Trial Observers

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”;

Considering Article II 2 and Article II 3 (e) of the Constitution of Bosnia and Herzegovina which provide that all persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols including “the right to a fair hearing in ... criminal matters, and other rights relating to criminal proceedings”;

Bearing in mind that in order to hold a fair hearing, where rules of procedure call for a pre-trial investigation, the conduct of a full, timely, fair, efficient and comprehensive pre-trial investigation is indispensable;

Recognizing that in criminal proceedings every endeavor must be made to ensure that all facts are, so far as can be achieved, safely and accurately established;

Considering the importance of guaranteeing the implementation of the basic principles of criminal procedure in force in the Federation of Bosnia and Herzegovina, being currently those set out in Chapter I, Article 1 through 19 of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, No. 43/98);

Considering the importance of guaranteeing the implementation of the basic principles of criminal procedure in force in the Republika Srpska being currently those set out in Chapter I, Article 1 through 21 of the Criminal Procedure Code of the Republika Srpska (Official Gazette of the Socialist Federative Republic of Yugoslavia, Nos. 26/86, 74/87, 57/89, 3/90; Official Gazette of the Republika Srpska, Nos. 26/93, 14/94, 6/97);

Considering the importance of guaranteeing the implementation of the basic principles of criminal procedure in Bosnia and Herzegovina, being those set out in Chapter I, Articles 1 to 19, of the Criminal Procedure Code of Bosnia and Herzegovina;

With the object of implementing the principle of legality of criminal prosecution in the Federation of Bosnia and Herzegovina, as currently required by Article 16 of the aforesaid Criminal Procedure Code of the Federation of Bosnia and Herzegovina;

With the object of implementing the principle of legality of criminal prosecution in the Republika Srpska, as currently

required by Article 18 of the aforesaid Criminal Procedure Code of the Republika Srpska;

With the object of implementing democratic standards and principles introduced by the Criminal Procedure Code of Bosnia and Herzegovina, notably the principles of legality and equality of arms as enshrined in Articles 2 and 14 of the said Code, and the required transparency standard underlined by the public nature of the main trial as set forth in Article 234 of the Code;

Noting the vital importance to the Federation of Bosnia and Herzegovina and to the Republika Srpska and to Bosnia and Herzegovina of ensuring that the rule of law is strengthened and followed;

Bearing in mind the Communiqué of the Steering Board of the Peace Implementation Council (Sarajevo, 13 July 2000) in which it was noted that the Steering Board and the High Representative had agreed inter alia that the promotion of the rule of law needed a sustained effort by the International Community and within the context of the establishment of the Independent Judicial Commission reference was made to the continuation of the monitoring and assessment of courts and prosecutor's offices in line with the closing mandate of JSAP;

Taking note, by way of example and information, of Articles III 1. (a) and IV 3 of Annex 11 to the General Framework for Peace in Bosnia and Herzegovina in which the Parties to the Agreement on the International Police Force agreed inter alia that there should be monitoring, observing and inspecting of judicial organizations and proceedings or any sites or facilities at which it was believed that judicial activities were taking place;

Bearing in mind the existence and extent of the obligation of disclosure imposed inter alia on all judges, prosecutors, officials in the Ministries of Interior, Finance and Justice

as to information needed for the Independent Judicial Commission under Decision 94/01 of the High Representative (Official Gazette of Bosnia and Herzegovina No. 10/01, Official Gazette of the Federation of BiH No. 14/01 and Official Gazette of the Republika Srpska No. 17/01) and under Decision 16/02 of the High Representative (Official Gazette of Bosnia and Herzegovina No. 10/01, Official Gazette of the Federation of Bosnia and Herzegovina No. 40/02, Official Gazette of the Republika Srpska No. 55/02);

Considering that the United Nations International Police Task Force mission ended on the 31st of December 2002;

Considering further that the promotion of the rule of law and the peace implementation process requires that court proceedings throughout Bosnia and Herzegovina should be observed at all stages when considered necessary by persons duly authorized by the High Representative to carry out such observing;

Concluding that such observing requires in addition that such duly authorised persons should be entitled to inspect all court papers and documents related to proceedings being observed;

Conscious of the fact that duly authorised trial observers must, for the avoidance of doubt, be properly identified as such;

Taking into account the totality of the matters aforesaid, I hereby issue the following

DECISION

(1) In the exercise of the powers vested in him 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, the High Representative has concluded that the interests of justice require him to appoint

a certain number of trial observers who shall be furnished with an official identification card.

(2) Such authorised trial observer shall, without let or hindrance, be entitled, notwithstanding any procedural law or regulation to the contrary, to attend, and observe such judicial proceedings as he or she may require to attend, and enjoy the right to inspect case papers relating to such proceedings as hereinbefore referred to.

(3) The proceedings referred to may be so observed at any stage thereof whether pre-trial or otherwise.

(4) Such observer shall respect all existing rules as to confidentiality and non-publicity of proceedings.

(5) This Decision, which is taken by the High Representative acting as aforesaid pursuant to the powers vested in him by virtue of his international mandate shall not be justiciable before the courts of Bosnia and Herzegovina. In making this Decision the High Representative does not in the premises substitute himself for any local law making body.

This Decision shall enter into force immediately and shall be published without delay in the Official Gazette of Bosnia and Herzegovina.

Sarajevo, 24 January 2003

*Paddy Ashdown
High Representative*