

Decision suspending all judicial and prosecutorial appointments in BiH (except to the BiH and the Entity Const.Courts, the BiH H.Rights Chamber, the BiH Court, and all courts in the Brcko District) pending the restructuring of the judicial system

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”;

Considering paragraph I.2.a. of the Conclusions of the said Bonn Conference which recognized “that an impartial and independent judiciary” was “essential to the rule of law and reconciliation within Bosnia and Herzegovina”;

Considering the Peace Implementation Council Steering Board Communiqué of 28 February 2002 following its meeting in Brussels which states inter alia that: “The Steering Board endorses the restructuring of the court system and the consequent reduction in the number of judges, which will require a selection process and termination of mandates....It notes that the proposed strategy has been devised in response to calls by the authorities in BiH for firmer IC actions to tackle economic crime, corruption and problems inherent to the judicial system. The Steering Board insists on the need for measures that will contribute decisively to building an independent and more efficient judicial system that enjoys the confidence of the public and enhances the environment for foreign investment”;

Having considered the foregoing matters, I hereby issue, in the exercise of the powers granted to me under Article V of Annex 10 aforesaid, the following

DECISION

On Cessation of Appointments Processes and Extension of Judicial and Prosecutorial Mandates Pending the Restructuring

of the Judicial System in Bosnia and Herzegovina.

1. From the date of this Decision, any appointment processes currently underway by the domestic commissions/councils or pending before an appointing authority or other body shall cease, and no appointment to a judicial or prosecutorial post is to be made until further provided by law as a result of restructuring of the judicial and prosecutorial systems. All relevant provisions of domestic law governing the appointment of judges and prosecutors, including but not limited to relevant provisions contained in the Law on the Judicial and Prosecutorial Service of the Federation of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina 22/00) as thereafter amended, the Law on Courts and Judicial Service of the Republika Srpska (Official Gazette of the Republika Srpska 13/00), as thereafter amended, and the Law on Prosecutorial Service of the Republika Srpska (Official Gazette of the Republika Srpska 13/00), as thereafter amended, are hereby suspended.

2. All judges and prosecutors currently holding office, regardless of expiration of mandate, shall continue to perform judicial and prosecutorial functions in accordance with their mandates, and shall enjoy all rights under law until further provided by law as a result of restructuring of the judicial and prosecutorial systems. Judges and prosecutors shall, however, be subject to mandatory retirement age requirements, shall be permitted to resign voluntarily, and shall be subject to removal for cause in accordance with the law.

3. This Decision does not apply to appointments to the Constitutional Court of Bosnia and Herzegovina, the Constitutional Courts of the Federation of Bosnia and Herzegovina and the Republika Srpska, the Human Rights Chamber, to judicial and prosecutorial appointments in the Brcko District, nor to the nomination process for appointments

to the Court of Bosnia and Herzegovina.

4. This Decision shall enter into force on the day of its signature and shall be published without delay in the Official Gazettes of Bosnia and Herzegovina, of the Federation of Bosnia and Herzegovina and its Cantons, and of the Republika Srpska.

Sarajevo,
2002

04

April

Wolfgang Petritsch
High Representative