Decision suspending Mirko BRALO from his position as President of the Municipal Court in Livno

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" 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 Annex 6 (Agreement on Human Rights) to the General Framework Agreement for Peace in Bosnia and Herzegovina, according to which all persons within the jurisdiction of Bosnia and Herzegovina shall be secured the highest level of internationally recognised human rights and fundamental freedoms, including the right to a fair hearing in civil and criminal matters;

Further noting the Constitution of Bosnia and Herzegovina, contained in Annex 4 to the General Framework Agreement for Peace in Bosnia and Herzegovina, which states at Article I.2, under the heading "Democratic Principles", that "Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law….";

Emphasizing the fact that the establishment of the rule of law is an essential part of the peace process;

Bearing in mind that the rule of law requires that justice must not only be done but be seen to be done, and that for justice to be seen to be done public confidence must exist in the fairness, impartiality, honesty, integrity and incorruptibility of the judiciary, and that like standards are maintained as to prosecutors;

Taking into account the current judicial reform programme in Bosnia and Herzegovina which involves the establishment of a High Judicial and Prosecutorial Council for Bosnia and Herzegovina as well as inter entity High Judicial and Prosecutorial Councils designed to ensure the institution and maintenance of the highest professional standards among judges and prosecutors by means of efficient and functioning processes, *inter alia*, as to discipline and dismissal;

Noting that the establishment and bringing into operation of such Councils will inevitably involve some period of delay but that the restoration of public confidence in the judiciary and in the prosecutorial service requires immediate action;

Considering that it is in the interest of those against whom substantial accusations have been made, as well as of those whose affairs and cases may be influenced or decided by such persons, that doubt should not be permitted to cloud the esteem and respect necessary for the confident conduct of legal proceedings;

Bearing in mind that public confidence in the current period before the setting up of such Councils requires that the exercise of judicial and prosecutorial functions by those against whom accusations have been made should cease pending scrutiny of such accusations by such Councils;

Further bearing in mind the concern that any action which may be taken against persons holding public office or officials is proportionate and that the matters hereinafter set out contain allegations not as yet tested before the appropriate disciplinary or other body.

Having considered, borne in mind and noted all the matters aforesaid, I hereby issue the following:

DECISION

To suspend Mirko BRALO from his position as President of the Municipal Court in Livno pending a further determination by the High Judicial and Prosecutorial Council of the Federation of Bosnia and Herzegovina.

The President of the Canton 10 Cantonal Court will without delay make arrangements for the management of Livno Municipal Court and for the taking over of any cases which were the responsibility of Mr. Mirko BRALO, and shall make arrangements for the administration of those cases.

This Decision has immediate effect and without the necessity for any further procedural steps to be taken.

The decision made herein is issued pursuant to the

international mandate of the High Representative and shall not be justiciable before any court in Bosnia and Herzegovina.

Reasons for Suspension

It is alleged that Mirko BRALO has shown total contempt for the rule of law. He was the presiding judge in a case in 1998, where a Bosnian Croat, BB, was charged with the murder of a Bosniak in Livno. BB was convicted of murder and sentenced to undergo a security measure of mandatory psychiatric treatment. It is alleged that this sentence is wholly inappropriate and in violation of the relevant law.

As presiding judge at the Municipal Court in Livno during the trial of BB, he was responsible for ensuring the proper conduct of the trial. The evidence against BB was irrefutable (he was seen shooting the victim in the head at point blank range). Mirko BRALO encouraged a highly intimidatory and nationalistic atmosphere at the trial. The trial involved many violations of substantive and procedural rules. Examples of such violations include that only one expert witness was heard as to the psychiatric state of the accused, the acceptance of the evidence of this expert, despite the fact that it was very unclear, weak and internally contradictory; the failure to hear evidence on behalf of the injured party, and the failure of the court to support its conclusions with proper reasoning in its decision.

The Human Rights Chamber stated in its decision relating to this case, “In fact, the decision is so seriously flawed that, in light of the situation in Canton 10 in 1998 which will be discussed later in the context of discrimination, it gives rise to suspicion as to whether B.B., a member of the Croat majority in Canton 10, when shooting S.T. in the head, acted in the awareness of the probability that no adequate sanction would follow.”[1]

Sarajevo May 2002

Wolfgang Petritsch

High Representative.

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[1][1] E.M and S.T v. Federation of Bosnia and Herzegovina, decision on admissibility and merits delivered on 8 March 2002 at paragraph 55.