

Decision to remove Dr. Dragan Kalinic from his positions as Chairman of the National Assembly of Republika Srpska and as President of the Srpska Demokratska Stranka

219/04

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 the Peace Agreement throughout Bosnia and Herzegovina and its Entities which “may include actions against persons holding public office”;

Noting that in paragraph X.4 of the Annex to the Declaration of the Peace Implementation Council issued at Madrid on 16 December 1998 it was stated that the Council acknowledged that those whom the High Representative barred from official office “may also be barred from running in elections and from any other elective or appointive public office and from office within political parties until further notice”;

Mindful of the fact that the peace implementation process requires to be completed in order that a stable political and security environment in Bosnia and Herzegovina is established which is conducive, *inter alia*, to fundamental economic reform and to the return of refugees and displaced persons;

Recalling that under Article II, Paragraph 8 of the Constitution of Bosnia and Herzegovina, all competent authorities in Bosnia and Herzegovina shall cooperate with and provide unrestricted access to the International Tribunal for the Former Yugoslavia and shall in particular comply with orders issued pursuant to Article 29 of the Statute of the Tribunal;

Recalling further all relevant resolutions of the Security Council of the United Nations and in particular Resolution 1503 of 28 August 2003 and Resolution 1534 of 26 March 2004 by which the Security Council called upon all States, especially Serbia and Montenegro, Croatia and Bosnia and Herzegovina, and on the Republika Srpska within Bosnia and Herzegovina, to intensify cooperation with and render all necessary assistance to the ICTY, particularly to bring Radovan Karadzic and Ratko Mladic, [...] and all other indictees to the ICTY;

Noting that Bosnia and Herzegovina’s failure to meet its international obligations towards the International Criminal

Tribunal for Former Yugoslavia increasingly constitutes an obstacle to Bosnia and Herzegovina's integration into Europe and that this failure is largely attributable to failures on the part of the entity of Republika Srpska;

Further noting, by way of illustration, the Istanbul Summit Communiqué issued on 28 June 2004 by which the Heads of State and Government participating in the meeting of the North Atlantic Council expressed their concerns that Bosnia and Herzegovina, particularly obstructionist elements in the Republika Srpska entity, has failed to live up to its obligation to cooperate fully with ICTY, including the arrest and transfer to the jurisdiction of the Tribunal of war crimes indictees, a fundamental requirement for the country to join Partnership for Peace.

Recalling that the Steering Board of the Peace Implementation Council, at its meeting held in Sarajevo on 25 June 2004, noted that Republika Srpska has failed to locate or apprehend even one war-crimes indictee in the nine years since the Dayton Accord and reminded that Republika Srpska an Entity of Bosnia and Herzegovina guaranteed under Dayton, is failing to carry out a key obligation under Dayton and international law, for which the relevant individuals and institutions must be held accountable.

Noting further that the Peace Implementation Council at its meetings held in Bonn on 10 September 1997, in Madrid on 16 December 1998 and in Brussels on 23/24 May 2000, expressed its deep concerns regarding ingrained corruption in BiH which can lead to the undermining of democratic governance and the wasting of public resources and can hinder the development of the market economy;

Bearing in mind that at Madrid on 16 December 1998 the Peace Implementation Council set out its concerns as follows: "The Council expresses deep concern about continuing corruption and evasion of public funds. It welcomes the High Representative's

development of a comprehensive anti-corruption strategy... The High Representative will take the lead in co-ordinating International Community efforts aimed at eliminating opportunities for corruption, tax evasion and diversion of public revenue, ensuring transparency in all phases of governmental operation...”;

Cognizant that the Election Law of Bosnia and Herzegovina and the Law on Party Financing of Bosnia and Herzegovina introduced the concept of transparency of funding of political parties with a view to curbing ingrained corruption in Bosnia and Herzegovina which undermines democratic governance and the confidence of citizens in their political system, wastes public resources and hinders the development of the market economy;

Considering Recommendation 1516(2001) on the Financing of political parties adopted by the Standing Committee, acting on behalf of the Parliamentary Assembly of the Council of Europe, which provides that “in the case of a violation of the legislation, political parties should be subject to meaningful sanctions, [...] and that when individual responsibility is established, sanction should include the annulment of the elected mandate or a period of ineligibility”;

Ever conscious of the need to balance in due proportion the public interest with the rights of individuals.

Recalling that the Directive Suspending All Disbursements of Budgetary Itemisations for Party Funding to the Srpska Demokratska Stranka (hereinafter the SDS) and Ordering the SDS to Submit a Financial Plan for the Period from 1 January 2003 until 31 March 2004 remains in force;

Mindful of the Financial Report of 19 April 2004 submitted by the SDS pursuant to the said Directive of the High Representative and the report of the Special Auditor for Republika Srpska (hereinafter: the Special Auditor) on the

said Financial Report released on 24 June 2004.

Distressed by the fact that the said Financial Report contains evidence of a disturbing pattern of serious violations of the Law on Party Financing of Bosnia and Herzegovina;

Noting that there is evidence, including from a letter from Radovan Karadzic, a person indicted under Article 19 of the Statute of the International Criminal Tribunal for former Yugoslavia who has been able, prior to the date hereof, to elude just prosecution, that the said individual was in regular contact with and has received assistance from SDS;

Recalling that the aforementioned Financial Report failed to provide any evidence that this was not the case and shows that no sufficient safeguards are in place against SDS funds being used to assist persons indicted under Article 19 of the Statute of the International Criminal Tribunal for former Yugoslavia, such as Radovan Karadzic, and their support structure;

Bearing in mind the responsibility of all public and party officials in positions of authority to ensure that Bosnia and Herzegovina meets its international obligation to co-operate with the ICTY in the capture of war criminals and their responsibility to ensure that the public and party funds are not used to give succour or support to war criminals and war criminal networks.

Recognizing that no other evidence has been proffered to exonerate SDS in this connection;

Noting that the SDS' failure to ensure that no assistance is provided to persons indicted under Article 19 of the Statute of the International Criminal Tribunal for former Yugoslavia constitutes obstruction of the implementation of the General Framework Agreement for Peace in Bosnia and Herzegovina;

Bearing in mind the totality of the matters hereinbefore and

hereinafter set out, the High Representative hereby issues the following:

DECISION

to remove Dr. Dragan Kalinic from his positions as Chairman of the National Assembly of Republika Srpska and as President of the Srpska Demokratska Stranka

and to bar him from holding any official, elective or appointive public office and from running in elections and from office within political parties unless or until such time as the High Representative may expressly authorise him so to do or to hold the same. Any entitlement to receive remuneration or any privileges or status arising out of his said position ceases forthwith.

This Decision has immediate effect and does not require any further procedural steps to be taken. Dr. Dragan Kalinic must vacate his office immediately.

This Decision shall be published without delay in the Official Gazette of Republika Srpska.

Reasons for Removal

1. Despite its constitutionally mandated duty to fully co-operate with ICTY – which duty was impressed upon Republika Srpska further by the Resolutions of the United Nations Security Council referenced above – indicted individuals remain at large within Republika Srpska and have been and are presently assisted in evading justice by individuals in positions of authority and by institutions of a state and political character. That this state of affairs has continued for nine years following the end of the war without a single war criminal being arrested in the territory of the Republika Srpska by the authorities of the Republika Srpska, is a source of deep and abiding concern not only for the people of Bosnia and Herzegovina but for the international community as a

whole.

For over a decade and throughout the war, SDS has held the reins of political power in Republika Srpska. The Entity's failure to apprehend those indicted individuals in flagrant disregard of Bosnia and Herzegovina's obligations under international law is, therefore, a damning indictment of SDS' commitment to proper governance. Given its dubious legacy as the political party founded by and initially presided over by the chief ICTY indictee at large, Radovan Karadzic, it was doubly incumbent upon SDS to effect expiation and rehabilitation by proactively pursuing and bringing to book the erstwhile architects of its odious policies which so disfigured the polity. That it has not done so is a testament, at best, to its negligent abdication of governmental responsibility or, at worst, to its concerted will to obstruct peace implementation by clinging to vestiges (and figures) of its bankrupt past.

As the leading member of the SDS occupying the highest position of responsibility within the party and upon solid information and belief, Mr. Kalinic is culpable for the SDS' failure to purge the political landscape of conditions conducive to the sustenance to individuals indicted under Article 19, as aforesaid.

2. Persons holding office as President of a political party are placed in a position of trust and confidence not only vis-à-vis the members of that particular party but also vis-à-vis the taxpayers insofar as political parties are funded, *inter alia*, from the budgets of the various level of Governments in Bosnia and Herzegovina. As such, they are under an obligation to ensure that the financing of the parties is fully transparent and orderly and to take such step as are necessary to ensure that the party observes and adheres to both domestic law and international obligations and that funds from the Party, whether private or public, are neither used for the sustenance of criminals or indicted war criminals or their

support structures nor to help those evade capture.

The Report of the Special Auditor for Republika Srpska shows substantial discrepancies between the Financial Report of 19 April 2004 and the financial records of SDS offices across Republika Srpska. In particular, the Report of the Special Auditor highlights the lack of property lists, poor invoices supporting payments, incomplete payments of required social benefit and employment tax costs for SDS employees, unreported cash income, poorly documented and frequent withdrawals from petty cash, all of which constitute breaches of the Law.

More importantly, the Report shows a total failure of the central bodies of the SDS to assume their supervisory duties under the Statute of the Party and to guarantee that the minimum necessary measures are in place for ensuring the effective and proper management and control of the party and its assets. The result of such failures of control amount to a delinquency of duty to ensure that these funds are secure from being used to sustain or assist indicted war criminals, and especially Radovan Karadzic, the founder of the SDS, who, *inter alia*, has admitted in a letter that he is in contact with and has received assistance from SDS, a fact which is also supported by certain other evidence.

For reasons mentioned above, Dragan Kalinic had a special responsibility to sever the links of the party with the past by ensuring that no material assistance could be or was provided to such an individual. The findings of said Report compel the conclusion that, in the absence of control mechanisms, the SDS and its President are not in sufficient control of the funds of the Party to preclude party bodies from providing any assistance or succour to its former President.

On these grounds, the peace implementation is undermined as long as Mr. Kalinic remains in office. Accordingly, he must be removed from office forthwith.

Sarajevo, 29 June 2004

Paddy Ashdown

High Representative