

Decision allowing judges in the Federation to decide on the need of detention of individuals charged with serious offences during criminal proceedings

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 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";

Considering that rights to liberty and to due process in the criminal justice system, reflected in the provisions of the aforementioned Convention and the International Covenant on Civil and Political Rights require that pre-trial custody should only be ordered where necessary on the basis of a judicial discretion;

I hereby issue the following

DECISION

On the Law Amending the Code of Criminal Procedure of the Federation of Bosnia and Herzegovina

Article 1

In Article 183 of the Code on Criminal Procedure (" Official Gazette of the Federation of Bosnia and Herzegovina, no. 43/98), Paragraph 1 shall be deleted.

Previous Paragraph 2 et seq becomes Paragraph 1 et seq.

Article 2

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

Sarajevo, 08 November 2001

Wolfgang Petritsch
High Representative