

Decision Enacting the Law on Legal Assistance and Official Co-operation in Criminal Matters between the Federation of Bosnia and Herzegovina, Republika Srpska and the District of Brcko

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";

Recalling further the Agreement on the Regulation of Legal Assistance between Institutions of the Federation of Bosnia and Herzegovina and the Republika Srpska in respect of rendering legal assistance in civil, criminal and administrative matters;

Considering Article III.1 (g) of the Constitution of Bosnia and Herzegovina which provides that Bosnia and Herzegovina is competent to regulate in the area of "International and inter-Entity criminal law enforcement,";

Mindful of paragraph II.2 of the Annex to the Declaration of the Peace Implementation Council (Madrid, 16 December 1998) which "emphasize[d] the importance of intensified judicial reform efforts, co-ordinated by the High Representative, to support the efforts of the authorities in BiH [Bosnia and Herzegovina]" and "urge[d] the High Representative to further develop a comprehensive judicial reform strategic plan, identifying short and longer-term priorities, in consultation with the authorities, the Council of Europe, OSCE, UNMIBH and other organizations";

Considering the reinvigorated strategy for judicial reform to strengthen the Rule of Law efforts in Bosnia and Herzegovina in 2002/03 which was endorsed by the Steering Board of the Peace Implementation Council on 28 February 2002 and noting that the aforementioned strategy was devised in response to calls by the authorities in Bosnia and Herzegovina for firmer International Community actions to tackle economic crime, corruption and problems inherent in the judicial system;

Bearing in mind that criminal activities continue to infringe on the economic, fiscal, commercial and other social rights and interests of the citizens of Bosnia and Herzegovina;

Noting the vital importance to the Federation of Bosnia and Herzegovina, the Republika Srpska and the District of Brcko of ensuring that the rule of law is strengthened and followed in order to create the ground for economic growth and foreign investment;

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;

Bearing in mind that closer and more efficient legal assistance and official co-operation in criminal matters between the Federation of Bosnia and Herzegovina, the Republika Srpska and the District of Brcko will contribute to the effective discovery, prevention and prosecution of all types of criminal activities;

With the object of facilitating and strengthening the provision of legal assistance and official co-operation and the robust fight against crime in the Federation of Bosnia and Herzegovina, the Republika Srpska and the District of Brcko.

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

DECISION

Enacting the Law on Legal Assistance and Official Co-operation in Criminal Matters between the Federation of Bosnia and Herzegovina, Republika Srpska and the District of Brcko, which is hereby attached as an integral part of this Decision. The said Law shall enter into force as a law of Bosnia and Herzegovina as provided for in Article 10 thereof on an interim basis, until such time as the Parliamentary Assembly of Bosnia and Herzegovina adopts this Law in due form, without amendment and with no conditions attached.

This Decision shall come into force forthwith and shall be published without delay in the Official Gazettes of Bosnia and Herzegovina, of the Federation of Bosnia and Herzegovina, of the Republika Srpska and of the District of Brcko.

Law on Legal Assistance and Official Co-operation in Criminal Matters between the Federation of Bosnia and Herzegovina, Republika Srpska and the District of Brcko

Article 1

Subject of the Law

This law shall regulate the establishment of Legal Assistance and Official Co-operation in criminal matters between the Federation of Bosnia and Herzegovina, Republika Srpska and the District of Brcko and shall acknowledge on a reciprocal basis the decisions of their respective Courts and Law enforcement agencies in such matters.

Article 2

Definitions

(1) For the purposes of this law only, the term 'legal assistance' shall mean mutual assistance between the Courts. The term 'official co-operation' shall mean mutual co-operation between the law enforcement agencies, co-operation between the Courts and Law enforcement agencies and co-operation between the Courts as well as Law enforcement agencies and other authorities.

(2) For the purpose of this law, the term 'court' shall also mean Minor Offence Court, and the term 'criminal matters' shall also mean minor offence matters whilst the term 'criminal proceedings' shall also mean minor offence proceedings in the Minor Offence Courts.

(3) For the purposes of this law, 'law enforcement agencies' mean:

- the Prosecutors Offices,
- the Finance Police,
- the Police Agencies,
- the Investigation Agencies of the Tax and Custom Administrations in so far as they undertake criminal investigation in the scope of their competence,
- the State Border Service in so far as they undertake criminal investigation in the scope of their competence.

4) The Council of Ministers of Bosnia and Herzegovina may, by sub-decree, assign additional authorities as Criminal law enforcement agencies in the sense of this Law.

Article 3

Validity of decisions

Warrants, decisions and judgments of Courts in criminal matters issued on or after the 20 May 1998 are valid in the territory of Bosnia and Herzegovina and can be executed without any additional confirmation or acknowledgement.

Warrants and decisions of the Law enforcement agencies of the Entities and of Brcko District including warrants of

arrest issued on or after the 20 May 1998 are valid in Bosnia and Herzegovina and they can be enforced upon request without any additional confirmation or acknowledgment.

Article 4

Legal Assistance and co-operation between authorities

- 1) The Courts of the entities and Brcko District shall render legal assistance to each other in criminal matters.
- 2) Every Law enforcement agency or other authority of the Entities and of Brcko District shall establish official co-operation upon the request of the Courts or Law enforcement agencies from any part of Bosnia and Herzegovina.
- 3) The Law enforcement agencies in the territory of Bosnia and Herzegovina shall provide each other with information which they deem necessary or which facilitates investigations. A formal request is not a precondition for this exchange.
- 4) The law, which is valid in the place where legal assistance or official co-operation is being rendered, shall be applied when rendering such assistance or co-operation.

Article 5

Procedure

- (1) Requests for legal assistance from par. 1 article 4 of this law shall be directly forwarded from one to another Court.
- (2) Requests for official co-operation from par. 2 article 4 shall be directly forwarded from the Court or the Law enforcement agency making such request to the requested Law enforcement agency or authority.
- (3) Requests for legal assistance or official co-operation can be submitted verbally, in writing or by telephone. The requested authority for legal assistance or official co-operation has the right to ask for a fax copy of the warrant, decision or a judgement. If their execution has a direct effect on the rights of an individual a copy of such warrant, decision or judgement always has to be provided.
- (4) A request for legal assistance or official co-operation as well as the answer to such request can be made in any one of the languages, which is in official use in Bosnia and Herzegovina.
- (5) Requests for legal assistance or official co-operation may only be rejected if the fulfillment of such requests is not in accordance with the law that is in force in the place where the request needs to be fulfilled. A request for legal assistance or official co-operation can not be rejected because of the lack of competence of the requested authority. If the requested authority does not have the competence to provide the requested assistance or co-operation, it should immediately transfer the request to the competent authority.
- (6) Requests for legal assistance or official co-operation must be processed without any delay and the requested documentation shall be immediately delivered to the authority that is requesting assistance or co-operation.
- (7) The officials of the requesting authority are entitled to be present when the requested authority implements the request.
- (8) Legal Assistance and official co-operation actions are rendered free of charge.

Article 6

Arrest and transfer

- (1) If a Court or Law enforcement agency orders or requests the arrest and/or a transfer of a suspect, an accused or a witness from one Entity or Brcko District to another for purposes of examination, custody or execution of a sentence, the competent authority of the requested Entity or Brcko District shall carry out the arrest and subsequent transfer to the requesting authority. This shall be done directly upon the request, in accordance with Article 5 par. 1 to par. 8. and no additional order or request of the requested Entity or Brcko District is required.

(2) In cases where the suspect or accused has been arrested and transferred in accordance with par. 1 of this article for the purpose of examination or pretrial detention, the authority that has requested assistance or co-operation must return the person immediately upon termination of the examination or pretrial detention to the place from where this person was transferred.

(3) The requested transfer shall be postponed if the presence of the person concerned as a suspect, accused or a witness is necessary in criminal proceedings in the requested Entity or in Brcko District.

Article 7

Persons in custody

(1) If a person in custody is summoned as a defendant, expert witness, witness or for purposes of confrontation of witnesses in a criminal proceeding in another Entity or Brcko District, that person shall be temporarily transferred to the requesting authority.

(2) The requested authority can define the time limit for the return of the person concerned from par. 1 of this article and can establish the manner in which the person shall be returned. The requesting authority must act in accordance with these conditions.

(3) The requesting authority has to ensure that the transferred person will also be held in custody while being in that Entity or Brcko District. The person has to be discharged if the time in custody expires while the person is still present in the area of the requesting Entity or Brcko District.

(4) A temporary transfer shall be postponed if the presence of the person concerned is necessary in criminal proceedings in the requested Entity or Brcko District.

Article 8

Urgency

(1) In cases of hot pursuit and seizure of evidence, law enforcement agencies of the entities and Brcko District are entitled to take the necessary action on the territory of the other entities and the Brcko District including the use of force and the use of weapons without the consent of the entity concerned or the Brcko District.

(2) When action is taken pursuant to paragraph 1, the competent authority and authority competent for prosecution in the Entity or Brcko District, whose territory is affected shall be immediately informed. Documents concerning the case and clarifying the situation of urgency must also immediately be submitted to them.

(3) Documents referred to in par.2 article 8 shall be returned to the entity or Brcko District that has taken action. Only in a case when the action has violated the Law of the entity or the Brcko District, can the return of the documents be rejected. In such a case the requesting entity or the Brcko District must be informed immediately.

(4) The Law that is in force in the place where hot pursuit and seizure of evidence is conducted shall be applied to activities undertaken based upon par. 1 of this article.

Article 9

Issues of conflict

In cases where a request for legal assistance or official co-operation is rejected pursuant to article 5 par.5 the case shall be resolved by the Court of Bosnia and Herzegovina in accordance with article 13 of the Law on the Court of Bosnia and Herzegovina.

Article 10

Final provision

This Law shall come into effect on the eighth day after it is published in the Official Gazette of Bosnia and

Herzegovina.

Sarajevo, 23 May 2002

Wolfgang Petritsch

High Representative