

Decision Enacting the Law on Amendments to the Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina

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 implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities”;

Bearing in mind the communiqué of the Steering Board of the Peace Implementation Council issued at Brussels on 28 February 2002 wherein it recognized “the importance of the creation of a High Judicial Council for BiH”;

Further bearing in mind the communiqué of the Steering Board of the Peace Implementation Council issued at Sarajevo on 7 May 2002 wherein it was stated that the establishment of a single High Judicial Council would “lay the foundations for further reform of the judiciary, such as the re-structuring of the court and prosecutorial systems”;

Noting that the Prosecutor’s Office of Bosnia and Herzegovina providing for the investigation and prosecution of crimes which lie within the competence of the State of Bosnia and Herzegovina under the Constitution of Bosnia and Herzegovina is a pre-condition for the establishment of the rule of law in the State of Bosnia and Herzegovina;

Considering that the communiqué of the Steering Board of the Peace Implementation Council issued at Sarajevo on 31 July 2002 stated that the Board welcomes the creation of the Special Chambers and endorses the proposal of the High Representative to include national and international Judges and Prosecutors in a Special Panel/Department for Organized Crime, Economic Crime and Corruption in the Court of Bosnia and Herzegovina and the Prosecutor’s Office of Bosnia and Herzegovina;

Conscious of the necessity to pursue the re-structuring of the Court and Prosecutorial systems and the selection process of Judges and Prosecutors following upon the establishment of the High Judicial and Prosecutorial Council for the Federation of Bosnia and Herzegovina and of the High Judicial and Prosecutorial Council of the Republika Srpska which shall together compose a State High Judicial Council for Bosnia and Herzegovina;

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

DECISION

Enacting the Law on Amendments to the Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina, 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 20 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 AMENDMENTS TO THE LAW ON HIGH JUDICIAL AND PROSECUTORIAL COUNCIL OF BOSNIA AND HERZEGOVINA

Preamble

The Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina No. 15/02, Official Gazette of the Federation of Bosnia and Herzegovina No. 29/02, Official Gazette of the Republika Srpska No. 40/02) (hereinafter the 'Law'), is hereby amended as follows:

Article 1

In Article 5 of the Law the words "two judges" shall be replaced by the words "one judge"

In Article 5 after the words "by all the judges of the Court;" the following sentence shall be inserted "-one prosecutor of the Prosecutor's Office of Bosnia and Herzegovina, elected by the Collegium of Prosecutors"

Article 2

Article 17, item 2 shall be deleted and the following new item 2 shall be inserted:

"2. Selection and appointment of prosecutors including Chief Prosecutor and Deputy Chief Prosecutors of the Prosecutor's office of Bosnia and Herzegovina and the Prosecutor and Deputy Prosecutors of the Prosecutor's Office of Brcko District;"

In Article 17 item 12: after the words "Basic Court of Brcko District and" the following words shall be inserted "prosecutors of the Prosecutor's Office of Bosnia and Herzegovina and of the".

In Article 17 item 15: after the words "Basic Court of Brcko District and of the" the following words shall be inserted "Prosecutor's Office of Bosnia and Herzegovina and of the".

Article 3

In Chapter IV: after the words "COURT OF BOSNIA AND HERZEGOVINA," the following words shall be inserted " THE PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA,".

Article 4

In Article 20: after the words "Court of Bosnia and Herzegovina," the following words shall be inserted "Prosecutor's Office of Bosnia and Herzegovina,".

Article 5

The following Article 24.a shall be inserted after Article 24:

"Article 24.a

Chief Prosecutor, Deputy Chief Prosecutors and Prosecutors of the Prosecutor's Office of Bosnia and Herzegovina

The chief prosecutor and deputy chief prosecutors of the Prosecutor's Office of Bosnia and Herzegovina shall have a minimum of ten (10) years of practical experience as a judge, prosecutor, deputy prosecutor, assistant prosecutor, attorney, or other comparable legal experience after having passed the bar examination and shall have proven management and leadership skills relevant to the operation of this prosecutor's office. The chief prosecutor and deputy chief prosecutors shall have a mandate of six (6) years and shall be eligible for re-appointment; however, the mandate shall be subject to resignation, mandatory retirement age or removal from office for cause.

Prosecutors shall have a minimum of five (5) years of practical experience as a judge, prosecutor, deputy prosecutor, assistant prosecutor, attorney, or other legal experience after having passed the bar examination. A deputy prosecutor's mandate shall be unlimited; however, the mandate shall be subject to resignation, mandatory retirement age or removal from office for cause."

Article 6

In Chapter V: after the words "PROSECUTORS OF THE," the following words shall be inserted "PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA AND OF THE".

Article 7

In Article 27: the words "prosecutor and deputy prosecutor's" shall be deleted and after the words " Basic Court of Brcko District and" the following words shall be inserted "prosecutors, including chief prosecutor and deputy chief prosecutors, and deputy prosecutors in the Prosecutor's Office of Bosnia and Herzegovina and the".

Article 8

In Article 37 paragraph 1: after the words " Court of Bosnia and Herzegovina" the following words shall be inserted "and prosecutors of the Prosecutor's Office of Bosnia and Herzegovina", and after the words "the duty of judge" the following word shall be inserted "/prosecutor".

Article 9

In Chapter VI: after the words "BASIC COURT OF BRCKO DISTRIC," the following words shall be inserted "PROSECUTORS OF THE PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA".

Article 10

In Article 58 paragraph 1: after the words "or deputy prosecutor of" the following words shall be inserted "the Prosecutor's Office of Bosnia and Herzegovina and of the".

Article 11

Article 61 paragraph 1 shall be deleted and the following new paragraph 1 shall be inserted:

"If a court president, chief prosecutor or prosecutor of the Prosecutor's Office of Brcko District believes that the activities of a judge of the Court of Bosnia and Herzegovina, Appellate Court of Brcko District, Basic Court of Brcko District and prosecutor or deputy prosecutor of the Prosecutor's Office of Bosnia and Herzegovina or of the Prosecutor's Office of Brcko District are not compatible with judicial or prosecutorial function, the judge, prosecutor or deputy prosecutor shall be informed and the court president, chief prosecutor or prosecutor of the Prosecutor's office of Brcko District shall refer the matter to the Council, which shall issue a binding decision. The Council's rules of procedure shall regulate proceedings."

Article 12

In Article 62 paragraph 1: after the words "or deputy prosecutor of" the following words shall be inserted "the Prosecutor's Office of Bosnia and Herzegovina and of the".

Article 13

In Chapter IX: after the words "OR DEPUTY PROSECUTOR OF" the following words shall be inserted "THE PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA AND OF THE".

Article 14

In Article 63 paragraph 1: after the words "or deputy prosecutor of" the following words shall be inserted "the

Prosecutor's Office of Bosnia and Herzegovina and of the".

In Article 63 paragraph 1 item 1: after the words "in the case of judges," the following words shall be inserted "prosecutors of the Prosecutor's Office of Bosnia and Herzegovina and deputy prosecutors".

In Article 63 paragraph 1 item 2: the word "prosecutors" shall be deleted and replaced by the following words "prosecutor of the Prosecutor's Office of Brcko District".

Article 63 paragraph 3 shall be deleted and the following new paragraph 3 shall be inserted:

"The term of a president of a court, chief prosecutor, deputy chief prosecutor or prosecutor of the Prosecutor's Office of Brcko District shall terminate upon the expiry of the period for which he/she has been appointed."

Article 15

In Article 64 paragraph 1: after the words "president of a court or the" the following words shall be inserted "chief prosecutor, deputy chief prosecutor of the Prosecutor's Office of Bosnia and Herzegovina or the".

In Article 64 paragraph 2: after the words " of a court president," the following words shall be inserted "chief prosecutor or deputy chief prosecutor," and after the words "in the same court" the following words shall be inserted "or prosecutor's office".

Article 16

In Article 65, after paragraph 1 the following new paragraph 2 shall be inserted:

"Mandatory retirement age for prosecutors at the Prosecutor's Office of Bosnia and Herzegovina shall be 67."

Article 65 paragraph 2 shall become "paragraph 3".

Article 17

In Article 65 after paragraph 2 the following new paragraph 3 shall be inserted:

"Until the Prosecutor's Office of Bosnia and Herzegovina is established, Article 1 of this law shall not apply."

Article 18

In Article 68 the following new words shall be inserted at the beginning of the paragraph: "With the exception of Article 5 of this law and".

Article 19

Article 71 of the Law shall be deleted.

Article 20

Publication and Entry into force of the Law on Amendments

This Law on Amendments to the Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina shall be published in the Official Gazette of Bosnia and Herzegovina, Official Gazette of the Federation of Bosnia and Herzegovina, Official Gazette of Republika Srpska and Official Gazette of Brcko District and shall enter into force on the eight day after publication in the Official Gazette of Bosnia and Herzegovina.

Sarajevo, 6 August 2002

*Paddy Ashdown,
High Representative*