

Decision Enacting the Law on the Prosecutor's Office 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";

Recalling further paragraph 12.1 of the Declaration of the Peace Implementation Council which met in Madrid on 15 and 16 December 1998, which made clear that the said Council considered that the establishment of the rule of law, in which all citizens had confidence, was a prerequisite for a lasting peace, and for a self-sustaining economy capable of attracting and retaining international and domestic investors;

Recalling in addition paragraph 3 of Annex II (Rule of Law and Human Rights) to the last said Declaration, according to which the establishment of judicial institutions at the State level, which meet an established constitutional need to deal with criminal offences perpetrated by public officials of Bosnia and Herzegovina in the course of their duties, and with administrative and electoral matters, is a precondition for the establishment of the rule of law in Bosnia and Herzegovina;

Bearing in mind 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;

Considering that the Steering Board of the Peace Implementation Council in Sarajevo on 7 May 2002 called upon the local authorities to ensure the rapid establishment of the Court of Bosnia and Herzegovina reminding the Bosnia and Herzegovina authorities that the Appellate Division of the Court needs to be operational in order to adjudicate election complaints and urging the authorities to immediately find a sustainable solution to the problem of the location of the Court;

Considering further 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;

Noting therefore that a 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;

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 and that the establishment of a Special Department for Organized Crime, Economic Crime and Corruption within the aforesaid Prosecutor's Office of Bosnia and Herzegovina will advance the robust fight against crime in Bosnia and Herzegovina;

Convinced of the vital importance to Bosnia and Herzegovina of ensuring that the rule of law is strengthened and followed in order to create the ground for economic growth and foreign investment;

Mindful therefore both of the urgency and of the need to establish the Prosecutor's Office of Bosnia and Herzegovina and for all the reasons as aforesaid,

I hereby issue the following

DECISION

Enacting the Law on the Prosecutor's Office 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 21 paragraph 1 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 THE PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

GENERAL PART

Article 1

Establishment

1. In order to ensure the effective exercise of competence of the State of Bosnia and Herzegovina and the respect of human rights and the rule of law in the territory of this State, the Prosecutor's Office of Bosnia and Herzegovina (hereinafter: the 'Prosecutor's Office') is hereby established.
2. The Seat of the Prosecutor's Office shall be at Sarajevo.

Article 2

Independence

The Prosecutor shall act independently as a separate organ of Bosnia and Herzegovina.

Article 3

Organization of the Prosecutor's Office

1. The duties of the Prosecutor's Office shall be carried out pursuant to the Constitution of Bosnia and Herzegovina and the laws of Bosnia and Herzegovina and shall be held by the Chief Prosecutor of Bosnia and Herzegovina (hereinafter: the Chief Prosecutor), three Deputy Chief Prosecutors of Bosnia and Herzegovina (hereinafter: the Deputy Chief Prosecutors) and a number of Prosecutors of Bosnia and Herzegovina (hereinafter: the Prosecutors).
2. The Chief Prosecutor and the Deputy Chief Prosecutors shall be selected and appointed by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina from the Prosecutors of the Prosecutor's Office.
3. Within the Prosecutor's Office a Special Department for Organized Crime, Economic Crime and Corruption shall be established, as defined by law (hereinafter the 'Special Department').

Article 4

Language

The Bosnian, Croat and Serb languages and Latin and Cyrillic scripts shall equally be used in the Prosecutor's Office.

Article 5

Chief Prosecutor, Deputy Chief Prosecutors and Prosecutors

1. The Prosecutor's Office shall be represented and chaired by the Chief Prosecutor.
2. If the Chief Prosecutor is incapacitated or prevented from carrying out his/her duties he/she shall be replaced by a Deputy Chief Prosecutor as designated by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina.
3. The Deputy Chief Prosecutors and Prosecutors may perform any action in the proceedings instituted before the Court of Bosnia and Herzegovina for which as provided by State Law the Chief Prosecutor has been authorized.

Article 6

Composition of the Special Department

1. The Special Department shall consist of a Head and Prosecutors.
2. A Deputy Chief Prosecutor shall be the Head of the Special Department (hereinafter 'Head of the Special Department'). He/she shall have a Deputy Head, who shall be selected from the Prosecutors of the Special Department.

Article 7

Collegium of Prosecutors

The Collegium of Prosecutors shall consist of the Chief Prosecutor, the Deputy Chief Prosecutors and the Prosecutors.

Article 8

Period of Office

1. The Chief Prosecutor and Deputy Chief Prosecutors shall have a mandate of six (6) years and shall be eligible for reappointment; however, the mandate shall be subject to resignation, mandatory retirement age or removal from office for cause.
2. Upon expiration of the mandates of the Chief Prosecutor and Deputy Chief Prosecutors, unless they are re-appointed or upon resignation as Chief Prosecutor or Deputy Chief Prosecutors, they shall continue to perform their duties as Prosecutors.
3. The Prosecutors shall have an unlimited mandate; however, the mandate shall be subject to resignation, mandatory retirement age or removal from office for cause.

Article 9

The Budget of the Prosecutor's Office

1. The Prosecutor's Office shall have its own budget, which shall be included in the budget of Bosnia and Herzegovina. Before the commencement of the budget year, the Chief Prosecutor shall present a budget proposal to High Judicial and Prosecutorial Council of Bosnia and Herzegovina. The Chief Prosecutor has the right to attend and to defend the High Judicial and Prosecutorial proposal at the sessions of the Parliamentary Assembly and its relevant committees whenever budgetary matters affecting the Prosecutor's Office are discussed or decided.

2. The Chief Prosecutor, assisted by the Registrar, shall be responsible for preparing and implementing the budget.
3. The budget shall include a separate item specifying the budget requirements for the work of the Special Department. The Head of the Special Department shall plan and execute the Special Department budget item.
4. At the end of each budgetary year, the Chief Prosecutor shall inform the Parliament of Bosnia and Herzegovina of the execution of the budget of the Prosecutor's Office.

Article 10

Requirements of Reporting to the State Authorities

In the exercise of its functions the Prosecutor's Office shall, upon its own initiative or upon request, be entitled and required to provide the Presidency of Bosnia and Herzegovina, Parliamentary Assembly of Bosnia and Herzegovina, and the Council of Ministers of Bosnia and Herzegovina with information on its operation and implementation of this Law.

Article 11

Notification of Public

1. The Prosecutor's Office shall inform the public by way of public media or otherwise about developments and issues of general relevance that come to its knowledge in the course of its operation.
2. Within limits of and when the interest of procedure so requires, the Prosecutor's Office may inform the public and interested parties of individual cases upon which it takes action.

JURISDICTION

Article 12

Criminal Jurisdiction

1. The Prosecutor's Office shall be the authority competent to investigate the offences for which the Court of Bosnia and Herzegovina is competent, and to prosecute offenders before the Court of Bosnia and Herzegovina, in accordance with the Criminal Procedure Code of Bosnia and Herzegovina and other applicable laws.
2. The Prosecutor's Office shall be the authority competent to receive requests for international legal assistance in criminal matters as stipulated by law, multilateral and bilateral treaties and conventions, including requests for extradition or surrender of persons sought, from Courts or authorities within the territory of Bosnia and Herzegovina and from other States or International Courts or Tribunals. Where a court decision is necessary to carry out the request, the Prosecutor's Office shall be competent to make application for such decision.
3. The Special Department shall *inter alia* undertake measures defined by law with a view to investigating and prosecuting the perpetrators of Organized Crime, Economic Crime and Corruption offences as provided by State Law, when provision is made in the said laws that the Court of Bosnia and Herzegovina has such jurisdiction;
4. When the Special Department receives a case pursuant to Article 65 of the Law on the Court of Bosnia and Herzegovina, the Head of the Special Department shall examine the case and shall retain or return the case or carry out any investigation required to make such a decision.

ADDITIONAL DUTIES

Article 13

Annual Information and Statistics

1. At the end of each budgetary year, the Chief Prosecutor shall make a statistical overview of its activities which refers to:
 - a) pending and completed cases (description of the criminal act, date of its commission, name, surname and date of birth of the alleged perpetrator, date of filing),
 - b) number of incoming cases during the current year (see item a),
 - c) date and kind of final or temporary decision on pending cases in the office,
 - d) date and kind of final or temporary decision on cases under indictment in the Court or after the Court's verdict.
2. At the end of each budgetary year, on the basis of the statistical overview, the Chief Prosecutor shall inform the Parliament of Bosnia and Herzegovina accordingly. The Chief Prosecutor shall elaborate on the development of criminality in Bosnia and Herzegovina and indicate crime trends. The Chief Prosecutor may, in his conclusions submit proposals to reform the law. The aforementioned conclusions shall be published in the media and in other appropriate fora.
3. The Prosecutor of the Federation of Bosnia and Herzegovina, the Prosecutor of the Republika Srpska and the Prosecutor of the Brcko District shall provide the Chief Prosecutor with necessary data for the purposes mentioned in par. 2.
4. The Head of the Special Department shall report his/her activities defined by Article 12 of this Law. His/her reports shall be included in the reports as defined by paragraph 2.

INTERNAL ORGANIZATION

Article 14

Rulebook

1. The Rulebook of the Prosecutor's Office shall regulate *inter alia*, the organization of the Prosecutor's Office, the number of administrative-technical staff and conditions for performance of such duties.
2. The Rulebook of the Prosecutor's Office shall be issued by the Chief Prosecutor, upon approval of the Collegium of Prosecutors and the High Judicial and Prosecutorial Council of Bosnia and Herzegovina.
3. The Head of the Special Department shall regulate the internal organization of the Special Department by the Internal Rules of the Special Department.

Article 15

Administration of the Prosecutor's Office

1. The Chief Prosecutor directs the Office administration. He/she shall issue general instructions to the prosecutorial and administrative branches of the Office in accordance to the Rulebook.
2. At the beginning of each year, the Chief Prosecutor shall make a general plan for the distribution of cases and for administrative matters. As to the case distribution, the plan must define objective criteria according to which the distribution is made. The plan may be amended during the year if required by the changing number of incoming cases or related administrative matters or other unforeseen circumstances.
3. The Special Department has its own administration. Paragraph 1 and 2 shall be applied appropriately to the administration of the Special Department.

Article 16

Registrar of the Prosecutor's Office

1. The Prosecutor's Office shall have a Registrar, appointed by the Collegium of Prosecutors. The Prosecutor's Office shall have other staff in charge of expert, administrative and technical duties.
2. The Registrar of the Prosecutor's Office shall assist the Chief Prosecutor in the exercise of the administrative duties and in making the administrative part of the plan under Article 15(2).
3. An individual who is a graduate of law and has at least five years of relevant experience in law shall perform the duties of the Registrar.
4. The Registrar of the Prosecutor's Office shall assist the Chief Prosecutor in the preparation and execution of the budget of the Prosecutor's Office.

Article 17

Register

1. The Prosecutor's Office will keep a register of cases. When a case is received by the Office, it will be registered specifying *inter alia* the following data:
 - name and surname of the person against whom a criminal charge has been brought,
 - nationality of the charged person,
 - address of the charged person,
 - date when the criminal act was committed,
 - legal characterization of the criminal act,
 - referring regulations of the Criminal Code,
 - file number of the Office,
 - file number of the Criminal Law Enforcement Agency,
 - date of filing in the Office.
2. The Chief Prosecutor shall regulate the details of the administration in the Rulebook, drafted in co-operation with the Registrar, in so far as these have not already been arranged in the general instructions and the plan of distribution.

TRANSITIONAL PROVISION

Article 18

Transitional Provision

1. The Prosecutor's Office shall have jurisdiction for crimes defined in the Laws of the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brcko District which occurred prior to the entry into force of the Criminal Code of Bosnia and Herzegovina when those crimes include elements of international or inter-Entity crime as defined in the Criminal Code of Bosnia and Herzegovina.
2. When the Prosecutor's Office is established and the Criminal Division of the Court of Bosnia and Herzegovina is established all courts and prosecutors' offices in the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brcko District which have in their jurisdiction criminal cases, which fall under the jurisdiction of the Court of Bosnia and Herzegovina pursuant to Article 65, paragraph 2, of the Law on the Court of Bosnia and Herzegovina in which the indictment has not entered into force, shall be bound to transfer immediately the cases to the Prosecutor's Office. The Prosecutor's Office shall conduct further proceedings in accordance with the Criminal Procedure Code of Bosnia and Herzegovina. If the indictment has entered into force further proceedings will be

conducted by the courts and prosecutors' offices in the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brcko District.

FINAL PROVISIONS

Article 19

Employment Regulations

The applicable State regulations covering the employment of staff within the Institutions of Bosnia and Herzegovina shall apply accordingly to the employees of the Prosecutor's Office, unless otherwise defined by this Law.

Article 20

Responsibilities

1. Bosnia and Herzegovina shall be liable for all damages resulting from actions by officials from the Prosecutor's Office, carried out while performing their duties.
2. Bosnia and Herzegovina shall retain the right to be indemnified by an official if it is estimated that this official intentionally acted to cause the damage or injury, or the damage or injury was caused by his/her gross negligence.
3. The Rulebook shall regulate the details of the procedure and conditions for indemnification until such time as specific laws on state liabilities are established.
4. The State regulations covering the administration that are of relevance to management and responsibility of an office holder shall apply accordingly to the Chief Prosecutor, unless otherwise specified under this Law.

Article 21

Entry into Force

1. This Law shall enter into force eight days after the date of its publication in the "Official Gazette of Bosnia and Herzegovina".
2. The Prosecutor's Office shall be established on a date determined by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina. The High Judicial and Prosecutorial Council of Bosnia and Herzegovina shall make a public announcement of the establishment date.

Article 22

Publishing of the Law

This Law shall be published in the "Official Gazette of Bosnia and Herzegovina", "Official Gazette of the Federation of Bosnia and Herzegovina", "Official Gazette of the Republika Srpska" and "Official Gazette of the Brcko District of Bosnia and Herzegovina".

Sarajevo, 6 August 2002

*Paddy Ashdown,
High Representative*