

Decision Enacting the Law on Amendments to the Law on High Judicial and Prosecutorial Council of the Federation 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;

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;

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 and Prosecutorial Council would “lay the foundations for further reform of the judiciary, such as the re-structuring of the court and prosecutorial systems”;

Considering that the communiqué of the Steering Board of the Peace Implementation Council issued at Sarajevo on 31 July 2002 called upon the authorities in Bosnia and Herzegovina to assist in the timely establishment of the High Judicial and Prosecutorial Council and in the re-structuring of the Court and Prosecutorial systems;

Conscious of the necessity to pursue the re-structuring and selection process following the establishment of the High Judicial and Prosecutorial Council for the Federation of Bosnia and Herzegovina and that re-structuring is a fundamental step towards reforming and strengthening the Prosecutorial system;

Observing 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 re-structuring of the Prosecutorial System in the Federation 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 re-structure the Prosecutorial System of the Federation of Bosnia and Herzegovina and for all the reasons as aforesaid,

I hereby issue the following

DECISION

Enacting the Law on Amendments to the Law on High Judicial and Prosecutorial Council of the Federation 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 the Federation of Bosnia and Herzegovina as provided for in Article 25 thereof on an interim basis, until such time as the Parliament of the Federation 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 Gazette of the Federation of Bosnia and Herzegovina.

LAW ON AMENDMENTS TO THE LAW ON THE HIGH JUDICIAL AND PROSECUTORIAL COUNCIL OF THE FEDERATION OF BOSNIA AND HERZEGOVINA

Preamble

The Law on the High Judicial and Prosecutorial Council of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina No. 22/02) (hereinafter 'the Law'), is hereby amended as follows:

Article 1

In Article 5 paragraph 1, sub-paragraph 2 the words "Prosecutor of the Federation of Bosnia and Herzegovina and deputy prosecutors in the Office" shall be replaced by the words "Federation Collegium of Prosecutors."

In Article 5 paragraph 1, sub-paragraph 4 the words "or deputy prosecutor, either" and the words "or from a municipal prosecutor's office" shall be deleted. The words "Association of Prosecutors of the Federation of Bosnia and Herzegovina" shall be replaced by the words "Cantonal Collegium of Prosecutors."

Article 2

In Article 18, item 1 the words "reserve judges, prosecutors and deputy prosecutors" shall be replaced by the words "reserve judges and prosecutors".

In Article 18, item 2 after the words "presidents of the courts" the words ", chief prosecutors and deputy chief prosecutors" shall be inserted.

In Article 18, item 11 the words "lay judges, prosecutors and deputy prosecutors " shall be replaced by the words "lay judges and prosecutors".

Article 18, item 13 shall be replaced by the following new item:

"determining the number of judges and prosecutors of a particular court or of a prosecutor's office after soliciting an opinion or upon the initiative of a president of the respective court or a chief prosecutor and after consultation with the relevant budgetary authority;"

In Article 18, item 14 the words "judges, prosecutors and deputy prosecutors" shall be replaced by the words "judges and prosecutors".

Article 3

In Article 19 sub-paragraph 5 the words "and Municipal" shall be deleted.

Article 4

In Article 20, the words "deputy prosecutors" shall be deleted.

Article 5

In Article 23 the words “Judges, prosecutors and deputy prosecutors” shall be replaced by the words “Judges and prosecutors”.

Article 6

The sub-title preceding Article 29 shall be replaced by the sub-title “Chief Prosecutors, Deputy Chief Prosecutors and Prosecutors”.

Article 7

Article 29 paragraph 1 shall be replaced by the following paragraph:

“The Chief Prosecutor and Deputy Chief Prosecutors of the Federation Prosecutor’s Office shall have a minimum of ten (10) years of practical experience as a judge, prosecutor, deputy prosecutor, attorney, or other comparable legal experience after having passed the bar examination, 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.

In Article 29 paragraph 2, 1st sentence the words “Deputy Prosecutors” shall be replaced by the words “Prosecutors of the Federation Prosecutor’s Office”. The word/number “eight (8)” shall be replaced by the word/number “five (5)”.

In Article 29 paragraph 2, 2nd sentence the word “deputy” shall be deleted.

Article 8

In Article 30 paragraph 1, 1st sentence the words “Cantonal prosecutors” shall be replaced by the words “Cantonal chief prosecutors and deputy chief prosecutors”.

In Article 30 paragraph 1, 2nd sentence the words “The prosecutor” shall be replaced by the words “Chief prosecutor and deputy chief prosecutors”

In Article 30 paragraph 2, 1st sentence the word “Deputy” shall be replaced by the word “Cantonal”. The word/number “five (5)” shall be replaced by the word/number “three (3)”.

In Article 30 paragraph 2, 2nd sentence the word “deputy” shall be replaced by the word “cantonal”.

Article 9

Article 31 of the Law shall be deleted.

Article 10

In Article 35 the words “court presidents, prosecutors and deputy prosecutors” shall be replaced by the words “court presidents and prosecutors, including chief and deputy chief prosecutors”

Article 11

In Article 45 paragraph 1 the words “judges, prosecutors and deputy prosecutors” shall be replaced by the words “judges and prosecutors”. The words “/deputy prosecutor” shall be deleted.

Article 12

In Article 51 the words “or deputy prosecutor” shall be replaced by the words “chief prosecutor or deputy chief prosecutor”.

Article 13

In Article 67 paragraphs 1, 2 and 3 the words “A judge, prosecutor or deputy prosecutor” shall be replaced by the words “A judge or prosecutor”.

Article 14

In Article 68 paragraphs 1, 2 (1st sentence), 3 and 4 the words “A judge, prosecutor or deputy prosecutor” shall be replaced by the words “A judge or prosecutor”.

In Article 68 paragraph 2, 2nd sentence the words “a judge, prosecutor or deputy prosecutor” shall be replaced by the words “a judge or prosecutor”.

Article 15

In Article 69 the words “A judge, prosecutor or deputy prosecutor” shall be replaced by the words “A judge or prosecutor”.

Article 16

In Article 70 paragraph 1 shall be replaced by the following new paragraph:

“ If a court president or chief prosecutor believes that the activities of a judge or prosecutor are not compatible with judicial or prosecutorial function, the judge or prosecutor shall be informed and the court president or chief prosecutor shall refer the matter to the Council, which shall issue a binding decision. The Council’s rules of procedure shall regulate proceedings.”

In paragraph 2 the words “Judges, prosecutors and deputy prosecutors” shall be replaced by the words “Judges and prosecutors”.

Article 17

The heading of Article 71 shall be replaced by the heading “Immunity of Judges and Prosecutors”.

In Article 71 paragraph 1 the words “A judge, prosecutor or deputy prosecutor” shall be replaced by the words “A judge or prosecutor”.

In Article 71 paragraphs 2 and 3 the words “a judge, prosecutor or deputy prosecutor” shall be replaced by the words “a judge or prosecutor”.

Article 18

In Article 72 paragraph 1, item 1 the word “deputy” shall be deleted.

In paragraph 1 item 2 shall be deleted. Items 3, 4 and 5 shall become items 2, 3 and 4 respectively.

In paragraph 2 the words “a judge, prosecutor or deputy prosecutor” shall be replaced by the words “judge or prosecutor”.

In paragraph 3 after the words “president of a court” the words “, chief prosecutor and deputy chief prosecutor” shall be inserted.

Article 19

In Article 73 paragraph 1 the words “A president of a court or prosecutor” shall be replaced by the words “A president of a court, chief prosecutor or deputy chief prosecutor”. After the words “new president” the word “or” shall be deleted and the words “, chief or deputy chief” shall be inserted.

Article 73 paragraph 2 shall be replaced by the following new paragraph:

“In case of the termination of the term of office of a court president, chief or deputy chief prosecutor, he/she shall nevertheless continue to perform a judicial or prosecutorial function in the same court or prosecutor’s office, subject to Article 72.”

Article 20

In Article 74 paragraph 2 the words “and deputy prosecutors” shall be deleted and the number “67” shall be replaced by the number “65”.

Article 21

Article 75 paragraph 1 item (1) shall be replaced by the following new item (1):

“soliciting opinions of the Presidents of the Courts or Chief Prosecutors or consulting with the relevant budgetary authorities in determining the number of judges and prosecutors,”

Article 22

In Article 79 paragraph 1 the words “court presidents, prosecutors and deputy prosecutors” shall be replaced by the words “court presidents and prosecutors, including chief and deputy chief prosecutors”.

In Article 79 after the second paragraph the following new paragraph shall be inserted:

“As an exception to the requirement set out at Article 22 sub-paragraph (c) of this law, during the transitional period, a person who was serving as a judge or prosecutor in Bosnia and Herzegovina at the date of entry into force of this law, shall be deemed to meet the basic requirements to hold judicial office if he/she has passed a bar examination administered in any country whose territory was part of the territory of the Socialist Federal Republic of Yugoslavia.”

Article 23

A new Article 81a shall be inserted as follows:

“Article 81a

A judge or prosecutor holding office at the time this law comes into effect and who is selected and appointed by the Council as a judge or prosecutor in the newly restructured courts or in the newly established prosecutors’ offices shall not have the right to compensation as a result of the change in location of the place of work.”

Article 24

In Article 84 the words “deputy prosecutor” shall be replaced by the words “chief prosecutor and deputy chief prosecutor”.

Article 25

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 the Federation of Bosnia and Herzegovina shall be published in the Official Gazette of the Federation of Bosnia and Herzegovina and shall enter into force on the eight day after publication.

Sarajevo, 21 August 2002

*Paddy Ashdown
High Representative*