

Decision Enacting the Law on Amendments to the Law on Courts of Bosnian Podrinje Canton - Goražde

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";

Considering the Communiqué by the Steering Board of the Peace Implementation Council of 28 February 2002, in which the Steering Board endorsed the reinvigorated strategy for judicial reform proposed by the Independent Judicial Commission for 2002/03, among other things recognizing the importance of the restructuring of the court system, sentiments that were reiterated in a further Communiqué of 7 May 2002;

Taking into account the establishment of the High Judicial and Prosecutorial Council of the Federation of Bosnia and Herzegovina, which has authority during a transitional period in which the courts and prosecutors' offices will be restructured to appoint judges to office in all courts throughout the Federation of Bosnia and Herzegovina;

Conscious therefore of the necessity to determine an appropriate court structure throughout Bosnia and Herzegovina that will allow for the efficient and effective operation of the court system, allowing for the needs of the public to have access to the courts, and taking into account also the recommendations of the Independent Judicial Commission, developed following extensive consultation with local authorities and experts;

Conscious of the fact that the names of certain municipal units could be disputed and aware of the guidance to use the names of geographic locations consistent with the Decision of the High Representative dated 2 June, 1999, without preempting a final determination of these disputes by a competent authority, the names set forth herein have been used in a manner as far as possible consistent with the aforementioned Decision and the Election Law of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina no. 23/01, 7/02, 9/02 and 20/02);

Having considered and borne in mind all these matters, the High Representative hereby issues the following

DECISION

Enacting the Law on Amendments to the Law on Courts of Bosnian Podrinje Canton - Goražde, which is hereby attached as an integral part of this Decision.

The said Law shall enter into force as a law of Bosnian Podrinje Canton - Goražde with effect from the date provided for in Article 14 thereof, on an interim basis until such time as the Assembly of Bosanski-Podrinje Canton - Goražde adopts this law in due form, without amendments and with no conditions attached.

This Decision shall enter into force forthwith and shall be published without delay in the Official Gazette of Bosnian Podrinje Canton - Goražde.

Sarajevo, 1 November 2002

LAW ON AMENDMENTS TO THE LAW ON COURTS OF BOSNIAN PODRINJE CANTON - GORAŽDE

Article 1

Article 27 of the Law on Courts of Bosnian Podrinje Canton – Goražde (Official Gazette of Bosnian Podrinje Canton – Goražde No. 4/97, 10/97, 17/99) shall be amended to read as follows:

“The courts of the Canton are the municipal court and the cantonal court.”

Article 2

Article 28. shall be amended to read as follows:

“The municipal court shall be established for the territory of all municipalities in the Canton.”

Article 3

In Article 31, paragraph 2, the words “Municipal Courts may” shall be replaced with the following words: “The Municipal Court may”.

Article 4

In the Chapter “Jurisdiction of the Courts”, heading 1. “Municipal Courts” shall be replaced with the following words: “The Municipal Court”.

Article 5

Article 32 shall be amended to read as follows:

“The municipal court shall have the following competence:

1. In criminal matters:

a) to try at first instance:

– criminal offences for which the law prescribes as main punishment a fine or sentence of imprisonment up to 10 years, unless the competence of another court is prescribed by a separate law;

– criminal offences for which the competence of the municipal court is prescribed by a separate law;

b) to conduct all criminal proceedings against juveniles;

c) to conduct investigation and certain investigative activities in criminal offences under its jurisdiction;

d) to decide upon appeals against decisions made by investigative judges of the municipal court;

e) to decide on deleting of conviction or on termination of security measures and legal effects of conviction, based on a decision of the court ;

f) to give opinion on requests for pardon.

2. In civil matters:

a) to try at first instance

- all civil disputes, unless otherwise stipulated by law;
 - non-contentious proceedings.
3. In other matters:
- a) to try at first instance economic offences;
 - b) to conduct bankruptcy and forced settlement proceedings and regular liquidation proceedings, as prescribed by law;
 - c) to conduct and decide in special proceedings, unless otherwise stipulated by law;
 - d) to conduct land-book related activities, unless otherwise stipulated by law;
 - e) to order and carry out execution and security measures, unless otherwise stipulated by law;
 - f) to provide legal assistance to courts in Bosnia and Herzegovina;
 - g) to carry out tasks related to international legal assistance, unless some of these tasks have been assigned by law to the cantonal court;
 - h) to perform other activities as prescribed by law.”

Article 6

After Article 32, the following new Article 32a shall be added to read as follows:

“Article 32a

The commercial department established within the municipal court under Article 51a of this Law shall have the following competence:

1. to try at first instance:
 - a) disputes related to any of the following, in which both parties in the proceedings are either a legal entity or a physical person who, in the capacity of an independent entrepreneur or in another capacity, performs business or other registered activity as his main or additional profession: rights and obligations arising from legal transactions of goods, services, securities and ownership or other property rights in real estate; and rights and obligations arising from securities;
 - b) disputes related to ships and navigation on the sea or inland waters, and disputes to which maritime law applies, with the exception of disputes related to the transport of passengers;
 - c) disputes related to airplanes and disputes to which aviation law applies, with the exception of disputes related to the transport of passengers;
 - d) disputes related to copyrights, related rights and other rights relating to intellectual property;
 - e) disputes arising from acts alleged to constitute unfair competition and monopolistic agreements;
 - f) economic offences;
2. to conduct bankruptcy and forced settlement proceedings and regular liquidation proceedings, as prescribed by law, and to try at first instance all disputes arising during and related to bankruptcy, forced settlement, or regular liquidation proceedings.”

Article 7

Article 35 shall be amended to read as follows:

"The cantonal court shall have the following competence:

1. First instance jurisdiction
 - a) to try at first instance criminal offences for which more than 10 years' imprisonment or a long-term imprisonment is prescribed, unless the competence of another court is prescribed by law;
 - b) to conduct investigation and certain investigative activities in criminal offences under its jurisdiction;
 - c) to decide on complaints against final administrative acts in administrative disputes, as well as on requests for protection of freedoms and rights guaranteed by the Constitution, if such rights and freedoms have been violated by a final individual act or activity of an authorized person in an administrative body, or of an authorized person in a company, institution or another legal entity in cases in which other court protection has not been provided, unless the competence of another court has been prescribed by a separate law;
2. Appellate jurisdiction
 - a) to decide on appeals against decisions of municipal courts;
 - b) to decide on appeals against decisions made by investigative judges of the cantonal court;
 - c) to decide on other ordinary and extraordinary legal remedies, if so stipulated by law;
3. Other
 - a) to decide on deleting of conviction or on termination of security measures and legal effects of conviction, based on a decision of the court ;
 - b) to give opinion on requests for pardon;
 - c) to keep a register of legal subjects, as prescribed by law;
 - d) to decide on the recognition of decisions of foreign courts, foreign commercial courts and foreign arbitration;
 - e) to provide international legal assistance in criminal matters;
 - f) to perform other activities as prescribed by law.

Article 8

Article 40 shall be amended to read as follows:

"The seat of the municipal court shall be in Gora`de.

The Municipal Court in Gora`de shall be established for the following municipalities: Gora`de, Pale-Prača, and Fo~a-Ustikolina."

Article 9

After Article 51, the following new Article 51a shall be added to read as follows:

"Article 51a

A commercial department shall be established in the municipal court."

Article 10

Cases in which court jurisdiction has been changed by statutory provisions in Articles 5, 6, 7, and 9 of this Law and which were filed by the day of commencement of the application of these statutory provisions as provided in Article 13 of this Law but for which the first instance decision has not been issued by that day, shall be decided by the competent court in accordance with this Law.

The files of the cases referred to in paragraph 1 of this Article shall be delivered to the competent court without delay and no more than 15 days from the day of the commencement of the application of the statutory provisions referred to in that paragraph.

In cases in which court jurisdiction has been changed by statutory provisions in Articles 5, 6, 7 and 9 of this Law and for which the first instance decision has been issued by the day of commencement of the application of such statutory provisions, appeal shall be decided by the competent court according to former provisions regulating subject matter jurisdiction.

Cases in which court jurisdiction has been changed by statutory provisions in Article 5, 6, 7 and 9 of this Law which were remanded upon appeal or extraordinary remedy after the day of commencement of the application of these statutory provisions, shall be finalized in accordance with this Law.

Decisions rendered and actions carried out by the previously competent court (on-the-spot-investigation, expert evaluation, hearing witnesses and the like) shall not be considered invalid due to the fact that they were carried out by that court and need not be repeated.

Article 11

Provisions contained in other cantonal laws and regulations that are in conflict with this law shall be repealed on the day of the entry into force of this Law and these laws and regulations shall be harmonized with this Law without delay.

Article 12

The Ministry of Justice of the Federation of Bosnia and Herzegovina is authorized to issue regulations on the criteria for determining the required number of employees in courts.

Article 13

The application of statutory provisions contained in Articles 5, 6, 7 and 9 of this Law shall commence on the date judges for all courts in the Canton are appointed, as determined by the High Judicial and Prosecutorial Council.

Article 14

This law shall enter into force on the eighth day after its publication in the Official Gazette of the Bosnian Podrinje Canton – Goražde.