

Decision Enacting the Law on Amendments to the Law on Courts and Judicial Service of the Republika Srpska

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 Republika Srpska, 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 Republika Srpska;

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 and Judicial Service of the Republika Srpska, which is hereby attached as an integral part of this Decision.

The said law shall enter into force as a law of the Republika Srpska with effect from the date provided for in Article 20 thereof, on an interim basis until such time as the Legislature of the Republika Srpska 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 the Republika Srpska.

Sarajevo, 1 November 2002

LAW ON AMENDMENTS TO THE LAW ON COURTS AND JUDICIAL SERVICE

Article 1

Article 16 of the Law on Courts and Judicial Service (Official Gazette of the Republika Srpska no. 13/00, 15/00, 16/00 and 70/01) shall be amended to read as follows:

“The basic 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 of less than 20 years;
 - b) to conduct investigation of criminal offences which, according to law, fall under its jurisdiction, and to conduct preliminary proceedings against juveniles;
 - c) to decide on appeals against decisions made by investigative judges of the basic court and on objections against indictments;
 - d) to decide on motions for deleting of conviction, based on a decision of the court and on motions for termination of security measures or for termination of legal effects of conviction, where the court issued such conviction or measure;
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 and decide in special proceedings, unless otherwise stipulated by law;
 - c) to keep the court register of companies and other legal persons, in accordance with the 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 district court;
 - h) to perform other activities as prescribed by law.”

Article 2

After Article 16, the following new Article 16a shall be added to read as follows:

“Article 16a

The basic court within which a commercial department is established under Article 25a of this Law shall have the exclusive competence in the following matters, for the entire territory which falls under the jurisdiction of the respective district court:

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 3

Article 19 shall be amended to read as follows:

“The district court shall have the following competence:

1. First instance jurisdiction
 - a) to try at first instance criminal offences for which 20 years’ imprisonment or a stricter punishment is prescribed;
 - b) to conduct investigation of criminal offences which, according to the law, fall under its jurisdiction, and to conduct preliminary proceedings against juveniles;
 - 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, or other legal entity, in cases in which other court protection has not been provided, unless the competence of another court has been prescribed by law;
 - d) to try administrative – accounting disputes;
2. Appellate jurisdiction
 - a) to decide on appeals against decisions of basic courts;
 - b) to decide on appeals against decisions made by investigative judges of the district court and on objections against indictments for criminal offences which fall under the jurisdiction of the district court;
3. Other
 - a) to decide on transfer of territorial jurisdiction from one basic court to another in the territory of its jurisdiction;

- b) to decide on motions for deleting of conviction, based on a decision of the court and on motions for termination of security measures or for termination of legal effect of conviction related to the prohibition of acquiring of certain rights, where the court issued such conviction or measure;
- c) to decide on the recognition of decisions of foreign courts, foreign commercial courts and foreign arbitration;
- d) to provide international legal assistance in criminal matters;
- e) to perform other activities as prescribed by law."

Article 4

Article 23 shall be amended to read as follows:

"The basic courts shall be:

- "1) the Basic Court in Banja Luka for the territory of the Banja Luka and Laktaši municipalities;
 - 2) the Basic Court in Bijeljina for the territory of the Bijeljina, Ugljevik and Lopare municipalities;
 - 3) the Basic Court in Višegrad for the territory of the Višegrad, Rudo, Rogatica and Goražde/Srpsko Goražde municipalities;
 - 4) the Basic Court in Vlasenica for the territory of the Vlasenica, Šekovici, Han Pijesak and Milići municipalities;
 - 5) the Basic Court in Bosanska Gradiška/Gradiška for the territory of Bosanska Gradiška/Gradiška and Srbac municipalities;
 - 6) the Basic Court in Derventa for the territory of the Derventa and Bosanski Brod/Srpski Brod municipalities;
 - 7) the Basic Court in Doboj for the territory of the Doboj and Petrovo municipalities;
 - 8) the Basic Court in Zvornik for the territory of the Zvornik and Osmaci municipalities;
 - 9) the Basic Court in Kotor Varoš for the territory of the Kotor Varoš, Čelinac and Skender Vakuf/Kneževo municipalities;
 - 10) the Basic Court in Modriča for the territory of the Modriča, Vukosavlje, Bosanski Šamac/Šamac, Pelagićevo and Orašje/Srpsko Orašje municipalities;
 - 11) the Basic Court in Mrkonjić Grad for the territory of the Mrkonjić Grad, Šipovo, Jezero, Drvar/Srpski Drvar, Drinic, Kupres/Srpski Kupres and Ribnik municipalities;
 - 12) the Basic Court in Bosanski Novi/Novi Grad for the territory of the Bosanski Novi/Novi Grad, Kostajnica and Krupa na Uni municipalities;
 - 13) the Basic Court in Prijedor for the territory of the Prijedor, Sanski Most/Srpski Sanski Most and Bosanska Dubica/Kozarska Dubica municipalities;
 - 14) the Basic Court in Prnjavor for the territory of the Prnjavor municipality;
 - 15) the Basic Court in Sokolac for the territory of Sokolac, Stari Grad/Srpski Stari Grad, Pale, Novo Sarajevo/Srpsko Novo Sarajevo, Ilidža/Srpska Ilidža and Trnovo municipalities;
- the Sokolac Basic Court shall have a branch in Sarajevo/Srpsko Sarajevo covering the territory of Novo Sarajevo/Srpsko Novo Sarajevo, Ilidža/Srpska Ilidža and Trnovo municipalities;
- 16) the Basic Court in Teslić for the territory of the Teslić municipality;
 - 17) the Basic Court in Trebinje for the territory of the Trebinje, Ljubinje, Berkovići, Bileća, Mostar/Srpski Mostar,

Nevesinje and Gacko municipalities;

the Trebinje Basic Court shall have a branch in Nevesinje covering the territory of the Nevesinje, Gacko and Mostar/Srpski Mostar municipalities;

18) the Basic Court in Foča/Srbinje for the territory of the Foča/Srbinje, Kalinovik and Čajniče municipalities;

19) the Basic Court in Srebrenica for the territory of the Srebrenica and Bratunac municipalities.”

Article 5

In Article 24, paragraph 1, Item 1, the words: “Kozarska Dubica”, “Laktaši”, and “Srbac” shall be deleted.

In the same Article, paragraph 1, Item 2, the words: “Lopare” shall be deleted.

In the same Article, paragraph 1, Item 3, the words: “Srpski Brod” and “Šamac” shall be deleted.

In the same Article, paragraph 1, Item 4, the word: “Nevesinje” shall be deleted.

In the same Article, paragraph 1, Item 5, the words: “Srpsko Sarajevo” and “Rogatica” shall be deleted.

Article 6

In Chapter III, sub-heading 1. shall be amended to read as follows:

“Court branches, court departments, and general session of all judges”

Article 7

In Chapter III, after sub-heading 1, the following new Article 24a. shall be added to read as follows:

“Article 24a.

“A court branch is a part of the court and operates under the direction of the court president.”

Article 8

After Article 25, the following new Article 25a. shall be added to read as follows:

“Article 25a

In the Basic Courts in Banja Luka, Bijeljina, Doboj, Trebinje and Sokolac, commercial departments shall be established.”

Article 9

The existing Basic Court in Prijedor and Basic Court in Bosanska Dubica/Kozarska Dubica shall be merged to form the Basic Court in Prijedor under Article 4 of this Law.

The existing Basic Court in Bosanska Gradiška/Gradiška and Basic Court in Srbac shall be merged to form the Basic Court in Bosanska Gradiška/Gradiška under Article 4 of this Law.

The existing Basic Court in Bijeljina and Basic Court in Lopare shall be merged to form the Basic Court in Bijeljina under Article 4 of this Law.

The existing Basic Court in Višegrad and Basic Court in Rogatica shall be merged to form the Basic Court in Višegrad under Article 4 of this Law.

The existing Basic Court in Sokolac and Basic Court in Sarajevo/Srpsko Sarajevo shall be merged to form the Basic Court in Sokolac under Article 4 of this Law.

The existing Basic Court in Trebinje and Basic Court in Nevesinje shall be merged to form the Basic Court in

Trebinje under Article 4 of this Law.

Article 10

The courts that will be merged pursuant to this Law shall continue to operate until the newly established courts referred to in Article 9 of this Law become operational as stipulated by paragraph 2 of this Article.

The newly established courts referred to in Article 9 of this Law shall become operational after appointment of judges to the court, on a date determined by the High Judicial and Prosecutorial Council of the Republika Srpska (hereinafter: High Judicial and Prosecutorial Council).

Article 11

On the day on which they become operational, the newly established courts referred to in Article 9 of this Law shall take over the cases, court registries and archives of the courts that were merged to create them.

All court documents and materials referred to in paragraph 1 of this Article shall be delivered to the newly established courts without delay and no more than 15 days from the day the newly established courts become operational.

Article 12

Until the date on which all courts within the area of the District Court of Banja Luka become operational, as determined by the High Judicial and Prosecutorial Council, the Basic Court in Banja Luka shall be competent for the territory of the municipalities of Čelinac and Skender Vakuf/Kneževo.

Upon that date, pending cases in which territorial jurisdiction has been changed by statutory provisions of this Law, shall be transferred to the competent court as provided in Article 4 of this Law.

All court files, court registries and archives related to the cases referred to in paragraph 2 of this Article shall be delivered to the competent court without delay and no more than 15 days from the date referred to in paragraph 1 of this Article.

Paragraph 5 of Article 13 of this Law shall be applicable to the cases transferred under paragraph 2 of this Article.

Article 13

Cases in which court jurisdiction has been changed by statutory provisions in Articles 1, 2, 3 and 8 of this Law and which were filed by the day of commencement of the application of these statutory provisions as provided in Article 19 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 courts 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 1, 2, 3 and 8 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 Articles 1, 2, 3 and 8 of this Law, which were remanded upon appeal or extraordinary remedies 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 14

The Government of the Republika Srpska shall issue a decision on transfer of rights on court buildings that the Ministry of Justice determines, due to court mergers identified in Article 9 of this law, are no longer needed by the courts.

Article 15

All employees of the merged courts, excluding judges, referred to in Article 9 of this Law, being employed at the moment when the newly established courts become operational, shall have the rights and obligations prescribed by provisions of relevant regulations of the Republika Srpska.

Article 16

The Ministry of Justice of the Republika Srpska shall regulate other modalities of mergers of the courts referred to in Article 9 of this Law.

Article 17

Provisions contained in other 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 18

The Ministry of Justice of the Republika Srpska shall issue regulations on the criteria for determining the required number of employees in courts.

Article 19

The application of statutory provisions contained in Article 1, 2, 3 and 8 of this Law shall commence on the date all courts within the area of the relevant district court become operational, as determined by the High Judicial and Prosecutorial Council.

Article 20

This law shall enter into force on the eighth day after its publication in the Official Gazette of the Republika Srpska.