

Decision Enacting the Law on Amendments to the Law on Courts of Posavina Canton

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 Posavina Canton, which is hereby attached as an integral part of this Decision.

The said Law shall enter into force as a law of Posavina Canton with effect from the date provided for in Article 21 thereof, on an interim basis until such time as the Assembly of Posavina Canton 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 Posavina Canton.

Sarajevo, 1 November, 2002

Paddy Ashdown
High Representative

LAW ON AMENDMENTS TO THE LAW ON COURTS

Article 1

Article 18 of the Law on Courts (Official Gazette of Posavina Canton No. 10/01) shall be amended to read as follows:

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

Article 2

Article 19 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 21 the words “Municipal courts may” shall be replaced with the words: “the Municipal court may”.

Article 4

Article 22 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 5

After Article 22, the following new Article 22a shall be added to read as follows:

“Article 22a

The commercial department established within the municipal court under Article 31a 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 6

Article 23 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 court;
 - b) to decide on appeals against decisions made by investigative judge 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 7

In Article 25, in the first and second paragraphs, the words " municipal courts" shall be replaced with the words " the municipal court".

Article 8

Article 26 shall be amended to read as follows:

"The seat of the municipal court shall be in Ora{je.

The Municipal Court in Ora{je shall be established for the following municipalities: Ora{je, Domaljevac-[amac and Od`ak."

Article 9

In Article 29, in the second and fourth paragraphs, the words "municipal courts" shall be replaced with the following words: "the municipal court".

Article 10

After Article 31, the following new Article 31a shall be added to read as follows:

"Article 31a

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

Article 11

The existing Municipal Court in Od`ak and Municipal Court in Ora{je shall be merged to form the Municipal Court in Ora{je under Article 8 of this Law.

Article 12

The courts that will be merged pursuant to this Law shall continue to operate until the newly established court referred to in Article 11 of this Law becomes operational as stipulated by paragraph 2 of this Article.

The newly established court referred to in Article 11 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 Federation of Bosnia and Herzegovina (hereinafter: the High Judicial and Prosecutorial Council).

Article 13

On the day on which it becomes operational, the newly established court referred to in Article 11 of this Law shall take over the cases, court registries and archives of the courts that were merged to create it.

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

Article 14

Cases in which court jurisdiction has been changed by statutory provisions in Articles 4, 5, 6 and 10 of this Law and which were filed by the day of commencement of the application of these statutory provisions as provided in Article 20 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 4, 5, 6 and 10 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 4, 5, 6, and 10 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 15

The Government of the Federation of Bosnia and Herzegovina, after consultation with the Cantonal Government, is authorized to issue a decision on transfer of rights on court buildings that the Cantonal Ministry of Justice determines, due to court mergers identified in Article 11 of this law, are no longer needed by the courts of the Canton.

Article 16

All employees of the merged courts, excluding judges, referred to in Article 11 of this Law, being employed at the moment when the newly established court becomes operational, shall have the rights and obligations prescribed by the Law on Labor Relations and Salaries of Civil Servants in Administrative Bodies in the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina No. 13/98).

Article 17

The Ministry of Justice of the Federation of Bosnia and Herzegovina is authorized to regulate other modalities of mergers of the courts referred to in Article 11 of this Law after consultations with the Cantonal Ministry of Justice.

Article 18

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 19

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 20

The application of statutory provisions contained in Articles 4, 5, 6 and 10 of this Law shall commence on the date all courts in the Canton become operational, as determined by the High Judicial and Prosecutorial Council.

Article 21

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