

Decision Enacting the Law re-amending the Law on Court 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;

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 Panel for Organized Crime, Economic Crime and Corruption within the aforesaid Court 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 and for all the reasons as aforesaid;

The High Representative hereby issues the following

DECISION

Enacting the Law re-amending the Law on Court 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, with effect from the date provided for in Article 13 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 Gazette of Bosnia and Herzegovina.

Sarajevo, 24 January, 2003

*Paddy Ashdown
High Representative*

LAW RE-AMENDING THE LAW ON THE COURT OF BOSNIA AND HERZEGOVINA

Preamble

The Law on the Court of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina No.29/00), as amended by Article 73 of the Law on High Judicial and Prosecutorial Council (Official Gazette of Bosnia and Herzegovina No. 15/02), as further amended by the Law on Amendments to the Law on Court of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina No.24/02) (hereinafter the 'Law'), is hereby re-amended as follows

Article 1

Article 9, paragraph 2 of the Law shall be deleted.

Article 2

Article 13 of the Law shall be deleted and the following new Article 13 shall be inserted:

'1. The Court has jurisdiction over criminal offences defined in the Criminal Code of Bosnia and Herzegovina and other laws of Bosnia and Herzegovina.

2. The Court has further jurisdiction over criminal offences prescribed in the Laws of the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brcko District of Bosnia and Herzegovina when such criminal offences:

- a) endanger the sovereignty, territorial integrity, political independence, national security or international personality of Bosnia and Herzegovina;
- b) may have serious repercussions or detrimental consequences to the economy of Bosnia and Herzegovina or may have other detrimental consequences to Bosnia and Herzegovina or may cause serious economic damage or other detrimental consequences beyond the territory of an Entity or the Brcko District of Bosnia and Herzegovina.

3. The Court shall further be competent to:

- a) take a final and legally binding position on the implementation of Laws of Bosnia and Herzegovina and

international treaties on request by any court of the Entities or any court of the Brcko District of Bosnia and Herzegovina entrusted to implement the Law of Bosnia and Herzegovina;

b) decide any issue relating to International and inter-Entity criminal law enforcement, including relations with Interpol and other international police institutions, such as decisions on the transfer of convicted persons, and on the extradition and surrender of persons, requested from any authority in the territory of Bosnia and Herzegovina, by foreign States or International Courts or Tribunals;

c) decide any conflict of jurisdiction between the courts of the Entities, between the Courts of the Entities and the Courts of the Brcko District of Bosnia and Herzegovina and between the Court of Bosnia and Herzegovina and any other Court;

d) decide on the reopening of criminal proceedings for criminal offences prescribed in the laws of Bosnia and Herzegovina.'

Article 3

In Article 14, paragraph 2, item c): after the words 'and the courts of Brcko District', the following words shall be inserted 'and between the Court of Bosnia and Herzegovina and any other court'.

Article 4

Article 15, paragraph 1 shall be deleted and the following new Article 15, paragraph 1 shall be inserted:

'1. The Court shall decide the following:

a) appeals against a judgement or decision delivered by the Criminal Division of this Court;

b) appeals against a judgement or decision delivered by the Administrative Division of this Court;

c) extraordinary legal remedies against final judgments reached by the divisions of the Court, not including those that constitute the requests for reopening of proceedings.'

Article 5

Article 16, Article 17 and Article 18 of the Law shall be deleted.

Article 6

Article 23 as amended, shall be deleted and the following Article 23 shall be inserted:

'1. The Administrative Division shall consist of at least five judges.

2. The Criminal Division shall consist of at least ten judges.

3. The Appellate Division shall consist of at least ten judges.

4. Panels of the Divisions shall be composed of three judges

5. A judge from another Division may be asked to sit in the Appellate Division except in the Special Appellate Panel.'

Article 7

Article 24, paragraphs 3, 4 and 5 as amended, shall be deleted and the new following Article 24, paragraphs 3, and 4 shall be inserted:

'3. Individual judges may serve as a preliminary proceeding judge and as a preliminary hearing judge.

4. The Criminal Division is chaired by its President who is elected by all judges of the Division.'

Article 8

Article 32, Article 33, Article 34, Article 35, Article 36, Article 37, Article 38, Article 39, Article 40, Article 41 and Article 42 of the Law shall be deleted.

Article 9

Article 44, Article 45, Article 46, Article 47, Article 48, Article 49, Article 50, Article 51, Article 52, Article 53, Article 54, Article 55, Article 56, Article 57, Article 58, Article 59 and Article 60 of the Law shall be deleted.

Article 10

In Article 61, paragraph 1 the words 'pursuant to Article 37 of this Law' and the words 'pursuant to Article 57 of this Law' shall be deleted.

Article 61, paragraph 4 as amended, shall be deleted.

Article 11

Article 63 and Article 64 of the Law shall be deleted.

Article 12

Article 65 as amended, shall be deleted and the following new Article 65 shall be inserted:

'1. During a transitional period, a maximum number of six (6) international judges may be appointed to the Special Panels for Organized Crime, Economic Crime and Corruption within the Criminal and Appellate Division. International judges shall not be citizens of Bosnia and Herzegovina or of any neighboring state. The transitional period shall last not more than four years.

2. International judges shall not be held criminally or civilly liable for any act carried out within the scope of their duties pursuant to this law.

Article 13

Entry into force

This Law re-amending the Law on the Court of Bosnia and Herzegovina shall enter into force on 1 February, 2003.