

Decision Enacting the Law on Protection of Witnesses under Threat and Vulnerable Witnesses

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;

Considering the need to provide for efficient conduct of investigation, prosecution and trial of crimes which lie within the competence of the State of Bosnia and Herzegovina under the Constitution of Bosnia and Herzegovina introducing the principles by which that purpose can be accomplished in the best possible manner;

Recalling that pursuant to the aforesaid, a working group comprised of the most distinguished legal experts from the field of criminal procedure law from both Entities of Bosnia and Herzegovina and from the Brčko District of Bosnia and Herzegovina, prepared a draft text of the Criminal Procedure Code of Bosnia and Herzegovina, which was submitted to the Council of Ministers of Bosnia and Herzegovina in September 2002;

Recalling further that the Council of Ministers of Bosnia and Herzegovina adopted the said Code at its 95th session held on December 19, 2002 and forwarded it to the BiH Parliamentary Assembly in order to be discussed in an expedited procedure, and whose House of Representatives at its 7th session held on January 13, 2003 did not adopt the proposal of the Council of Ministers to treat the Code in accordance with Article 104 of the Rules of Procedure of the House of Representatives but decided to treat it under regular procedure;

Regretting that notwithstanding the matters aforesaid, the said Code has not been adopted yet;

Stressing the need for the existence of criminal procedure at the state level of Bosnia and Herzegovina which shall be in conformity with modern internationally recognized standards in the field of criminal procedure and which shall comply with guarantees enshrined under the European Convention on Human Rights which itself forms part of the Constitution of Bosnia and Herzegovina and enjoys priority over all other law in Bosnia and Herzegovina;

Mindful both of the urgency and of the need to adopt the Criminal Procedure Code of Bosnia and Herzegovina for all the reasons as aforesaid and in order to protect the interests of the citizens of Bosnia and Herzegovina;

Mindful further that the draft Criminal Procedure Code was designed with a separate law on witness protection in mind;

Affirming that a legal framework allowing for witness protection measures in a clearly regulated manner is necessary to guarantee both the rights of individuals to a fair trial under the European Convention on Human Rights, the appropriate outcome of trials where unlawful coercion is exerted against witnesses, the safety of

witnesses under threat and the well-being of witnesses who, as a result of the crime or otherwise, are under harmful psychological pressure;

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

DECISION

Enacting the Law on Protection of Witnesses under Threat and Vulnerable Witnesses,

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 27 thereof, on an interim basis until such time as the Parliamentary Assembly of Bosnia and Herzegovina 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 Bosnia and Herzegovina.

LAW ON PROTECTION OF WITNESSES UNDER THREAT AND VULNERABLE WITNESSES

Sarajevo, 24 January 2003.

*Paddy Ashdown
High Representative*