

DECISION Enacting the Law on Amendment to the Law on Transfer of Cases from the ICTY to the Prosecutor's Office Of BiH and the use of Evidence Collected by ICTY in Proceedings Before the Courts in BiH

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 “[F]acilitate, 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;

Bearing in mind the reinvigorated strategy for judicial reform to strengthen the Rule of Law efforts in Bosnia and Herzegovina in 2002/03 that was endorsed by the Steering Board of the Peace Implementation Council on 28 February 2002;

Recalling the UN Security Council Resolution 1503 (2003) and the statement of 23 July 2002 made by the President of the Security Council (S/ PRST/2002/21), which endorsed the strategy of International Criminal Tribunal for the Former Yugoslavia (“ICTY”) for completing investigations by the end of 2004, all trial activities at first instance by the end of 2008, and all of its work in 2010 (S/2002/678), by concentrating on the prosecution and trial of the most senior leaders suspected of being most responsible for crimes within the ICTY's jurisdiction and transferring cases involving those who may not bear this level of responsibility to competent national jurisdictions, as appropriate, as well as the strengthening of the capacity of such jurisdictions;

Noting the Security Council's statement that the above-mentioned Completion Strategy shall in no way alter the obligation of countries to investigate those accused whose cases would not be tried by the ICTY and take appropriate action with respect to indictment and prosecution, while bearing in mind the primacy of the ICTY over national courts;

Noting also that the strengthening of national judicial systems is crucially important to the rule of law in general and to the implementation of the ICTY Completion Strategy in particular;

Noting further that, in its communiqué issued after its meeting in Sarajevo on 26 September 2003, the Steering Board of the Peace Implementation Council took note of UN Security Council Resolution 1503, which, *inter alia*, called on the International Community to support the work of the High Representative in setting up the war crimes chamber;

Noting the progress made in developing the capacity of the Special Section for War Crimes of the Court of Bosnia and Herzegovina and the Special Department for War Crimes of the Prosecutor's Office of Bosnia and Herzegovina;

Further noting that such capacity has sometimes been undermined by the non-recognition of the special

requirements associated to the transfer of cases from the ICTY;

Conscious that certain provisions of the domestic legislation applicable to the cases transferred to Bosnia and Herzegovina from ICTY can impede the effective domestic trial;

Deploring, however, that the changes to legislation necessary to facilitate the prosecution and adjudication of the cases transferred from the ICTY have not been given the attention it requires by the authorities in Bosnia and Herzegovina;

Being especially seized of the urgency to amend such provisions;

Having considered and borne in mind all these matters,

The High Representative hereby issues the following

DECISION

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(Official Gazette of Bosnia and Herzegovina , No. 61/04)

The Law which follows and which forms an integral part of this Decision shall enter into force as provided for in Article 3 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 effect forthwith.

This Decision shall be published in the "Official Gazette of Bosnia and Herzegovina " without delay.

Sarajevo, 16 June 2006

Dr. Christian Schwarz-Schilling
High Representative

Law

on amendment to the LAW ON TRANSFER OF CASES FROM THE ICTY TO THE PROSECUTOR'S OFFICE OF BIH AND THE USE OF EVIDENCE COLLECTED BY ICTY IN PROCEEDINGS BEFORE THE COURTS IN BIH

Article 1

(Amendment to Article 2)

(1) In Article 2 (*Transfer of Cases from ICTY*) of the Law on Transfer of Cases from the ICTY to the Prosecutor's Office of BiH and the Use of Evidence Collected by ICTY in Proceedings before the Courts in BiH (Official Gazette of Bosnia and Herzegovina, No. 61/04; hereinafter: the Law), a new Paragraph (5) shall be added after Paragraph (4) to read:

"(5) As an exemption from the provisions of Paragraph 4 of this Article and from the provision of Article 139, Paragraph 4 of CPCBiH, the court shall issue a decision on custody or on releasing of the transferred person as soon as possible, but not later than 48 hours from the time when the Prosecutor has filed the request for custody."

(2) Current Paragraphs (5) and (6) of Article 2 of the Law shall become Paragraphs (6) and (7).

Article 2

(Entry into Force of this Law)

This Law shall enter into force on a day after its publication in the "Official Gazette of Bosnia and Herzegovina".