

HR's Decision on Enacting the Law on Amendment to the Criminal Code of Bosnia and Herzegovina

n 26/21

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";

Further Recalling that the Security Council of the United Nations has repeatedly affirmed, through its resolutions adopted pursuant to Chapter VII of the Charter of the United Nations, that the role of High Representative as final authority in theater regarding the implementation of Annex 10 to the GFAP includes the "authority to make binding decisions as he judges necessary on issues as elaborated by the Peace Implementation Council in Bonn on 9 and 10 December 1997;"

Mindful of the statement of the Steering Board of the Peace Implementation Council issued in June 2015 in which it reaffirmed that genocide in Srebrenica, war crimes and crimes against humanity committed in the course of the conflict in Bosnia and Herzegovina must not be forgotten or denied;

Noting that the preamble to the Constitution of Bosnia and Herzegovina, which forms an integral part of the General Framework Agreement for Peace expresses a determination "to ensure full respect for international humanitarian law;"

Remembering that the UN Security Council, in Resolution 808 (1993) that established the International Criminal Tribunal for the former Yugoslavia, was convinced that a special tribunal was necessary to prosecute persons who committed mass killings and "ethnic cleansing" and that those prosecutions would contribute to the restoration and maintainance of peace;

Recalling the final judgements of the International Criminal Tribunal for former Yugoslavia, and final judgements of the War Crimes Chamber of the Court of Bosnia and Herzegovina and the numerous statements of international support for the work of those institutions;

Conscious of the fact that there can be no reconciliation without the acknowledgement of crimes and responsibilities and that hate speech, the glorification of war criminals and revisionism or outright denial of genocide, crimes against humanity and war crimes established by final judicial decisions undermines the rule of law and represents a direct barrier to peace, reconciliation and trust-building and ultimately undermines the prospects for a secure, peaceful future for Bosnia and Herzegovina;

Deeply concerned that prominent individuals and public authorities in Bosnia and Herzegovina continue to deny that acts of genocide, crimes against humanity and war crimes were committed during the armed conflict, that individuals and public authorities publicly question the legitimacy of judgements issued by the International Criminal Tribunal for former Yugoslavia and the Court of Bosnia and Herzegovina and that individuals and public authorities honor or praise convicted war criminals;

Convinced that the behavior described above creates a significant difficulty for the civilian implementation of the

General Framework Agreement for Peace; and

Noting that all legislative initiatives brought before the parliamentary assembly of Bosnia and Herzegovina to address this issue have been blocked.

For the reasons set forth above the High Representative hereby issues the following:

DECISION

Enacting the Law on Amendment to the Criminal Code of Bosnia and Herzegovina

(Official Gazette of BiH Nos. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10, 47/14, 22/15, 40/15 and 35/18)

1. The Law which follows and which forms an integral part of this Decision shall enter into force as provided for in Article 2 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.
2. This Decision shall come into effect immediately and shall be published on the official website of the Office of the High Representative, and in the "Official Gazette of Bosnia and Herzegovina" without delay.

Sarajevo, 22 July 2021

Dr. Valentin Inzko High Representative

LAW

ON AMENDMENT

TO THE CRIMINAL CODE OF BOSNIA AND HERZEGOVINA

Article 1

(Amendment to Article 145a)

- In the Criminal Code of Bosnia and Herzegovina (Official Gazette of BiH Nos. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10, 47/14, 22/15, 40/15 and 35/18) in Article 145a, after paragraph (1) new paragraphs (2) to (6) shall be added to read:

"(2) Whoever publicly incites to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin, when that behaviour does not constitute the criminal offence from paragraph (1) of this Article,

shall be punished by imprisonment for a term between three months and three years.

(3) Whoever publicly condones, denies, grossly trivializes or tries to justify a crime of genocide, crimes against humanity or a war crime established by a final adjudication pursuant to the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945 or by the International Criminal Tribunal for the former Yugoslavia or the International Criminal Court or a court in Bosnia and Herzegovina, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or

ethnic origin, when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group,

shall be punished by imprisonment for a term between six months and five years.

(4) Whoever perpetrates the criminal offence referred to in paragraphs (1) to (3) of this Article by public dissemination or distribution of tracts, pictures or other material,

shall be punished by imprisonment for a term not less than one year.

(5) If the criminal offence referred to in paragraphs (1) to (3) of this Article is carried out in a manner likely to disturb public peace and order or which is threatening, abusive or insulting, the perpetrator

shall be punished by imprisonment for a term not less than three years.

(6) Whoever gives a recognition, award, memorial, any kind of memento, or any privilege or similar to a person sentenced by a final judgement for genocide, crimes against humanity or a war crime, or names a public object such as a street, square, park, bridge, an institution, building, municipality or a city or similar, or registers a brand, after or under a name of a person sentenced by a final judgement for genocide, crimes against humanity or a war crime, or whoever glorifies a person sentenced by a final judgement for genocide, crimes against humanity or a war crime in any way,

shall be punished by imprisonment for a term not less than three years.”

- Paragraph (2), which shall become paragraph (7), shall be amended to read:

“(7) A perpetrator of the criminal offence referred to in paragraphs (1) to (4) of this Article who is an official or responsible person or employed in an institution of authority or any body financed through public budget,

shall be punished by imprisonment for a term not less than three years.”

Article 2

(Entry into Force)

This law shall enter into force eight days after the date of its publication on the official website of the Office of the High Representative or one day after the date of its publication in the “Official Gazette of Bosnia and Herzegovina”, whichever comes first.