

Decision Enacting the Law on Amendments to the Law on Courts of West-Herzegovina 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 West-Herzegovina Canton, which is hereby attached as an integral part of this Decision.

The said Law shall enter into force as a law of West-Herzegovina Canton with effect from the date provided for in Article 12 thereof, on an interim basis until such time as the Assembly of West-Herzegovina 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 West-Herzegovina Canton.

Sarajevo, 1 November 2002

*Paddy Ashdown
High Representative*

LAW ON AMENDMENTS TO THE LAW ON COURTS

Article 1

Article 19 of the Law on Courts (Official Gazette of West-Herzegovina Canton No. 5/96, 9/00, 15/01) shall be amended to read as follows:

“Municipal courts shall be established for one or more municipalities.”

Article 2

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 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;

- b) to try at first instance economic offences;
- c) to conduct bankruptcy and forced settlement proceedings and regular liquidation proceedings, as prescribed by law;
- d) to conduct and decide in special proceedings, unless otherwise stipulated by law;
- e) to conduct land-book related activities, unless otherwise stipulated by law;
- f) to order and carry out execution and security measures, unless otherwise stipulated by law;
- g) to provide legal assistance to courts in Bosnia and Herzegovina;
- h) to carry out tasks related to international legal assistance, unless some of these tasks have been assigned by law to the cantonal court;
- i) to perform other activities as prescribed by law.”

Article 3

After Article 23, a following new Article 23a shall be added to read as follows:

“Article 23a

The municipal court within which a commercial department is established under Article 33a of this Law shall have the exclusive competence in the following matters, for the entire

territory of the Canton:

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 4

Article 24 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.

2. Appellate jurisdiction

a) to decide on appeals against decisions of municipal courts;

b) to decide on appeals against decisions made by investigative judges 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 conflict of territorial jurisdiction between municipal courts of the Canton;

b) to decide on transfer of territorial jurisdiction from one municipal court to another within the territory of the Canton;

c) to decide on deleting of conviction or on termination of security measures and legal effects of conviction, based on a decision of the court;

d) to give opinion on requests for pardon;

e) to keep a register of legal subjects,

as prescribed by law;

f) to decide on the recognition of decisions of foreign courts, foreign commercial courts and foreign arbitration;

g) to provide international legal assistance in criminal matters;

h) to perform other activities as prescribed by law.”

Article 5

Article 28 shall be amended to read as follows:

“The municipal courts shall be:

1. the Municipal Court in Široki Brijeg for the territory of the municipalities of Široki Brijeg and Posušje;

2. the Municipal Court in Ljubuški for the territory of the municipalities of Ljubuški and Grude.”

Article 6

After Article 33, the following new Article 33a shall be added to read as follows:

“Article 33a

A commercial department shall be established in the Municipal Court in Široki Brijeg.”

Article 7

Until the date on which judges for all courts in the Canton are appointed, as determined by the High Judicial and Prosecutorial Council of the Federation of Bosnia and Herzegovina (hereinafter: the High Judicial and Prosecutorial Council), the Municipal Court of Široki Brijeg shall be

competent for the territory of the municipality of Grude.

Upon that date, pending cases in which territorial jurisdiction has been changed by statutory provisions of this Law, shall be transferred to the competent court as provided in Article 5 of this Law.

All court files, court registries and archives related to the cases referred to in paragraph 2 of this Article shall be delivered to the competent court without delay and no more than 15 days from the date referred to in paragraph 1 of this Article.

Paragraph 5 of Article 8 of this Law shall be applicable to the cases transferred under paragraph 2 of this Article.

Article 8

Cases in which court jurisdiction has been changed by statutory provisions in Articles 2, 3, 4 and 6 of this Law and which were filed by the day of commencement of the application of these statutory provisions as provided in Article 11 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 2, 3, 4 and 6 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 Articles 2, 3, 4 and 6 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 9

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 10

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 11

The application of statutory provisions contained in Articles 2, 3, 4 and 6 of this Law shall commence on the date judges for all courts in the Canton are appointed, as determined by the High Judicial and Prosecutorial Council.

Article 12

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