

Decision Enacting the Law re-amending the Law on the High Judicial and Prosecutorial Council 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”;

Bearing in mind the communiqué of the Steering Board of the Peace Implementation Council issued at Brussels on 28 February 2002 wherein it recognized “the importance of the creation of a High Judicial Council for BiH”;

Further bearing in mind the communiqué of the Steering Board of the Peace Implementation Council issued at Sarajevo on 7 May 2002 wherein it was stated that the establishment of a single High Judicial Council would “lay the foundations for further reform of the judiciary, such as the re-structuring of the court and prosecutorial systems”;

Considering that the communiqué of the Steering Board of the Peace Implementation Council issued at Sarajevo on 31 July 2002 stated that the Board welcomed the creation of the Special Chambers and endorsed 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;

Conscious of the necessity to pursue the re-structuring of the Court and Prosecutorial systems and the selection process of Judges and Prosecutors following upon the establishment of the High Judicial and Prosecutorial Council for the Federation of Bosnia and Herzegovina and of the High Judicial and Prosecutorial Council of the Republika Srpska and of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina;

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

DECISION

Enacting the Law re-amending the Law on the High Judicial and Prosecutorial Council 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 as provided for in Article 5 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 Gazettes of Bosnia and Herzegovina, of the Federation of Bosnia and Herzegovina, of the Republika Srpska and of the District of Brcko.

Sarajevo, 1st November 2002

Paddy Ashdown
High Representative

LAW Re-AMENDING THE LAW ON THE HIGH JUDICIAL AND PROSECUTORIAL COUNCIL OF BOSNIA AND HERZEGOVINA

Preamble

The Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina No.15/02, Official Gazette of the Federation of Bosnia and Herzegovina No.29/02, Official Gazette of the Republika Srpska No.40/02), as amended in the Law on Amendments to the Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina No.26/02, Official Gazette of the Federation of Bosnia and Herzegovina No.47/02, Official Gazette of the Republika Srpska No.58/02) (hereinafter the 'Law'), is hereby further amended as follows

Article 1

Article 17 item 12 as amended, shall be deleted and the following new Article 17 item 12 shall be inserted:

“12. determining the number of judges of the Court of Bosnia and Herzegovina, Appellate and Basic Court of Brcko District, prosecutors of the Prosecutor’s Office of Bosnia and Herzegovina and of deputy prosecutors of the Prosecutor’s Office of Brcko District after soliciting an opinion or upon the initiative of a president of the respective court or the prosecutor and after consultation with the relevant budgetary authority;”

Article 2

In Article 20 as amended, a new paragraph shall be added to follow the existing paragraph:

“As an exception to the requirement set out at sub-paragraph (c) of this article, during the transitional period, a person who was serving as a judge or prosecutor in Bosnia and Herzegovina at the date of entry into force of this law, shall be deemed to meet the basic requirements to hold judicial office if he/she has passed a bar examination administered in any country whose territory was part of the territory of the Socialist Federal Republic of Yugoslavia.”

Article 3

The text of Article 65 as amended shall be deleted and the following text shall be inserted:

“Mandatory retirement age for judges of the Court of Bosnia and Herzegovina and Appellate Court of Brcko District shall be age 70 and for judges of Basic Court of Brcko District shall be age 67.

Mandatory retirement age for prosecutors at the Prosecutor’s Office of Bosnia and Herzegovina shall be 65.

Mandatory retirement age for the prosecutor and deputy

prosecutors at Prosecutors' Office of Brcko District shall be age 67."

Article 4

The text of Article 67 shall be deleted and the following text shall be inserted:

"During a transitional period the Council shall not be obliged to exercise its competence in the following matters: (1) soliciting opinions of the President of the Court or Chief Prosecutors or consulting with the relevant budgetary authorities in determining the number of judges and prosecutors, (2) obligations related to budgets for courts and prosecutor's offices, (3) annual budget and reporting responsibilities, and (4) appointment of an executive director.

During the transitional period all decisions of the Council shall require the agreement of at least one half of the number of the international members.

During the transitional period, the provisions of this law shall apply unless provided otherwise by this chapter.

The transitional period shall last until 31 December 2003 and may be extended until the Council completes its obligations under this chapter.

Until the Prosecutor's office of Bosnia and Herzegovina is established the Council shall not have one prosecutor of the Prosecutor's Office of Bosnia and Herzegovina as a member, instead two judges of the Court of Bosnia and Herzegovina shall be members."

Article 5

Publication and Entry into force

The Law Re-amending the Law on the High Judicial and

Prosecutorial Council of Bosnia and Herzegovina shall be published in the Official Gazette of Bosnia and Herzegovina, Official Gazette of the Federation of Bosnia and Herzegovina, Official Gazette of Republika Srpska and Official Gazette of Brcko District and shall enter into force on the eighth day after publication in the Official Gazette of Bosnia and Herzegovina.

[CONSOLIDATED TEXT – LAW ON THE HIGH JUDICIAL AND PROSECUTORIAL COUNCIL OF BOSNIA AND HERZEGOVINA](#)