

Decision Enacting the Law on Amendments to the Law on the Execution of Criminal Sanctions in the Federation 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 “[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;

Noting that the Steering Board of the Peace Implementation Council, in the communiqué of 20 March 2001 issued in Brussels, emphasized that “functioning and effective State institutions, judicial reform, respect for the Rule of Law and good governance, remain fundamental to the implementation of the Peace Agreement”;

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 *inter alia* transferring cases to competent national jurisdictions, as appropriate, as well as the strengthening of the capacity of such jurisdictions;

Noting 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;

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;

Having in mind that, in the communiqué issued after the meeting of the Peace Implementation Council Steering Board in Vienna on 15 March 2006, the Political Directors expressed their continuing support for the State Court to enable the authorities of Bosnia and Herzegovina to effectively prosecute domestically war crimes indictees and those indicted for organized crime;

Mindful of the fact that in order for the justice system to function and for the criminal law to be able to protect the values of society and humanity, there has to be a serious approach to the execution of criminal sanctions, as an important phase in seeing the justice done;

Seeing that certain provisions of the domestic legislation on the execution of criminal sanctions, being also applicable to the cases transferred to Bosnia and Herzegovina from ICTY, can impede the effective execution of criminal sanction once it is pronounced;

Noting that the laws on execution of criminal sanction of both Bosnia and Herzegovina, the Republika Srpska, and Brcko District were amended in 2007 in order to address inadequacies noted in the system of enforcement of imprisonment sentence;

Recalling the understanding that imposition at the entity level was unnecessary, and that authorities of the Federation of Bosnia and Herzegovina would harmonize its law with these amendments in the shortest possible timelines;

Deploring that this was not done, primarily because the authorities have willfully neglected this issue for nearly 20 months, despite numbers of written and verbal communications urging them to address this matter;

Convinced that the changes to legislation necessary to rectify problems related to the execution of criminal sanctions, especially in war crimes cases, have not been given the attention it requires by all the authorities in Bosnia and Herzegovina;

Being seized of the necessity to amend such provisions;

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 the Execution of Criminal Sanctions in the Federation of Bosnia and Herzegovina

(Official Gazette of the Federation of Bosnia and Herzegovina, Nos. 44/98 and 42/99)

The Law which follows and which forms an integral part of this Decision shall enter into force as provided for in Article 14 thereof on an interim basis, until such time as the Parliament of the Federation of Bosnia and Herzegovina adopts this Law in due form, without amendment and with no conditions attached.

This Decision shall enter into force forthwith and be published in the "Official Gazette of the Federation of Bosnia and Herzegovina" without delay.

<i>Sarajevo, 20 February 2009</i>	<i>Miroslav Lajčák</i> <i>High Representative</i>
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LAW

ON AMENDMENTS TO THE LAW ON THE EXECUTION OF CRIMINAL SANCTIONS IN THE FEDERATION OF BOSNIA AND HERZEGOVINA

Article 1

(New Article 1a)

In the Law on the Execution of Criminal Sanctions in the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, Nos. 44/98 and 42/99; hereinafter: the Law), after Article 1 a new Article 1a shall be added to read:

“Article 1a

(1) On the execution of criminal sanctions pronounced by the Court of Bosnia and Herzegovina, the law of Bosnia and Herzegovina on the execution of criminal sanctions shall apply.

(2) On the enforcement of detention by the Court of Bosnia and Herzegovina, the laws of Bosnia and Herzegovina regulating the enforcement of detention shall apply.

Article 2

(Amendment to Article 4)

In Article 4 of the Law, paragraph (1), after the words “the competent court specified in the cantonal law” the words “or other competent court” shall be added.

Article 3

(Amendment to Article 19)

In Article 19 of the Law, after paragraph (1) a new paragraph (2) shall be added to read:

“(2) On the conditional release of persons convicted pursuant to the jurisdiction of Bosnia and Herzegovina in criminal matters, the Court of Bosnia and Herzegovina shall be consulted on the question of applicable substantive law.”

Article 4

(Amendment to Article 22)

In Article 22 of the Law, after the words “the court in whose jurisdiction the person resides permanently or temporarily” the words “or the Court of Bosnia and Herzegovina when that court has passed the sentence” shall be added.

Article 5

(Amendments to Article 24)

(1) In Article 24 of the Law, paragraph (6), the words “within eight days” shall be replaced by the words “as soon as possible, but during the same day at the latest”.

(2) In paragraph (7) of Article 24 of the Law, the words “at the latest within three days” shall be replaced by the words “as soon as possible, but during the same day at the latest”.

Article 6

(Amendment to Article 61)

In Article 61 of the Law, after paragraph (4) a new paragraph (5) shall be added to read:

“(5) On the transfer of persons convicted by the Court of Bosnia and Herzegovina, a decision may be made only pursuant to the law of Bosnia and Herzegovina on the execution of criminal sanctions.”

Article 7

(Amendment to Article 89)

Article 89 of the Law shall be amended to read:

“(1) A convicted person may be granted the following privileges to be used outside the establishment:

- a) a period of 24 hour leave outside the establishment for each seven days of imprisonment sentence served (four times a month, normally to be used at weekends);
- b) to go to town freely five hours once a month;
- c) up to six days’ leave each year. After serving each period of two months, a convicted person may be granted one day of leave;
- d) up to seven days’ leave each year in the event of serious illness or death of a family member, natural disaster or in very difficult social cases;
- e) up to two days a year leave outside the establishment, on religious holidays;
- f) up to one day’s leave a year outside the establishment, on national holidays;
- g) annual holiday with family members.”

Article 8

(New Article 89a)

After Article 89 of the Law, a new Article 89a shall be added to read:

“Article 89a

(1) Supervision shall be mandatory if a privilege to be used outside the establishment is granted:

- a) to a person convicted for up to ten years of imprisonment for crimes of genocide, crimes against humanity, war crimes, terrorism, illicit production and trafficking in drugs, preventing the return of refugees and displaced persons;
- b) to a person sentenced to more than ten years, regardless of the type of criminal offence;
- c) to an alcohol abuser, drug addict or multiple recidivist.

(2) If a privilege to be used outside the establishment is granted to a person convicted by the Court of Bosnia and Herzegovina, the Ministry of Justice of Bosnia and Herzegovina shall be informed about it as soon as possible, but before a privilege starts to be used at the latest.”

Article 9

(Amendment to Article 90)

Article 90 of the Law shall be amended to read:

“(1) The following persons shall not be granted privileges to be used outside the establishment prior to the expiration of one half of the imprisonment sentence:

- a) persons convicted for up to ten years of imprisonment for crimes of genocide, crimes against humanity, war

crimes, terrorism, illicit production and trafficking in drugs, preventing the return of refugees and displaced persons;

b) all persons sentenced to more than ten years, regardless of the type of criminal offence;

c) alcohol abusers, drug addicts and multiple recidivists.

(2) Persons sentenced to imprisonment for between five and ten years, who have not perpetrated a criminal offence referred to in paragraph (1), sub-paragraphs a) and b), of this Article and are not multiple recidivists, alcohol abusers or drug addicts, may be granted privileges to be used outside the establishment after one third of the imprisonment sentence has been served.

(3) Other convicted persons may be granted privileges to be used outside the establishment after one quarter of the prison sentence has been served.

(4) The opinion of the competent police authority and the competent municipality social welfare authority shall be required when granting privileges referred to in Article 89 of this Law to convicted persons who have perpetrated a criminal offence referred to in paragraph (1), sub-paragraphs a) and b), of this Article, or to those in respect of whom it has been assessed that their being at liberty might cause public outrage or when a security conditions so require.

(5) The criteria referred to in paragraphs (1), (2), (3) and (4) of this Article shall not apply to the authorisation of privileges referred to in sub-paragraph d) of Article 89 of this Law, which are to be used in exceptional cases only.

(6) The convicted person shall, together with the request for the privilege referred to in sub-paragraph d) of Article 89 of this Law, give the reasons for applying for leave in writing.

(7) Failure to return from a period of leave within 24 hours of the expiry of the authorised period, without a reasonable, preferably prior, justification shall be considered an escape.

(8) The privileges referred to in Article 89 of this Law shall not be used outside the territory of Bosnia and Herzegovina."

Article 10

(Amendment to Article 91)

(1) In Article 91 of the Law, a new paragraph (1) shall be added to read:

"(1) The conditions and the manner for using the privileges referred to in Article 89 of this Law, as well as those which are used inside the establishment, shall be prescribed by the House Rules."

(2) Current paragraph (1) of Article 91 of the Law shall become paragraph (2).

Article 11

(Amendment to Article 92)

(1) In Article 92 of the Law, a new paragraph (1) shall be added to read:

"(2) Appeals against decisions on the use of privileges can be made to the Human Rights Ombudsman of Bosnia and Herzegovina."

(2) Current paragraph (1) of Article 92 of the Law shall become paragraph (2).

Article 12

(Amendment to Article 108)

In Article 108 of the Law, after paragraph (5) a new paragraph (6) shall be added to read:

“(6) On the conditional release of persons convicted pursuant to the jurisdiction of Bosnia and Herzegovina in criminal matters, the Court of Bosnia and Herzegovina and the Ministry of Justice of Bosnia and Herzegovina shall be consulted on the question of applicable law.”

Article 13

(Amendment to Article 112)

In Article 112 of the Law, paragraph (4), the words “within eight days” shall be replaced by the words “as soon as possible, but during the same day at the latest”.

Article 14

(Entry into Force of this Law)

This Law shall enter into force eight days after its publication in the “Official Gazette of the Federation of Bosnia and Herzegovina”.