

Decision enacting the Law on Amendments to the Criminal Code of Bosnia and Herzegovina



13/23

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 theatre 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 most recent Communique of the Steering Board of the Peace Implementation Council, which reiterated its full support for the High Representative in ensuring complete respect for the GFAP and in carrying out his mandate under Annex 10 and relevant UN Security Council Resolutions;

Remembering that the UN Security Council, in Resolution 2549 (2020) “urges the parties, in accordance with the Peace Agreement, to abide to their commitment to cooperate fully with all institutions involved in the implementation of this peace settlement, as described in the Peace Agreement, including Annex 4;”

Reminding that under Article I.2 of the Constitution, Bosnia and Herzegovina “shall be a democratic state which shall operate under the rule of law,” that Article VI.5 of the Constitution provides that “decisions of the Constitutional Court shall be final and binding,” and that Article III.3(b) requires the Entities and any subdivisions thereof to fully comply with the Constitution of Bosnia and Herzegovina and with the decisions of its institutions;

Reminding that the independence of judiciary is cornerstone to the rule of law and requires that the judiciary is free from

external pressure and political influence, which is an integral part of the fundamental democratic principle of the separation of powers, and that political pressure on the judiciary threatens the right to a fair trial as defined in the European Convention on Human Rights: “...everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal” (Article 6 § 1);

Recalling Article II.1 of the Constitution which states that “Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights” and Article II.6 where “Bosnia and Herzegovina, and all courts, agencies, governmental organs, and instrumentalities operated by or within the Entities, shall apply and conform to [those] human rights and fundamental freedoms (...).”

Recognizing that non-implementation of courts’ decisions directly undermines the right to a fair trial and the rule of law in general;

Deeply concerned that prominent public officials and public authorities are deliberately failing to comply fully with decisions of the High Representative and the decisions of the Constitutional Court of Bosnia and Herzegovina; and

Reminding that attacks on the Constitutional Court of Bosnia and Herzegovina, one of the highest institutions of the State of Bosnia and Herzegovina established by the Constitution of Bosnia and Herzegovina as an autonomous and independent guardian of the Constitution of Bosnia and Herzegovina, and/or attempts to change the constitutional order of Bosnia and Herzegovina, constitute serious violations of the General Framework Agreement for Peace and to peace and stability in the country and the region, and consequently deserve an appropriate response;

Deeply concerned about the decision of the National Assembly of Republika Srpska to adopt at the session held on 27 June

2023 the Law on the Non-application of the Decisions of the Constitutional Court of Bosnia and Herzegovina, attempting to provide that decisions taken by the Constitutional Court of Bosnia and Herzegovina shall not be applicable and enforceable in the territory of Republika Srpska and to exclude from the state jurisdiction in criminal matters and the Criminal Code of Bosnia and Herzegovina, offering political “protection of individuals from possible criminal prosecution due to non-application of the decisions of the Constitutional Court of Bosnia and Herzegovina”;

Further deploring the adoption by Republika Srpska National Assembly at its session held on 27 June 2023 of the Conclusion in relation to the Law on Non-application of the Decisions of the Constitutional Court of Bosnia and Herzegovina which among others, calls on Republika Srpska National Assembly to enact laws or other legal acts with measures to punish any institutions and authorities which do not enforce the law on the non-application of the decisions of the Constitutional Court of Bosnia and Herzegovina and that these measures include the immediate dissolution of such institutions and authorities as well as measures criminalizing the non-implementation of such a law;

Deeply concerned about the decision by National Assembly of Republika Srpska taken at its session of 21 June 2023 to adopt amendments to the Law on Publication of Laws and Other Regulations of Republika Srpska removing the obligation to publish decisions of the High Representative in the Official Gazette of Republika Srpska, and reminding in this regard the authorities of Republika Srpska of their obligations under Annex 10 of the Dayton Peace Agreement to fully cooperate with the High Representative;

Convinced that the behavior described above seriously undermines the civilian implementation of the General Framework Agreement for Peace;

Aware of the need for Bosnia and Herzegovina to engage meaningfully in reforms needed for the country to advance its integration into European Union and to be able to do so as early as possible;

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

DECISION

Enacting the Law on Amendments

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, 35/18, 46/21 and 31/23)

1. The Law which follows and which forms an integral part of this Decision shall enter into force as provided for in Article 4 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, 1 July 2023

Christian Schmidt

High Representative

LAW

ON AMENDMENTS

TO THE CRIMINAL CODE OF BOSNIA AND HERZEGOVINA

Article 1

(Amendment to Article 156)

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, 35/18, 46/21 and 31/23; hereinafter: the Criminal Code) in Article 156 the words "Whoever, by physical force or threat of physical force" shall be replaced by the words "(1) Whoever, by force or threat of force, or in some other unlawful way".

After paragraph (1) new paragraphs (2) and (3) shall be added to read:

"(2) For the criminal offence from paragraph (1) of this Article, the security measure of ban on carrying out a duty shall be imposed.

(3) In accordance with Articles 113 and 114 of this Code, a sentence for a criminal offence from paragraph (1) of this Article shall entail as legal consequences incident to conviction:

- a) the cessation of an official duty and termination of employment;
- b) deprivation of decorations;
- c) ban on performance of an official duty in the legislative, executive, judicial, administrative or any body financed by public funds in whole or in part;
- d) ban on acquisition of an official duty in the legislative, executive, judicial, administrative or any body financed by public funds in whole or in part."

Article 2

(New Article 203a)

After Article 203 of the Criminal Code, a new Article 203a shall be added to read:

“Failure to Implement Decisions of the High Representative

Article 203a

(1) An official person in an institution of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, Republika Srpska, the Brčko District of Bosnia and Herzegovina, or in a canton, a city or a municipality or a local community or any form of local government and self-government, or a responsible person, who does not apply, implement, enforce or otherwise comply with a decision of the High Representative in Bosnia and Herzegovina, or who prevents or otherwise obstructs its application, implementation or enforcement,

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

(2) A person from paragraph (1), who was ordered, directly or indirectly, to behave in a way referred to in paragraph (1) of this Article, and felt compelled to follow such an order not to lose the livelihood or not to be exposed to maltreatment at work, but informed the superior that by such actions a criminal offence might be committed, may be punished less severely.

(3) A person from paragraph (1), who was ordered, directly or indirectly, to behave in a way referred to in paragraph (1) of this Article, but informed the competent prosecutor of such a situation, shall be released from punishment.

(4) For the criminal offence from paragraph (1) of this Article, the security measure of ban on carrying out a duty shall be imposed.

(5) In accordance with Articles 113 and 114 of this Code, a sentence for a criminal offence from paragraph (1) of this Article shall entail as legal consequences incident to conviction:

- a) cessation of an official duty and termination of employment;
- b) deprivation of decorations;
- c) ban on performance of an official duty in the legislative, executive, judicial, administrative or any body financed by public funds in whole or in part;
- d) ban on acquisition of an official duty in the legislative, executive, judicial, administrative or any body financed by public funds in whole or in part."

Article 3

(Amendment to Article 239)

Article 239 of the Criminal Code shall be amended to read:

"(1) An official person in an institution of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, Republika Srpska, the Brčko District of Bosnia and Herzegovina, or in a canton, a city or a municipality or a local community or any form of local government and self-government, or a responsible person, who does not apply, implement, enforce or otherwise comply with the final and binding decision of the Constitutional Court of Bosnia and Herzegovina including a decision on interim measure, the final and binding decision or a provisional measure of the Court of Bosnia and Herzegovina, Human Rights Chamber of Bosnia and Herzegovina or European Court of Human Rights, or who prevents or otherwise obstructs application, implementation or enforcement of such a decision,

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

(2) A person from paragraph (1), who was ordered, directly or indirectly, to behave in a way referred to in paragraph (1) of this Article, and felt compelled to follow such an order not to lose the livelihood or not to be exposed to maltreatment at work, but informed the superior that by such actions a

criminal offence might be committed, may be punished less severely.

(3) A person from paragraph (1), who was ordered, directly or indirectly, to behave in a way referred to in paragraph (1) of this Article, but informed the competent prosecutor of such a situation, shall be released from punishment.

(4) For the criminal offence from paragraph (1) of this Article, the security measure of ban on carrying out a duty shall be imposed.

(5) In accordance with Articles 113 and 114 of this Code, a sentence for a criminal offence from paragraph (1) of this Article shall entail as legal consequences incident to conviction:

- a) cessation of an official duty and termination of employment;
- b) deprivation of decorations;
- c) ban on performance of an official duty in the legislative, executive, judicial, administrative or any body financed by public funds in whole or in part;
- d) ban on acquisition of an official duty in the legislative, executive, judicial, administrative or any body financed by public funds in whole or in part.

Article 4

(Entry into Force)

This Law shall enter into force on 2 July 2023, being published on the official website of the Office of the High Representative and shall be published without delay in the "Official Gazette of Bosnia and Herzegovina".