

## **High Representative develops strategy for ‘Rules of the Road’ Court proceedings**

The High Representative, Wolfgang Petritsch, today issued a Decision mandating Judges in BiH to exercise judicial discretion when deciding on the detention of individuals charged with serious offences, during criminal proceedings, so bringing the Federation of BiH (FBiH) and Republika Srpska (RS) Criminal Procedure Codes into line with European human rights conventions. Previously under the laws of both Entities, such detentions were mandatory. This Decision is part of a broader strategy to tackle comprehensively the problems of ‘Rules of the Road’ criminal proceedings in BiH.

Cases, if approved by the International Criminal Tribunal for the former Yugoslavia (ICTY) under the 1996 Rome Agreement, commonly known as the “Rules of the Road” procedure, may be tried by domestic courts. The Office of the High Representative is acutely aware of the sensitivity and importance of such trials which are not only aimed at bringing perpetrators to justice but also play a key role in the overall reconciliation process. In this context, it is crucial that justice is not only done but also – seen – to be done by the general public.

The fact that the ICTY under the ‘Rules of the Road’ procedure does not specify where cases which are returned by the ICTY to BiH should be heard has often led to the politicisation of trials, undue pressure on the Judiciary or accusations that an outcome is not just. War crimes trials heard in lower level Entity courts have also been the subject of public skepticism. The High Representative therefore intends to ensure that all such trials are henceforth conducted professionally and in an impartial and non-discriminatory atmosphere. The aim of war crimes trials is to attribute guilt to individuals who have committed crimes, not to an entire ethnic group.

The High Representative’s Decision today deletes Article 183, paragraph 1 of the FBiH Criminal procedure Code and Article 191 of the RS Criminal Procedure Code. With this Decision Judges no longer have a statutory obligation to place individuals accused of serious crimes on remand. Judges will use the criteria specified in the applicable criminal code to determine if an individual should remain at liberty during investigation and trial. They will, for example, consider the likelihood or otherwise of the accused re-offending, absconding, or interfering with witnesses.

Mandatory custody had been part of the criminal code in cases where individuals were accused of crimes punishable by death. The death sentence has since been abolished in BiH, in line with the European Convention on Human Rights, but the articles remained and have been applied to all serious crimes. The Decision brings the Criminal Procedure Codes of BiH’s Entities into line with the European Convention on Human Rights and the International Covenant on Civil and Political Rights, both of which state that individuals should not be detained, as a rule, pending trial.

The High Representative’s Decision amending the Entities Criminal Procedure Codes is effective immediately and is also applicable to all cases currently at investigative or trial stage. The Decision will be published in the Official Gazettes of FBiH and the RS without delay.

Click here to see Decision [1](#) and [2](#).