

Decision Enacting the Law on Amendments to the Criminal Procedure Code 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;

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 concentrating on the prosecution and trial of the most senior leaders suspected of being most responsible for crimes within the ICTY’s jurisdiction and transferring cases involving those who may not bear this level of responsibility 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, while bearing in mind the primacy of the ICTY over national courts;

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;

Recalling that in its Declaration issued after the meeting held in Sarajevo on 18 and 19 June 2007, the Steering Board of the Peace Implementation Council agreed on the need to augment the BiH authorities’ capacity to conduct investigations against war-crimes suspects and to prosecute them;

Appreciating the progresses made in the prosecution of war crimes cases;

Recalling, in that respect, the recent the adoption by the Council of Ministers of the National War Crimes Strategy;

Bearing in mind the letter of 19 December 2008, signed by the President of the Court of Bosnia and Herzegovina, and the letter of 10 February 2009, signed by the Chief Prosecutor of the ICTY raising concerns that the maximum length of custody pending the second instance verdict is inadequate to prevent persons convicted of the most

heinous crimes from being released, incurring a risk of intimidation of witnesses or of flight;

Deploring, however, that the changes to legislation necessary to facilitate the prosecution and adjudication of the cases transferred from the ICTY have not been given a timely attention by the relevant authorities in Bosnia and Herzegovina;

Considering the language of the proposed Amendment to Article 138, paragraph (3) of the Criminal Procedure Code of Bosnia and Herzegovina adopted by the Council of Minister on 12 of February 2009;

Being seized of the urgency to amend such provision;

Having considered and borne in mind all these matters,

The High Representative hereby issues the following

DECISION

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(Official Gazette of Bosnia and Herzegovina, Nos. 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08 and 12/09)

The Law which follows and which forms an integral part of this Decision shall enter into force as provided for in Article 3 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 be published on the official website of the Office of the High Representative and shall come into effect forthwith.

This Decision shall be published in the "Official Gazette of Bosnia and Herzegovina" without delay.

Sarajevo, 20 February 2009	Miroslav Lajčák High Representative
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law

on amendment to the criminal procedure code of bosnia and herzegovina

Article 1

(Amendment to Article 138)

In the Criminal Procedure Code of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, Nos. 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08 and 12/09), in Article 138 (*Ordering Custody after the Verdict is pronounced*), paragraph (3) shall be amended to read:

“(3) After pronouncing the first instance verdict, the custody may last no longer than additional nine months. Exceptionally, in complex cases and for the important reasons, the Appellate Panel may extend the custody additionally for a six months maximum. If during that period no second instance verdict to alter or sustain the first instance verdict is pronounced, the custody shall be terminated and the accused shall be released. If within the prescribed deadlines the second instance verdict is pronounced reversing the first instance verdict, the custody shall last for no longer than another year after pronouncement of the second instance verdict.”

Article 2

(Application of this Law)

This Law shall apply to all cases in which the final verdict has not been rendered before the date of entry into force of this Law.

Article 3

(Entry into Force of this Law)

This Law shall enter into force upon publication in the “Official Gazette of Bosnia and Herzegovina”.