

Decision Enacting the Law on Amendments to the Law of Bosnia and Herzegovina on the Execution of Criminal Sanctions, Detention and Other Measures

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 the Security Council’s statement 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;

Noting the progress made in developing the capacity of the Special Section for War Crimes of the Court of Bosnia and Herzegovina and the Special Department for War Crimes of the Prosecutor’s Office of Bosnia and Herzegovina;

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;

Deploring, however, that the changes to legislation necessary to enable secure 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 urgency 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 of Bosnia and Herzegovina on the Execution of Criminal Sanctions, Detention and Other Measures

(Official Gazette of Bosnia and Herzegovina, No. 13/05)

The Law which follows and which forms an integral part of this Decision shall enter into force as provided for in Article 9 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 enter into force forthwith and shall be published in the "Official Gazette of Bosnia and Herzegovina" without delay.

<i>Sarajevo, 9 July 2007</i>	<i>Miroslav Lajčák</i> <i>High Representative</i>
------------------------------	--

Law

on amendments to the Law of Bosnia and Herzegovina on the Execution of Criminal Sanctions, Detention and Other Measures

Article 1

(Amendments to the Entire Text of the Law, Except Articles 9 through 44 and Article 112)

In the Law of Bosnia and Herzegovina on the Execution of Criminal Sanctions, Detention and Other Measures (Official Gazette of Bosnia and Herzegovina, No. 13/05; hereinafter: the Law), in the entire text of the Law, except in Chapter II (*Authorities Competent for Execution of Criminal Sanctions, Detention and Other Measures*) – Articles 9 through 44 and Article 112 paragraph (1), the word “Establishment” shall be replaced by the word “establishment” in a corresponding case.

Article 2

(Amendment to Article 1)

(1) In Article 1 (*Scope and Application of this Law*) of the Law, new paragraphs (5) and (6) shall be added, which shall read:

“(5) Detention ruled by the Court of Bosnia and Herzegovina shall be executed pursuant to the provisions of this Law even when it is executed in an entity establishment.

(6) Sanctions pronounced by the Court of Bosnia and Herzegovina shall be executed pursuant to the provisions of this Law, even when they are served in an entity establishment.”

(2) Current paragraph (5) of Article 1 of the Law shall become paragraph (7).

Article 3

(Amendment to Article 110)

In Article 110 (*General Provision on Conditional Release*) of the Law the words “in accordance with Article 44 of the Criminal Code” shall be replaced by the words “in accordance with a criminal code”.

Article 4

(Amendments to Article 113)

(1) In Article 113 (*Confiscation of Travel Documents*) of the Law, paragraph (1), the words “who has a travel document” and the comma shall be deleted, and the words “to confiscate the person’s travel document” shall be amended to read: “to confiscate the person’s documents authorising him/her to cross the State border”.

(2) In paragraph (2) of Article 113 of the Law the words “a travel document” shall be replaced by the words “a document authorising the person to cross the State border”.

Article 5

(Amendments to Article 114)

(1) In Article 114 (*Effecting Order to Commit*) of the Law, paragraph (7), the words “within eight days” shall be replaced with the words “as soon as possible, but during the same day at the latest”.

(2) In paragraph (8) of Article 114 of the Law the words “within three days since the day scheduled for the reporting to the Establishment” shall be replaced with the words “as soon as possible, but during the same day at the latest”.

Article 6

(Amendment to Article 140)

In Article 140 (*Free movement, leave and furlough*) of the Law, after paragraph (1) a new paragraph (2) shall be added to read:

“(2) A privilege may be granted with or without the supervision. Supervision shall be mandatory if a privilege to be used outside the establishment is granted to:

- 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.”

Article 7

(Amendment to Article 142)

In Article 142 (*Rules on Use of Privileges*) of the Law, paragraph (1), after the words “referred to in Article 140 of the Law” a comma and the words “including the rules on supervision of person during the use of privileges” shall be added.

Article 8

(Amendment to Article 156)

In Article 156 (*Commission for Conditional Release*) of the Law, paragraph (2), the words “and who are serving their sentences in an Establishment of Bosnia and Herzegovina” and the comma before them shall be deleted.

Article 9

(Entry into Force of this Law)

This Law shall enter into force on a day after it is published in the “Official Gazette of Bosnia and Herzegovina”.