

Decision on Enacting the Law on Amendments to the Law on High Judicial and Prosecutorial Council 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 made at its meeting held 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 its communiqué of 20 March 2001 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”;

Noting further that the Steering Board of the Peace Implementation Council, in its Communiqué issued on 31 July 2002 called upon the authorities to assist in the timely establishment of the High Judicial and Prosecutorial Council and in the restructuring of the court and prosecutorial systems;

Having in mind that the Peace Implementation Council Steering Board noted on 7 January 2004 that a professional and independent judiciary is a key European standard and a key requirement for BiH’s integration into Europe and Euro-Atlantic structures and reaffirmed their full support for the ongoing work of the High Judicial and Prosecutorial Council;

Having also in mind the statement of the Steering Board of the Peace Implementation Council of 5 March 2004, whereby it fully supported “the HJPC process as the best chance this country has of establishing a modern independent and multi-ethnic judiciary and meeting European standards in this area;”

Further noting that the Steering Board of the Peace

Implementation Council, in the communiqué issued after the meeting in Sarajevo on 23 June 2006, “urged the BiH authorities to address in a disciplined and effective manner key rule of law reforms, including continued support for a strong and independent judiciary and the work of the High Judicial and Prosecutorial Council”;

Bearing in mind that the Steering Board of the Peace Implementation Council on 20 October 2006 noted with disappointment attempts by politicians to undermine the independence and efficiency of judges and prosecutors, but expressed confidence in the institutions of Bosnia and Herzegovina to address this problem and in particular supported the High Judicial and Prosecutorial Council in its efforts to ensure that judges and prosecutors are free from political interference in their work;

Having been seized by the letter of the President of the High Judicial and Prosecutorial Council of 16 May 2007 and by the letter of 14 June 2007 signed by the President and the members of the Council, expressing the unanimous Council’s decision reached at the 14 June 2007 session about the necessity to urgently introduce internal checks and balances between the exercise of the professional function of the Council as an independent and autonomous body and the technical and administrative tasks of the Secretariat of the Council, with the view of ensuring the maintenance of an independent, impartial and professional judiciary;

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 on High Judicial and Prosecutorial Council of Bosnia and Herzegovina

(Official Gazette of Bosnia and Herzegovina, Nos. 25/04 and 93/05)

The Law that follows and that 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 be published in the "Official Gazette of Bosnia and Herzegovina" without delay and shall enter into force upon publication.

Sarajevo,
2007

15

June
Dr.

Christian Schwarz-Schilling

High Representative

LAW

ON AMENDMENTS TO THE LAW ON HIGH JUDICIAL AND PROSECUTORIAL COUNCIL OF BOSNIA AND HERZEGOVINA

Article 1

(Amendments to Article 9)

(1) In the Law on High Judicial and Prosecutorial Council of

Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, Nos. 25/04 and 93/05; hereinafter: the Law), in paragraph (3) of Article 9 (*Leave of Absence and Contributions*) the words "The employer of any council member who is paid from public funds" shall be replaced by the words "The Council", and at the end of the paragraph a new sentence shall be added to read: "The compensation for expenses shall be regulated in the regulations referred to in Article 16 of this Law."

(2) Paragraph (4) of Article 9 of the Law shall be deleted. Current paragraph (5) shall become paragraph (4).

Article 2

(Amendments to Article 11)

(1) In Article 11 (*President and Vice-Presidents of the Council*) of the Law a new paragraph (3) shall be added to read:

"(3) The President of the Council and up to three members of Council shall work on a full time basis at the Council."

Current paragraph (3) shall become paragraph (4).

(2) Current paragraph (4) of Article 11 of the Law shall become paragraph (5) and shall be amended to read:

"(5) The President shall prepare the agenda for Council sessions, convene and preside over Council sessions and supervise the overall operations of the Council and the Secretariat. The President shall represent the Council before third parties and undertake other duties as regulated by the Rules of Procedure of the Council.."

(3) A new paragraph (6) shall be added to read:

"(6) The Vice-Presidents shall assist the President in carrying out the tasks as required for effective and duly

performance of the work of the Council. One of the Vice-Presidents, as regulated in the Rules of Procedure of the Council, shall act in the place of the President during the President's absence. The further duties of the Vice-Presidents shall be regulated by the Rules of Procedure of the Council."

Article 3

(Amendments to Article 15)

(1) Paragraph (1) of Article 15 (*The Secretariat*) of the Law shall be amended to read:

"The professional, financial and administrative tasks for the Council shall be performed by the Secretariat of the Council, supervised by the President and the two Vice-Presidents of the Council. The tasks of the Secretariat shall include, inter alia, provision of administrative support, the carrying out of legal, financial and other research necessary for the Council to implement its mandate in accordance with the law, as well as provision of strategic advice on issues related to the execution of the mandate of the Council. The Secretariat shall prepare draft decisions to be rendered by the Council, execute decisions adopted by the Council and regularly report to the Council with respect to its activities. The Secretariat shall also be responsible for preparing the proposal of the annual budget and the annual report of the Council required pursuant to Article 20 of this Law, for review by the President and two Vice-Presidents of the Council."

(2) Paragraph (2) of Article 15 of the Law shall be amended to read:

"The Secretariat of the Council shall have a Director and a Deputy Director, responsible to the Council. The Director and the Deputy Director shall be appointed and removed by the Council in accordance with the provisions of the Law on Civil Service in the Institutions of Bosnia and Herzegovina. The mandate of the Director and the mandate of the Deputy Director

shall be limited to four years. Notwithstanding Article 34, paragraph 2, second sentence of the Law on Civil Service in the Institutions of BiH, the mandate of the Director and the Deputy Director shall be renewable every four years.”

(3) In the second and third sentences of paragraph (3) of Article 15 of the Law, the word “the Director” shall be replaced by the words “a Committee comprised of a member of the Council selected by the Council, the Director and the Deputy Director”.

(4) In the third sentence of paragraph (4) of Article 15 of the Law, after the words “The Director or his/her designate” the words “and a member of the Council selected by the Council” shall be added. In the fourth sentence, the words “shall be decided by the Director” shall be replaced by the words “shall be decided by the Council upon the proposal of the Director”.

(5) Paragraph (5) of Article 15 of the Law shall be amended to read:

“The Director shall be responsible for the overall performance of the professional, financial and administrative tasks of the Secretariat, for execution of the budget adopted by the Council, as well as for other tasks as decided by the Council.

(6) Paragraph (6) of Article 15 of the law shall be amended to read:

“The Deputy Director shall be responsible for overseeing the preparation of Council sessions and overseeing the execution of Council decisions, as well as for other tasks as decided by the Council. The Deputy Director shall replace the Director in his/her absence.”

(7) Paragraph (7) of Article 15 of the Law shall be deleted.

(8) In the first sentence of paragraph (8) of Article 15 of

the Law, which shall become paragraph (7), the words "his or her designate" shall be replaced by the words "the Deputy Director" and the words "a non-voting participant" shall be replaced by the words "non-voting participants". In the second sentence, after the words "The Director" the words "and the Deputy Director" shall be added.

(9) Paragraph (9) of Article 15 of the Law shall be deleted.

(10) In paragraph (10) of Article 15 of the Law, which shall become paragraph (8), after the words "the Secretariat staff" the following words shall be inserted: "not referred to in the Law on Salaries and Other Compensations in Judicial and Prosecutorial Institutions at the Level of Bosnia and Herzegovina."

(11) In the last sentence of paragraph (11) of Article 15 of the Law, after the words "the Director of the Secretariat" and before the words "in accordance with the conditions of the grant agreement with the donor", the following words shall be inserted: "in accordance with regulations for execution of donor funds issued by the Council".

Article 4

(Amendment to Article 20)

In paragraph (3) of Article 20 (*Annual Budget and Report*) of the Law, the words "within first (1) of February each year" shall be replaced by the words "not later than 1 May each year".

Article 5

(Amendment to Article 64)

Paragraph (7) of Article 64 (*Disciplinary Counsel*) of the Law shall be amended to read:

"All administrative and financial decisions of the Office of

the Disciplinary Prosecutor shall be rendered by the Chief Disciplinary Prosecutor and shall be executed by the relevant department of the Secretariat upon the order of the Chief Disciplinary Prosecutor.”

Article 6

(Amendment to Article 79)

In paragraph (2) of Article 79 (Decision on Suspension and Appeals) of the Law, at the end of text, a new sentence shall be added to read: “An appeal shall not stay the enforcement of the decision referred to in paragraph (1) of this Article.”

Article 7

(New Transitional Provision)

After Article 91 of the Law a new Article 91a shall be added to read:

“Article 91a

(Current mandates of the Director, the Deputy Director and the Vice-Presidents)

(1) The mandate of the Director and the Deputy Director of the Secretariat provided for under this Law shall be deemed to have commenced on the date they assumed their respective offices.

(2) The Vice-Presidents of the Council shall assume their full time duties in the Council not later than 1 January 2008.”

Article 8

(Entry into Force of this Law)

This Law shall enter into force on the eighth day after its publication in the “Official Gazette of Bosnia and Herzegovina”.