

Decision Enacting the Law on the Immunity of the Federation 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 “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”;

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;

Bearing in mind that accountability to the public of officials and persons holding elective office is one of the cornerstones of a functioning democracy but also noting that a proper functioning democracy also requires that such persons should enjoy such immunities under civil and criminal law as are appropriate for the proper carrying out of their functions and duties;

Conscious of the need to protect the integrity of the legislative and executive institutions of the Federation of Bosnia and Herzegovina

Bearing in mind the totality of the matters aforesaid the High Representative hereby issues with immediate effect the following

DECISION

Enacting the Law on the Immunity of the Federation of Bosnia and Herzegovina,

which is hereby attached as an integral part of this Decision.

The Law which follows shall come into effect as provided for in Article 9 thereof on an interim basis until such time as the Parliament of the Federation of Bosnia and Herzegovina adopts the same in due form, without amendment and with no conditions attached.

Sarajevo, 6 October 2002

Paddy Ashdown

High Representative

THE LAW ON IMMUNITY OF THE FEDERATION OF BOSNIA AND HERZEGOVINA

Article 1.

(Purpose of Law)

This Law is passed in order to protect the integrity of the legislative and executive institutions of the Federation of Bosnia and Herzegovina (hereinafter: the Federation), by laying down the procedure by which delegates and members of the Parliament of the Federation as well as the members of the Cantonal Legislatures may invoke immunity from criminal and civil liability, and the President and Vice-Presidents of the Federation, members of the Government of the Federation as well as the members of the Cantonal Governments may invoke immunity from civil liability.

Article 2.

(Scope and Application of Law)

This Law shall identify those persons entitled to invoke immunity as a defense in criminal or civil proceedings and provide specific rules of criminal and civil procedure which shall be mandatory for Prosecutor's Offices, courts, and other participants in criminal and civil proceedings as specified in this Law. Nothing contained in this Law shall however impinge in any way on the procedures or jurisdiction of the Constitutional Court of the Federation as provided for in the Constitution of the Federation.

Article 3.

(Persons entitled to immunity (non-liability))

Members of the House of Representatives and Delegates to the House of Peoples, as well as the members of the Cantonal Legislatures shall not be held criminally or civilly liable for any acts carried out within the scope of their duties in the Parliament of the Federation, or the Cantonal Legislatures.

The President and Vice-President of the Federation, members of the Federation Government as well as the members of the Cantonal Governments shall not be held civilly liable for any acts carried out within the scope of their duties in the executive authority of the Federation, or the executive authority of the respective Canton.

Article 4.

(Duration and Definition of Immunity)

The immunity granted to the individuals listed in Article 3. of this Law may be invoked at any time for acts carried out within the scope of their duties in the said institutions, but may not be treated as a general bar preventing criminal prosecution or the institution of civil proceedings.

For the purpose of this Law, the phrase “acts carried out within the scope of their duties” shall refer to acts arising out of an individual’s duties in the Federation Parliament, the Cantonal Legislature, the Federation Executive or in the Cantonal Executive, as respectively applicable, and as defined in the Constitution of the Federation.

Article 5.

(Generally Applicable Law)

Except as otherwise provided in this Law, criminal and civil

proceedings in relation to individuals listed in Article 3. of this Law as aforesaid shall be conducted in accordance with the normally applicable criminal and civil procedure codes.

Article 6.

(Procedure in Criminal Proceedings)

If, in the course of criminal proceedings, an individual listed in paragraph 1. of Article 3. of this Law claims that an act which is the basis for such proceedings was carried out within the scope of his or her duties as defined in Article 4. hereof, this issue shall be heard and decided by a judgment (*judgement shall be translated as decision/odluka*) of a competent court.

Model procedural rules governing the hearing of such issues including the identification of the competent court for the hearing of the same, shall be drawn up by the competent ministry.

Such judgment shall be final and binding, subject to appeal to the Constitutional Court of the Federation.

Article 7.

(Procedure in civil proceedings)

If, in the course of civil proceedings brought against an individual listed in Article 3. of this Law, an individual claims that the act which is the basis for the civil proceedings was carried out within the scope of his or her duties as defined in Article 4. hereof, this issue shall be heard and decided by a judgment (*judgement shall be translated as decision/odluka*) of the competent court. Model procedural rules governing the hearing of such issues including the identification of the competent courts for the hearing of the same shall be drawn up by the competent ministry.

Such judgment shall be final and binding, subject to appeal to

the Constitutional Court of the Federation.

Article 8.

(Repeal)

As of the date of entry into force of this Law, previous procedural bars to prosecution of or civil proceedings against those otherwise entitled to immunity are hereby repealed. Such repeal shall be without prejudice to substantive defenses in criminal and civil proceedings previously provided for by law.

Article 9.

(Entry into force and publication)

This Law shall come into effect forthwith and shall be published without delay in the "Official Gazette of the Federation of Bosnia and Herzegovina".