

Decision Enabling the Allocation of Court Cases to other Courts within the same Entity

In the exercise of the powers vested in me 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”;

Considering Article II 2. and Article II 3. (e) of the Constitution of Bosnia and Herzegovina which provide that all persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols including “the right to a fair hearing in Š criminal matters, and other rights relating to criminal proceedings”;

Bearing in mind that in order to hold a fair hearing, the conduct of a full, timely, efficient and comprehensive pre-trial investigation is indispensable;

Recognizing that in criminal proceedings every endeavor must be made to ensure that all facts are, so far as can be achieved, safely and accurately established;

Considering the importance of guaranteeing the implementation of the basic principles of criminal procedure in force in the Federation of Bosnia and Herzegovina, being currently those set out in Chapter I, Article 1 through 19 of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, No. 43/98);

Considering the importance of guaranteeing the implementation of the basic principles of criminal procedure in force in the Republika Srpska being currently those set out in Chapter I, Article 1 through 21 of the Criminal Procedure Code of the Republika Srpska (Official Gazette of the Socialist Federative Republic of Yugoslavia, Nos. 26/86, 74/87, 57/89, 3/90; Official Gazette of the Republika Srpska, Nos. 26/93, 14/94, 6/97);

With the object of implementing the principle of legality of criminal prosecution in the Federation of Bosnia and Herzegovina, as currently required by Article 16 of the aforesaid Criminal Procedure Code of the Federation of Bosnia and Herzegovina;

With the object of implementing the principle of legality of criminal prosecution in the Republika Srpska, as currently required by Article 18 of the aforesaid Criminal Procedure Code of the Republika Srpska;

Noting the vital importance to the Federation of Bosnia and Herzegovina and to the Republika Srpska and to Bosnia and Herzegovina of ensuring that the rule of law is strengthened and followed;

Recalling the Decision of the High Representative number 101/01 (Official Gazette of the Federation of Bosnia and Herzegovina, No. 20/01) making provision for the allocation to the Cantonal Court of Sarajevo of investigations into, and first instance trials of, perpetrators of all criminals acts arising from the events and circumstances therein specifically referred to;

Considering that from time to time the interests of justice, as embodied in the principles and matters hereinbefore set out, may require the High Representative, acting as aforesaid, to allocate to the Supreme Court, a Cantonal Court or other court or courts within the Federation of Bosnia and Herzegovina, the conduct of

investigations into, and first instance trials of, criminal acts, and the alleged perpetrators thereof (in addition to and/or other than criminal acts arising from the events and circumstances referred to in the said Decision 101/01), notwithstanding the existence of any other law, regulation, rule or practice of the Federation of Bosnia and Herzegovina otherwise applicable to criminal acts and the perpetrators thereof which come within the jurisdiction of the courts of the Federation of Bosnia and Herzegovina;

Considering that from time to time the interests of justice, as embodied in the principles and matters hereinbefore set out, may require the High Representative, acting as aforesaid, to allocate to the Supreme Court, a District Court or other court or courts within the Republika Srpska, the conduct of investigations into, and first instance trials of, criminal acts, and the alleged perpetrators thereof, notwithstanding the existence of any other law, regulation, rule or practice of the Republika Srpska otherwise applicable to criminal acts and the perpetrators thereof which come within the jurisdiction of the courts of the Republika Srpska;

I hereby issue the following

DECISION

(1) Where the High Representative concludes, in the exercise of the powers vested in him 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, that the interests of justice require him to allocate to the Supreme Court, a Cantonal Court, or any other court or courts within the Federation of Bosnia and Herzegovina, or to the Supreme Court, a District Court, or any other court or courts within the Republika Srpska, the conduct of investigations into, and the first instance trial or trials of, a criminal act or acts and the alleged perpetrator or perpetrators thereof, the competent court shall be and remain the court specifically identified by the High Representative for this purpose by means of a Notice as hereinafter referred to;

(2) As to the Federation of Bosnia and Herzegovina, the circumstances in which the High Representative may issue a Notice as aforesaid may include, but would normally be other than, those referred to in his Decision No. 101/01 relating to the Federation of Bosnia and Herzegovina only (Official Gazette of the Federation of Bosnia and Herzegovina, No 20/01);

(3) Such allocation and bestowal of competency as hereinbefore referred to, shall take place notwithstanding the existence of any other law, regulation, rule or practice of the Federation of Bosnia and Herzegovina or of the Republika Srpska otherwise applicable to criminal acts and the perpetrators thereof;

(4) Each and every Prosecutor (and the Office thereof), or court, who or which would otherwise be competent under the provisions of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina (or other relevant Federal or Cantonal Law in force within the Federation of Bosnia and Herzegovina), or under the provisions of the Criminal Procedure Code of the Republika Srpska, to prosecute, or to conduct the investigation or the first instance trial of perpetrators of criminal acts as referred to in numbered Paragraph 1 of this Decision, is required to comply with this Decision and Notices issued under it by the High Representative, and shall transfer the case forthwith, under the relevant and applicable procedural rules, to the Prosecutor and/or to the Office and/or to the court identified by the High Representative as competent in the case or cases concerned;

(5) In the event that a prosecution, investigation or trial has already been initiated prior to the date of specific identification by Notice by the High Representative referred to in numbered paragraph 1 hereof, the Prosecutor and/or the Office thereof, and/or court concerned shall nevertheless transfer the case forthwith, under the relevant and applicable procedural rules, to the Prosecutor and/or to the Office and/or to the court identified by the High Representative as competent in the case or cases concerned;

(6) All law enforcement agencies throughout the Federation of Bosnia and Herzegovina in cases within the jurisdiction of the courts of the Federation of Bosnia and Herzegovina, and all law enforcement agencies throughout the Republika Srpska, in cases within the jurisdiction of the courts of the Republika Srpska, are obliged to assist the Prosecutor and the Office thereof to whom or to which such Notice hereinbefore referred to relates, in the discovery and prosecution of perpetrators of the criminal act or acts referred to in numbered Paragraph 1 of this Decision;

(7) The High Representative shall, so long as the Decision herein remains in force, identify each and every case under numbered Paragraph 1 hereof to be allocated and/or transferred as aforesaid, by means of a Notice, in such form as shall be adopted by him at his sole discretion, and addressed to the Prosecutor(s), Prosecutors' Office(s) and court(s) concerned, identifying the criminal act or acts to which the Notice relates, and, if known, the alleged perpetrator(s) thereof;

(8) Each such Notice as may be issued by the High Representative as aforesaid shall have immediate and binding effect on the Prosecutor(s), Prosecutors' Office(s) and court(s) concerned, and shall itself be, and be deemed and treated for all purposes, to be issued in the exercise of the powers vested in the High Representative as hereinbefore referred to;

(9) Each and every court before which an alleged perpetrator appears, pursuant to such a Notice as aforesaid, shall take immediate steps to ensure that such alleged perpetrator is provided with a copy of such Notice;

(10) This Decision, which shall not be treated as authorising or permitting cases to be transferred for hearing from one or other of the Entities of Bosnia and Herzegovina to the other, nor as extending in any manner the duties discharged and/or jurisdiction exercised by the Prosecutors or Prosecutors' Offices or courts of the respective Entities within each such Entity over the other, shall enter into force immediately and shall be published without delay in the Official Gazettes of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and of the Republika Srpska.

Sarajevo, 3 August 2001

Wolfgang Petritsch

High Representative