

Decision imposing the Law on State Border Service

In accordance with my authority under Annex 10 of the Dayton Agreement, and recalling Article XI of the Bonn Declaration, I hereby decide that the Law on State Border Service of Bosnia and Herzegovina, whose text appears below, enters into force with immediate effect on an interim basis, until such time as the Parliamentary Assembly of Bosnia and Herzegovina adopts this Law in due form, without amendments and no conditions attached.

This Decision, accompanied by the text of the Law, shall forthwith be published in the Official Gazette of Bosnia and Herzegovina as well as in the Official Gazettes of both Entities.

13 January 2000

Wolfgang Petritsch
High Representative
Sarajevo

LAW ON STATE BORDER SERVICE

BOSNIA AND HERZEGOVINA

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Article 1 Establishment of Border Service Authorities

For the performance of the border protection and airport security, Border Service authorities are established within the responsibility of Bosnia and Herzegovina (hereinafter, BiH). The Presidency of Bosnia and Herzegovina shall establish the fundamental principles of organization, functioning and responsibilities of the Border Service. The Presidency of Bosnia and Herzegovina may transfer part of the authorizations to the Council of Ministers of Bosnia and Herzegovina or the Ministry of Civil Affairs and Communications (hereinafter, the Ministry), to manage, on its behalf, the Border Service in accordance with the Constitution and this Law. The Border Service shall be headed by a Director with two Deputies appointed by the BiH Presidency. The Director and Deputies shall rotate responsibilities every eight months. The main headquarters of the Border Service shall be located in Sarajevo. Field offices shall be established as required, and will report to the Border Service main headquarters. The composition of the personnel of the Border Service shall be based on the 1991 census according to the following criteria:

- the main headquarters shall reflect the BiH-wide distribution;
- the field offices shall reflect the distribution of the regions or cantons in which they are situated;
- the representation of any one of the constituent peoples of BiH at each office level shall in no event be more than 2/3 or less than 10 percent of total Border Service personnel; this provision

does not apply to the representation of Others who shall, in all cases, be entitled to representation in accordance with the 1991 Census and the above criteria;

- all Border Service units will be fully integrated and members may serve at any point on the border.

Insofar as the Republika Srpska, the Federation of Bosnia and Herzegovina (hereinafter, Federation) or its Cantons have performed border protection, Bosnia and Herzegovina may recruit part of the staff presently assigned to such tasks.

Article 2 Border Protection

The Border Service is responsible for the protection of the borders of Bosnia and Herzegovina. Border protection includes the following duties:

1. surveillance of the borders;
2. control of cross-border traffic within a zone extending to ten (10) kilometers from the international border of BiH, except in those cases where the distance to the entity boundary line is less than 10 kms, in which case the responsibilities of the Border Service shall extend to half the distance from the international border to the entity boundary line. This duty includes:
 - a. inspection of border-crossing documents as well as of authorization for crossing the border,
 - b. apprehension of prevention of non-permitted entry into BiH,
 - c. search for persons within the border zone.

The police in the Entities possess full competency to conduct its duties within the border zone, foreseen in Paragraph 1 Section 2 of this Article.

The Border Service can issue exceptionally visas and travel certificates insofar as it is authorized by the Ministry to do so. The Border Service shall insure that any alien raising reasons relating to asylum or nonrefoulment as defined in the BiH Law on Immigration and Asylum shall be referred to the Ministry without delay.

Article 3 Airport Security

The Border Service shall protect at the international airports the international borders of Bosnia and Herzegovina as well as the security of civilian air traffic. Such protection by the Border Service is restricted to the premises of the airports.

Article 4 Duties in Case of Civil State of Emergency

In the case that serious dangers to public security or order, as established by the BiH Presidency, or a natural disaster cause the Border Service serious difficulties insofar as those difficulties are directly related to the express execution of its duties, it can request support from the appropriate police authority in the Entities. The Ministry takes such a decision in agreement with the responsible authority of the Entities. Entity police involved in such support activities are subordinate to the Border Service and measures undertaken by them shall constitute measures undertaken by the Border Service. Additional costs incurred by such support activities are to be borne by BiH.

The provisions of paragraph one of this Article apply in reverse to assistance provided to Entities by the Border Service.

Article 5 Prosecution

The Border Service assumes police duties in the field of investigation and prosecution, where suspicion exists that a crime or offense:

1. is aimed against the security of the border or the execution of Border Service duties according

to Article 2;

2. must be prosecuted according to provisions on documents demonstrating personal identity, passport and visa obligations, as well as provisions on immigration and asylum, insofar as it was committed through the act of crossing the border or in a manner directly related to it;
3. involving goods taken across the border without official permission or in violation of an applicable prohibition, in a manner establishing an objective element of a criminal provision, insofar as the Border Service has been assigned the duty to supervise such a prohibition on the basis of another law or an administrative agreement with the authority responsible for such prosecution.

If investigation and prosecution activities beyond the border zone established in Article 2, Paragraph 1, Section 2 of this Law are necessary, the Border Service shall undertake such measures in consultation with the responsible authorities. Otherwise, the competence of other prosecution authorities remains unaffected.

With respect of offenses, which do not fall within Paragraph 1 of this Article, information and materials related to suspected offenses shall be handed over to the responsible prosecution authority without delay. Notwithstanding this, the Border Service remains obligated to take any measures, which must be undertaken without delay in order to prevent tampering with information and materials related to suspected offenses. This is also applicable in cases under this Article, Paragraph 1, Section 3, when those duties are not assigned to the Border Service.

The provisions of Paragraph 1 to 3 of this Article apply accordingly to the prosecution of minor offenses.

Article 6 Powers

The Border Service can take necessary measures for the fulfillment of its duties under Articles 2 to 5, in order to prevent a danger. A danger in the sense of this Law, is constituted by any individual case of existing danger to public security or order within the area of duties for which the Border Service is responsible. A serious danger, in the sense of Article 4, jeopardizes a substantial right such as the existence of the state, life, health, freedom, assets of significant value or other goods protected by criminal law provisions and of particular societal value. Detailed provisions regarding the powers of the Border Service in a manner consonant with the rule of law shall be regulated transitionally through provisions or regulations by the Ministry.

For the fulfillment of duties according to Articles 2 to 5, as well as for the fulfilment of duties assigned to the Border Service through other BiH provisions, the Border Service shall have such powers as provided within those provisions. To the extent that such provisions do not provide such powers, do not sufficiently provide them, or do not provide them in a manner consonant with the rule of law, the Border Service has the powers provided under this Law and corresponding provisions or regulations.

Article 7 Principle of Proportionality

From amongst any possible and suitable measures, the one undertaken is to be that which would foresee a result in the last disadvantage to individuals and the public. A measure may not lead to a disadvantage, which is recognizably disproportionate to the aim to be achieved. A measure may only be used until its objective is achieved, or until it is clear that the objective cannot be achieved.

Article 8 Transitional measures

To the extent that the police forces of the Republika Srpska and the Federation have, until now, performed the duties foreseen in this Law, they transitionally assume these duties until the Border Service is capable of fully taking them over. To the extent that competent authorities at the state level appoint Border Service officials upon entry into force of this Law, those officials are responsible for the execution of the duties foreseen in this Law. The police officials mentioned in the first sentence of this paragraph shall be under Border Service command.

Article 9 Implementation of the Law

The Ministry shall, without delay, pass necessary regulations or administrative directives necessary for the implementation of this Law, in particular in the areas of;

1. general and special powers as well as data protection;
2. direct compulsion and the use of firearms;
3. liability and compensation for damages caused by the Border Service in the line of duty;
4. personnel and service regulations, including the number of employees;
5. manner of funding;
6. co-operation with other authorities, such as the police of the Entities, other law enforcement authorities, as well as immigration and customs authorities.

Article 10 Entry into Force

This Law enters into force on the eight day after its publication in the Official Gazette of BiH and shall be published in the official gazettes of the Entities.

13 January 2000

Wolfgang Petritsch
High Representative

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