

Decision Enacting the Law on Amendment to the Law on Court 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 issued by the Peace Implementation Council at its meeting 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;

Mindful of 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 concentrating on the prosecution and trial of the most senior leaders suspected of being most responsible for crimes within the jurisdiction of ICTY and transferring cases involving those who may not bear this level of responsibility to competent national jurisdictions, as appropriate, as well as the strengthening of the capacity of such jurisdictions;

Noting that the above-mentioned Completion Strategy in no way alters 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, while bearing in mind the primacy of the ICTY over national courts;

Considering the communiqué issued by the Peace Implementation Council Steering Board at its meeting held in Sarajevo on 3 December 2004, in which the Steering Board reiterated its full support to the work of national and international judges and prosecutors in BiH, called on the BiH authorities to show resolve in their efforts to tackle endemic corruption, and called on all countries to assist in the rule of law effort by deploying international judges and prosecutors;

Recalling that, in the communiqué issued at its meeting held in Vienna on 15 March 2006, the Steering Board of the Peace Implementation Council expressed their continuing support for the State Court to enable the BiH authorities to effectively prosecute domestically war crimes indictees, and encouraged international contributions to help sustain the Court and its operations, which are an essential part of the overall BiH justice sector reform;

Noting that in its Declaration issued after the meeting held in Sarajevo on 29 and 30 June 2009, the Steering Board of the Peace Implementation Council encouraged the BiH authorities to confirm their dedication to strengthening the rule of law by taking those actions that are necessary to extend the mandates of international judges and of international prosecutors by positively considering the recommendations of the ICTY, and taking into account the views of the local judicial institutions;

Mindful of the joint letters sent by the President of the Court of Bosnia and Herzegovina and the Chief Prosecutor of Bosnia Herzegovina to national and international institutions on 9 May 2008, 11 September 2008 and 13 March 2009, seeking an extension of the tenure of international judges and prosecutors;

Mindful also of the letter sent by the Transition Council established by the Registry Agreement to coordinate transition of the Registry into national institutions to the Presidency, the Council of Ministers and the High Judicial and Prosecutorial Council of BiH, sent on 24 October 2008, supporting the extension of the presence of international judges and prosecutors beyond December 2009;

Taking into account the conclusions of the “Report of the International Criminal Law Services (ICLS) Experts on the Sustainable Transition of the Registry and International Donor Support to the Court of Bosnia and Herzegovina and the Prosecutor’s Office of Bosnia and Herzegovina in 2009” submitted on 15 December 2008, which recommend the extension of international assistance beyond 2009;

Bearing in mind the “Opinion in Reference to the Presence of International Judges and Prosecutors after 31.12.2009” of the High Judicial and Prosecutorial Council of BiH dated 25 February 2009, expressing its support for the continuation of international presence in a reduced capacity;

Noting with regret the failure of the authorities in BiH over the last two years to provide the Court and Prosecutor’s Office of BiH the budgetary means necessary to ensure the recruitment of national judges and prosecutors to gradually replace international judges and prosecutors whose mandates were due to expire in the course of 2009, even after being duly seized of the issue by the Transition Council established by the Registry Agreement to coordinate transition of the Registry into national institutions in the letter of 24 October 2008 sent to the Presidency, the House of Representatives and the House of Peoples of the Parliamentary Assembly, the Council of Ministers and the Ministry of Finance of BiH;

Bearing in mind the letters sent by the then President of the ICTY, Mr. Fausto Pocar, on 22 October 2008, and by his successor Mr. Patrick Robinson on 30 June 2009, which fully and strongly support the extension of mandates of international judges and prosecutors at the Court and Prosecutor’s Office of Bosnia and Herzegovina;

Acknowledging the addresses of the Prosecutor of the ICTY, Mr. Serge Brammertz, to the Security Council of the United Nations on 4 June and on 3 December 2009, by which he joined the representatives of the international community in Bosnia and Herzegovina in supporting an international presence in judicial institutions;

Recalling letters sent by the High Representative to the relevant national institutions of 28 October 2008, 27 May 2009, 16 July 2009 and 19 August 2009, stressing the need of a timely adoption of amendments to the Law on Court of Bosnia and Herzegovina and the Law on Prosecutor’s Office of Bosnia and Herzegovina providing for the continuation of presence for international judges and prosecutors;

Recalling further the letter sent by the High Representative for the Common Foreign and Security Policy of the European Union, Mr. Javier Solana on 22 July 2009 to the Chairman of the Council of Ministers, requesting prompt action to extend the mandate of international members of the judiciary beyond the current deadline;

Aware of the need to extend the presence of international judges adjudicating in the first instance war crimes cases that will not be completed by the time of the expiration of the mandates in the beginning of January 2010;

Noting that the lack of extension of the current tenure of international judges could lead to the reinitiating of several ongoing first instance trials, with a serious financial impact and the consequence of considerable number of witnesses needing to testify again, which would lead to an immeasurable loss for the confidence in the justice system of Bosnia and Herzegovina;

Convinced that the rule of law is paramount to stable and functioning state on track to join the European Union;

Emphasizing the need to conclude transfer of positions within the Court and the Prosecutor’s Office of Bosnia and Herzegovina to the citizens of Bosnia and Herzegovina in a timely and orderly manner;

Aware of the necessity of enabling the President of the Court to use resources in the best possible manner, and noting the importance of a transitional plan to that effect;

Being seized of the urgency;

Having given full consideration and borne in mind all these matters,

The High Representative hereby issues the following

DECISION

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and Directing the Authorities of Bosnia and Herzegovina to Ensure that Conditions for Cessation of International Presence by Transfer of the Positions to the Citizens of Bosnia and Herzegovina are Met

1. The Law which follows and which forms an integral part of this Decision shall enter into force as provided for in Article 2 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.
2. This Decision shall come into effect a day after publication on the official website of the Office of the High Representative, and shall be published in the "Official Gazette of Bosnia and Herzegovina" without delay.

Sarajevo, 14 december 2009

Dr. Valentin Inzko

High Representative

LAW

ON AMENDMENT

TO THE LAW ON COURT OF BOSNIA AND HERZEGOVINA

Article 1

(Amendment to Article 24)

(1) In the Law on Court of Bosnia and Herzegovina - Consolidated Text (Official Gazette of Bosnia and Herzegovina, Nos. 49/09 and 74/09; hereinafter: the Law), Article 24, paragraphs (1) through (5) shall be amended to read:

“(1) During the transitional period, the duty of the Registrar referred to in Article 17, paragraph (5), of this Law shall be performed by the Registrar of the Court referred to in the Agreement on the **Registry for Section I for War Crimes and Section II for Organized Crime, Economic Crime and Corruption of the Criminal and Appellate Divisions of the Court of Bosnia and Herzegovina and the Special Department for War Crimes and the Special Department for Organized Crime, Economic Crime and Corruption of the Prosecutor’s Office of Bosnia And Herzegovina, as well as on the Establishment of the Transitional Council, Replacing the Agreement on the Office of the Registrar Dated 1 December 2004 and the Supplement to the Mentioned Agreement (Official Gazette of Bosnia and Herzegovina - International Agreements, No. 3/07; hereinafter: the Registry Agreement). The transitional period shall last until 31 December 2012.**

(2) During the transitional period referred to in paragraph (1) of this Article, the Rules of Procedure of the Court, in the part concerning the Sections referred to in the Registry Agreement, may be issued or amended only after consultation in writing with the Registrar of the Court referred to in the Registry Agreement.

(3) During the transitional period referred to in paragraph (1) of this Article, a number of international judges may be appointed to the Court, to work on cases assigned to Section I **for War Crimes of the Criminal and Appellate Divisions**. International judges shall not be citizens of Bosnia and Herzegovina nor of any of the neighbouring countries.

(4) During the transitional period referred to in paragraph (1) of this Article, but not later than **31 July 2011**, the Minister of Justice, the Minister of Finance and the Council of Ministers, together with the Fiscal Council, shall devise a financial plan to enable gradual transfer of the positions to which international judges are appointed to citizens of Bosnia and Herzegovina, as well as to enable proper provision of support services as provided by the Registry Agreement. The financial plan shall be reflected in the Law on Execution of the Budget for the year 2012.

(5) After the expiry of the transitional period referred to in paragraph (1) of this Article, the duty of the Registrar referred to in Article 17, paragraph (5), of this Law shall be performed by the Registrar referred to in the Registry Agreement for an additional period to be specified by the Transitional Council established by the Registry Agreement, but of no less than six months, in order to meet all technical prerequisites for terminating the transition process.”

(2) Paragraphs (6) and (7) of Article 24 of the Law shall be deleted.

(3) Current paragraphs (8) and (9) of Article 24 of the Law shall become paragraphs (6) and (7).

Article 2

(Entry into Force and Publication)

This law shall enter into force on the third day after the date of its publication on the official website of the Office of the High Representative or on the day after the date of its publication in the “Official Gazette of Bosnia and Herzegovina”, whichever comes first.