

Decision Enacting the Law on Amendments to the Criminal Procedure Code 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 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 the reinvigorated strategy for judicial reform to strengthen the Rule of Law efforts in Bosnia and Herzegovina in 2002/03 that was endorsed by the Steering Board of the Peace Implementation Council on 28 February 2002;

Recalling 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 ICTY's jurisdiction 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 the Security Council's statement that the above-mentioned Completion Strategy shall in no way alter 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;

Noting further that, in its communiqué issued after its meeting in Sarajevo on 26 September 2003, the Steering Board of the Peace Implementation Council took note of UN Security Council Resolution 1503, which, *inter alia*, called on the International Community to support the work of the High Representative in setting up the war crimes chamber;

Mindful that, in the communiqué issued after the meeting of the Peace Implementation Council Steering Board in Vienna on 15 March 2006, the Political Directors expressed their continuing support for the State Court to enable the authorities of Bosnia and Herzegovina to effectively prosecute domestically, war crimes indictees and those indicted for organized crime;

Recalling that the Steering Board of the Peace Implementation Council, at its meeting held in Sarajevo on 19 June 2007, called upon the authorities in Bosnia and Herzegovina, especially in Republika Srpska, to abide by their obligations under international law by cooperating fully with the ICTY, playing a proactive role in apprehending all remaining indictees – including Radovan Karadžić and Ratko Mladić – without further delay, dismantling their support networks and ensuring that indictees are transferred to the ICTY;

Noting the progress made in developing the capacity of the Special Section for War Crimes of the Court of Bosnia and Herzegovina and the Special Department for War Crimes of the Prosecutor's Office of Bosnia and Herzegovina;

Bearing in mind that the ability of the prosecutors' offices to conduct large-scale investigations has been undermined by the fact that experts cannot take investigative acts in the official capacity;

Considering that, under the criminal procedural legislation in Bosnia and Herzegovina, it is impossible to bring cases against the perpetrators of crimes to trial if they are not present in Bosnia and Herzegovina;

Deploring, however, that the changes to legislation necessary to facilitate the investigation and eventual prosecution of the most serious crimes such as genocide, crimes against humanity and war crimes, have not been given the required attention by the authorities in Bosnia and Herzegovina;

Being seized of the urgency to amend such legislation;

Having considered and borne in mind all these matters,

The High Representative hereby issues the following

DECISION

Enacting the Law on Amendments to the Criminal Procedure Code of Bosnia and Herzegovina

(Official Gazette of Bosnia and Herzegovina, Nos. 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06 and 29/07)

The Law which follows and which forms an integral part of this Decision shall enter into force as provided for in Article 6 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 enter into force forthwith and shall be published in the "Official Gazette of Bosnia and Herzegovina" without delay.

Sarajevo, 9 July 2007

*Miroslav Lajčák
High Representative*

Law

on amendments to the criminal procedure code of bosnia and herzegovina

Article 1

(Amendment to Article 20)

In the Criminal Procedure Code of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, Nos. 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06 and 29/07; hereinafter: the Code), Article 20 (*Basic Terms*), subparagraph g), at the end of the text a full-stop shall be inserted instead of a semicolon and a new sentence shall be added to read:

“Expert associates as well as investigators working for the Prosecutor’s Office of Bosnia and Herzegovina under the authorization of the Prosecutor shall also be considered as authorized officials.”

Article 2

(Amendment to Article 123)

In Article 123 (*Types of Measures*) of the Code, paragraph (1), the words “house arrest” shall be replaced by the words “prohibiting measures”.

Article 3

(Change of the Title of the Section 4 and the Amendment to Article 126)

(1) Before Article 126 (*Prohibiting Measures*) of the Code, the title of the Section shall be amended to read “Prohibiting

Measures”.

(2) The title of Article 126 and Article 126 of the Code shall be amended to read:

“House Arrest and Travel Ban

(1) If there are circumstances indicating that the suspect or accused might flee, hide or go to an unknown place or abroad, the Court may, by a reasoned decision, place the suspect or accused under house arrest.

(2) In circumstances referred to in Paragraph (1) of this Article, the Court may also, either as an additional measure to the house arrest or as a separate measure, order a temporary withdrawal of travel documents together with the prohibition of issuance of new travel documents, as well as the prohibition to use the identity card for crossing the State border of Bosnia and Herzegovina (travel ban).

Article 4

(New Articles 126a to 126g)

After Article 126 of the Code, new Articles 126a, 126b, 126c, 126d, 126e, 126f and 126g shall be added to read:

“Article 126a

Other Prohibiting Measures

(1) When the circumstances of the case so indicate, the Court may order one or more of the following prohibiting measures:

- a) prohibition from performing certain business or official activities,
- b) prohibition from visiting certain places or areas,

- c) prohibition from meeting with certain persons,
- d) order to report occasionally to a specified body, and
- e) temporary withdrawal of the driver's license.

(2) Other prohibiting measures referred to in Paragraph (1) of this Article may be imposed in addition to the house arrest as well as in addition to a travel ban referred to in Article 126 of this Code, or as separate measures.

Article 126b

Imposing the Prohibiting Measures

(1) The Court may impose the house arrest, travel ban and other prohibiting measures by a reasoned decision upon the proposal of a party or the defense attorney.

(2) When deciding on custody, the Court may impose the house arrest, travel ban and other prohibiting measures ex officio, instead of ordering or prolonging the custody.

(3) In the decision imposing the prohibiting measures, the suspect or accused shall be warned that the custody may be ordered against him or her if he/she violates the obligation under the imposed measure.

(4) In the course of an investigation, the prohibiting measures shall be ordered and revoked by the preliminary proceedings judge and after the issuance of an indictment – by a preliminary hearing judge and after the case has been referred to the judge or the Panel for the purpose of scheduling the main trial – by that judge or the presiding judge.

(5) The prohibiting measures may last as long as they are needed, but not later than the date on which the verdict becomes legally binding if a person was not pronounced the sentence of imprisonment and at the latest until the person

has been committed to serve the sentence if a person was pronounced the sentence of imprisonment. Travel ban may also last until the pronounced fine is paid in full and/or the property claim and/or confiscation of material gain enforced in full.

(6) The preliminary proceedings judge, preliminary hearing judge, the judge, or the presiding judge must review every two months whether the imposed prohibiting measure is still needed.

(7) A decision ordering, extending or revoking the prohibiting measures may be appealed by a party or the defense attorney, while the Prosecutor may also appeal a decision rejecting his motion for the ordering of a measure. An appeal shall be decided by the Panel referred to in Article 24 Paragraph (6) of this Code within three days of receipt of the appeal. An appeal shall not stay the execution of decision.

Article 126c

Content of the Prohibiting Measures

(1) In a decision ordering the house arrest for the suspect or accused, the Court shall specify the place where the suspect or accused shall stay for as long as the measure lasts, as well as the boundaries beyond which the suspect or accused may not go. The place may be restricted to the suspect's or accused's home.

(2) In a decision imposing the travel ban, the Court shall order temporary withdrawal of travel documents together with the prohibition of issuance of new travel documents, as well as the enforcement of the prohibition to use the identity card for crossing the State border of Bosnia and Herzegovina. The decision shall contain personal data of the suspect or accused, and may contain other information as necessary.

(3) In a decision prohibiting the suspect or accused from

visiting certain places or areas, the Court shall specify places and areas and the distance within which the suspect or accused may not approach them.

(4) In a decision prohibiting the suspect or accused from meeting with certain persons, the Court shall specify the distance within which the suspect or accused may not approach a certain person.

(5) In a decision ordering the suspect or accused to report occasionally to a specified body, the Court shall appoint an official person that the suspect or accused must report to, the time limit in which the suspect or accused must report and the manner of keeping records of reporting.

(6) In a decision ordering temporary withdrawal of a driver's license, the Court shall specify categories for which a driver's license shall be suspended. The decision shall contain personal data of the suspect or accused, and may contain other information as necessary.

Article 126d

Limitations in the Content of the Prohibiting Measures

(1) The prohibiting measures shall not restrict the right of the suspect or accused to communicate with his/her defense attorney in Bosnia and Herzegovina.

(2) The prohibiting measures shall not restrict the right of the suspect or accused to live in his/her home in Bosnia and Herzegovina, to see members of his/her family and close relatives freely or just in Bosnia and Herzegovina or just in a place specified under the house arrest and unless the proceedings involve the criminal offense committed to the detriment of the family member or close relatives, nor shall they restrict the right of the suspect or accused to perform its professional activity unless the proceedings involve the criminal offense related to the performance of that activity.

Article 126e

Enforcement of Prohibiting Measures

(1) A decision ordering the house arrest shall be submitted also to the body enforcing the measure.

(2) A decision ordering the travel ban shall be submitted also to the border police, and the temporary withdrawal of travel documents together with the prohibition of issuance of new travel documents, as well as the enforcement of the prohibition to use the identity card for crossing the State border shall be entered into the Central Data Processing Centre.

(3) The measures of house arrest, travel ban, prohibition from visiting certain places or areas, prohibition from meeting with certain persons and temporary withdrawal of a driver's license shall be enforced by a police body.

(4) The measure ordering the suspect or accused to report occasionally to a specified body shall be enforced by a police body or the body that the suspect or accused must report to.

Article 126f

Verification of Prohibiting Measures and Obligation to Submit Report

(1) At any time, the Court may order verification of prohibiting measures and request the competent body in charge of the enforcement to submit a report. The body shall be obliged to submit the report to the Court without delay.

(2) If the suspect or accused is not fulfilling obligations ordered by the measure, the enforcement body shall inform the Court about it and the Court may pronounce additional prohibiting measure or place him/her into custody.

Article 126g

Special Provision on Travel Ban

(1) Exceptionally, in emergency cases, in particular in cases involving a criminal offense for which a prison sentence of ten years or more severe punishment may be pronounced, the order for a temporary withdrawal of travel documents and the identity card together with prohibiting the issuance of new documents that might be used for crossing the State border, may be issued by the Prosecutor.

(2) The Prosecutor may issue the order referred to in Paragraph (1) of this Article when ordering the conduct of an investigation, when questioning the suspect or when issuing an apprehension order under Article 125, Paragraph (2) of this Code, or whenever the emergent action is needed for the effective conduct of the process until the beginning of the main trial.

(3) In the course of an investigation, the Prosecutor shall immediately inform the preliminary proceedings judge and after the issuance of an indictment – a preliminary hearing judge and after the case has been referred to the judge or the Panel for the purpose of scheduling the main trial – that judge or the presiding judge, who shall decide about the order within 72 hours. In case the judge fails to issue the said order, the travel documents and the identity card shall be returned.

(4) The order for a temporary withdrawal of travel documents and the identity card together with prohibiting the issuance of new documents that might be used for crossing the State border, shall be executed by a police body, and may also be executed by judicial police. If a suspect or accused refuses to surrender the travel documents and/or the identity card, the order shall be executed by force.

(5) The suspect or accused shall be issued a receipt on withdrawn documents. For the identity card, the suspect or accused shall be issued a special certificate or card that

shall replace the identity card in all respects, but it may not be used for crossing the State border.”

Article 5

(Application of this Law)

This Law shall apply to all cases in which the final verdict has not been rendered before the date of entry into force of this Law.

Article 6

(Entry into Force of this Law)

This Law shall enter into force on a day after it is published in the “Official Gazette of Bosnia and Herzegovina” without delay.