

Decision Enacting the Law on Amendments to the Law on Prosecutor's Office 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;

Recalling in addition paragraph 3 of Annex II (Rule of Law and Human Rights) to the last said Declaration, according to which the establishment of judicial institutions at the State level, which meet an established constitutional need to deal with criminal offences perpetrated by public officials of Bosnia and Herzegovina in the course of their duties, and with administrative and electoral matters, is a precondition for the establishment of the rule of law in Bosnia and Herzegovina;

Bearing in mind the reinvigorated strategy for judicial reform to strengthen the Rule of Law efforts in Bosnia and Herzegovina in 2002/03 which was endorsed by the Steering Board of the Peace Implementation Council on 28 February 2002 and noting that the aforementioned strategy was devised in response to calls by the authorities in Bosnia and Herzegovina for firmer International Community actions to tackle economic crime, corruption and problems inherent in the judicial system;

Considering that the Steering Board of the Peace Implementation Council in Sarajevo on 7 May 2002 called upon the local authorities to ensure the rapid establishment of the Court of Bosnia and Herzegovina reminding the Bosnia and Herzegovina authorities that the Appellate Division of the Court needs to be operational in order to adjudicate election complaints and urging the authorities to immediately find a sustainable solution to the problem of the location of the Court;

Considering further that the communiqué of the Steering Board of the Peace Implementation Council issued at Sarajevo on 31 July 2002 stated that the Board welcomes the creation of the Special Chambers and endorses the proposal of the High

Representative to include national and international Judges and Prosecutors in a Special Panel/Department for Organized Crime, Economic Crime and Corruption in the Court of Bosnia and Herzegovina and the Prosecutor's Office of Bosnia and Herzegovina;

Noting therefore that a Prosecutor's Office of Bosnia and Herzegovina providing for the investigation and prosecution of crimes which lie within the competence of the State of Bosnia and Herzegovina under the Constitution of Bosnia and Herzegovina is a pre-condition for the establishment of the rule of law in the State of Bosnia and Herzegovina;

Recognizing that criminal activities continue to infringe on the economic, fiscal, commercial and other social rights and interests of the citizens of Bosnia and Herzegovina and that the establishment of a Special Department for Organized Crime, Economic Crime and Corruption within the aforesaid Prosecutor's Office of Bosnia and Herzegovina will advance the robust fight against crime in Bosnia and Herzegovina;

Bearing in mind the commitment taken over by the Entities and the District of Brcko of Bosnia and Herzegovina to harmonize their respective criminal procedure codes with the Criminal Procedure Code of Bosnia and Herzegovina with the aim of securing that justice for all throughout Bosnia and Herzegovina as a whole is based on the same principles and procedural safeguards, and in particular noting the progress achieved so far in that process;

Convinced of the vital importance to Bosnia and Herzegovina of ensuring that the rule of law is strengthened and followed in order to create the ground for economic growth and foreign investment and for all the reasons as aforesaid,

The High Representative hereby issues the following

DECISION

Enacting the Law on Amendments to the Law on Prosecutor's Office of Bosnia and Herzegovina, which is hereby attached as an integral part of this Decision.

The said Law shall enter into force as a law of Bosnia and Herzegovina, with effect from the date provided for in Article 5 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 come into force forthwith and shall be published without delay in the Official Gazette of Bosnia and Herzegovina.

Sarajevo 24 January 2003

*Paddy Ashdown
High Representative*

LAW ON AMENDMENTS TO THE LAW ON PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

Preamble

The Law on Prosecutor's Office of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina No. 24/02, Official Gazette of the Federation of Bosnia and Herzegovina No. 43/02, Official Gazette of the Republika Srpska No. 55/02) (hereinafter the 'Law'), is hereby amended as follows:

Article 1

In Article 12, paragraph 3 the word 'State' shall be deleted.

Article 12, paragraph 4 shall be deleted.

Article 2

In Article 16, paragraph 1 after the words: 'have a Registrar,' the following words shall be deleted 'appointed by the Collegium of Prosecutors'.

Article 3

Article 18 of the Law shall be deleted and the following new Article 18 shall be inserted:

When the Prosecutor's Office is established all courts and prosecutors' offices in the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brcko District in which criminal cases are pending that fall under the jurisdiction of the Court of Bosnia and Herzegovina, pursuant to Article 13, as amended, of the Law on the Court of Bosnia and Herzegovina, in which the indictment is not confirmed or in legal effect, shall be bound to inform the Prosecutor's Office of the cases.

Article 4

After Article 18, a new Article 18a shall be inserted:

'Article 18a

International Prosecutors

During a transitional period, a maximum number of three (3) international prosecutors may be appointed to the Special Department for Organized Crime, Economic Crime and Corruption. International prosecutors shall not be citizens of Bosnia and Herzegovina or of any neighboring state. The transitional period shall last not more than four years.

An international prosecutor shall be the Deputy Chief Prosecutor, Head of the Special Department.

International prosecutors shall not be held criminally or civilly liable for any act carried out within the scope of their duties pursuant to this law.'

Article 5

Entry into force

This Law on Amendments to the Law on Prosecutor's Office of Bosnia and Herzegovina shall enter into force on 1 February, 2003 and shall be published without delay in the "Official Gazette of Bosnia and Herzegovina".