

Decision Enacting the Law on Salaries and Other Compensations for Judges and Prosecutors in the Federation 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”;

Mindful of paragraph I.2.a of the Conclusions of the said Bonn

Conference, which recognised “that an impartial and independent judiciary” was “essential to the rule of law and reconciliation within Bosnia and Herzegovina ”;

Noting the Annex to the Declaration of the Peace Implementation Council of 16 December 1998, in which the Steering Board urged “the adoption by 30 June 1999 of legislation to achieve an independent and impartial judiciary, focusing on judicial and prosecutorial appointments, adequate salaries and objective standards for appointment of judges and prosecutors, consistent with those of European democratic practice, and the promotion of a multi-ethnic judiciary throughout Bosnia and Herzegovina.”;

Recognizing that relevant legislation in the Federation was imposed by the High Representative on 17 May 2000 and was later adopted by the Parliament of the Federation of Bosnia and Herzegovina and published in the Official Gazette of the Federation of Bosnia and Herzegovina No. 20/01;

Appreciating the fact that, when the Independent Judicial Commission started its work in the spring of 2001, the financial situation within the judiciary was critical and that the Independent Judicial Commission, in close cooperation with Entity ministries of justice and Entity Parliaments, achieved significant reduction of the yearly costs of the judiciary and prosecution by unifying the prosecutorial services, reducing the number of first instance courts and the number of judges and support staff in the judiciary;

Realizing that the financial situation within the judiciary and the prosecution at all levels in Bosnia and Herzegovina continues to be extremely critical and that the yearly costs of salaries and benefits for judges and prosecutors clearly represents a disproportionate part of the overall budgets;

Realizing further that the current situation is unsustainable and could lead to a collapse of the judiciary in Bosnia and

Herzegovina;

Mindful that the courts and prosecutors offices have accrued significant debt due to lack of funds to pay operational expenses and salaries on time, that the total debt at the end of 2004 was 16 million KM and that many courts have had and continue at this very moment to have their basic services – such as post and telephone – cut off and therefore are not operational and able to deliver the services required by the citizens of Bosnia and Herzegovina;

Cognisant of the fact that judges and prosecutors in Bosnia and Herzegovina had – due to the mechanisms provided for in the current legislation – their salaries increased by approximately 40% from the initial increase in 2000 until the salaries were frozen in December 2004 while at the same time the inflation in Bosnia and Herzegovina has been minimal;

Noting the Communiqué by the Steering Board of the Peace Implementation Council of 3 December 2004, in which the Steering Board underlined that “the efficient administration of justice, a core plank of Bosnia and Herzegovina’s postwar rehabilitation, depends on a properly functioning and appropriately remunerated judiciary” and in which it fully supported “the urgent need to review judicial salaries in order to ensure the proper allocation of funds to enable the judicial system to work effectively.”

Noting further that to avoid a further deterioration of the situation the High Representative froze judicial salaries by Decision of 13 December, 2004 and that a Working Group, consisting of the representatives from the ministries of justice at Entity and Bosnia and Herzegovina levels, Brcko District Judicial Commission, the High Judicial and Prosecutorial Council of Bosnia and Herzegovina as well as judges and prosecutors associations in both Entities, was established and tasked with reviewing judicial salaries and drafting new legislation;

Welcoming the recommendations of the Working Group that salaries for judges and prosecutors should be harmonized between the Entities, that the benefits that were eliminated by the Entity Parliaments in 2003 should not be reinstated, that salaries for judges and prosecutors should be modestly reduced, that the current salaries should continue to be frozen until the average salary in Bosnia and Herzegovina has reached a certain level, that when the salaries again start to increase they will increase with the same percentage as the average salary in Bosnia and Herzegovina thus securing a fixed ratio between the average salary in Bosnia and Herzegovina and judicial salaries as well as continued harmonization between the Entities;

Welcoming that fact that the High Judicial and Prosecutorial Council of Bosnia and Herzegovina , at its session held on 23 August 2005 has supported the recommendations of the Working Group;

Recalling the Communiqué by the Steering Board of the Peace Implementation Council of 24, June 2005 where it remained worried “over the fiscal sustainability challenge faced by Bosnia and Herzegovina ’s governments, especially at Entity level;

Realizing that implementation of the recommendations of the Working Group is of critical for a functioning judicial system in Bosnia and Herzegovina and that in this respect it is paramount that they take effect from the beginning of the upcoming budget year starting 1 January, 2006;

Having considered and borne in mind all these matters, the High Representative hereby issues the following

DECISION

Enacting the Law on Salaries and Other Compensations for Judges and Prosecutors in the Federation 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 Federation of Bosnia and Herzegovina, with effect from the date provided for in Article 18 thereof, unless the said Law is adopted in the same text, in due form, without amendment and with no conditions attached by the Parliament of the Federation of Bosnia and Herzegovina before 31 December 2005. Should such a Law be adopted by the Parliament of the Federation of Bosnia and Herzegovina in a different text, with amendments or with conditions attached, such Law shall not enter into force.

In the event that the Law attached as an integral part of this Decision enters into force in accordance with the terms of this Decision, it shall enter into force on an interim basis, until such time as the Parliament of the Federation 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 the Federation of Bosnia and Herzegovina".

Sarajevo, 9 December 2005

*Paddy Ashdown
High Representative*

LAW ON SALARIES AND OTHER COMPENSATIONS

FOR JUDGES AND PROSECUTORS IN THE FEDERATION OF BOSNIA AND HERZEGOVINA

I

GENERAL PROVISIONS

Article 1

Scope of this Law

This Law regulates the salary, compensations and certain material rights of Judges and Prosecutors and Judicial Associates in the Federation of Bosnia and Herzegovina.

II

SALARY AND OTHER RIGHTS AND COMPENSATIONS

Article 2

Basic Monthly Salary for Judges

The Basic Monthly Salary of Judges shall be as follows:

- (a) For Judges of Municipal Courts: 2,400 KM.
- (b) For Heads of Department of Municipal Courts: 2,600 KM.
- (c) For Court Presidents of Municipal Courts: 2,800 KM.
- (d) For Court Presidents of Municipal Courts with 30 judges or more: 3,200 KM.
- (e) For Court Presidents of Municipal Courts with 60 judges or more: 3,600 KM.
- (f) For Judges of Cantonal Courts: 3,000 KM.
- (g) For Heads of Department of Cantonal Courts: 3,200 KM.
- (h) For Court Presidents of Cantonal Courts: 3,400 KM.
- (i) For Judges of the Constitutional Court of the Federation of Bosnia and Herzegovina and Judges of the Supreme Court of the Federation of Bosnia and Herzegovina: 3,800 KM.
- (j) For Head of Departments of the Constitutional Court of the Federation of Bosnia and Herzegovina and the Supreme Court

of the Federation of Bosnia and Herzegovina: 4,000 KM.

(k) For the Court Presidents of the Constitutional Court of the Federation of Bosnia and Herzegovina and the Supreme Court of the Federation of Bosnia and Herzegovina: 4,400 KM.

Article 3

Basic Monthly Salary for Prosecutors

The Basic Monthly Salary of Prosecutor shall be as follows:

- a) For Prosecutors of Cantonal Prosecutors' Offices: 2,400 KM.
- b) For Heads of Section of Cantonal Prosecutors' Offices: 2,600 KM.
- c) For Deputy Chief Prosecutors of Cantonal Prosecutors' Offices: 3,000 KM.
- d) For Chief Prosecutors of Cantonal Prosecutors' Offices: 3,400 KM
- e) For Federation of Bosnia and Herzegovina Prosecutors: 3,800 KM.
- f) For the Deputy Chief Federation of Bosnia and Herzegovina Prosecutor: 4,000KM.
- g) For the Chief Federation of Bosnia and Herzegovina Prosecutor: 4,400 KM.

Article 4

Basic Monthly Salary for Judicial Associates

1. The Basic Monthly Salary of Judicial Associates who carry out judicial duties in accordance with Article 43, paragraph 2 of the Law on Courts of the Federation of Bosnia and Herzegovina shall be 1200 KM.

2. The number of Judicial Associate referred to in paragraph 1 of this Article shall be decided by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina. They shall be appointed by the High Judicial and Prosecutorial Council in accordance with the Rules of Procedures of the High Judicial and Prosecutorial Council and shall not hold the position of Judicial Associate for a period longer than 6 years.

Article 5

Supplement for Experience

The Basic Monthly Salary for each category of Judge and Prosecutor under Articles 2, and 3 of this Law respectively and of Judicial Associates who fall under Article 4 shall be supplemented by 0.5% for each complete year of work experience up to a maximum of 40 years.

Article 6

Regulation of the Basic Monthly Salary

1. The salaries stipulated in Articles 2, 3 and 4 of this Law shall not be increased until such time as the average monthly net salary of Bosnia and Herzegovina, calculated over a calendar year, has reached or exceeded 800 KM.

2. From the year subsequent to the year in which the average monthly net salary of Bosnia and Herzegovina, calculated over a calendar year, first reaches or exceeds 800 KM, the Basic Monthly Salary of Judges, Prosecutors and Judicial Associates who fall under Article 4 of this Law respectively shall be adjusted annually by the percentage increase in the average monthly net salary of Bosnia and Herzegovina.

3. The percentage increase referred to in paragraph 2 of this Article shall be derived by comparing the average

monthly net salary in Bosnia and Herzegovina over a calendar year with the average monthly net salary in Bosnia and Herzegovina in the previous calendar year.

4. In the event that in any year the average monthly net salary of Bosnia and Herzegovina, calculated over a calendar year, decreases, the Basic Monthly Salary of Judges and Prosecutors and Judicial Associates who fall under Article 4 of this Law shall remain the same and shall not increase again until such time as the average monthly net salary of Bosnia and Herzegovina calculated over a calendar year reaches its highest level since the first increase in salaries in accordance with paragraph 2 of this Article. Thereafter, the salaries of Judges and Prosecutors and Judicial Associates who fall under Article 4 of this Law shall increase in accordance with paragraph 2 of this Article.

5. The average monthly net salary shall be as per data published by the Agency for Statistics of Bosnia and Herzegovina.

Article 7

Working Hours

1. The working hours for Judges and Prosecutors and Judicial Associates who fall under Article 4 of this Law shall be 40 hours per week.

2. If a Judge or a Prosecutor and Judicial Associates who fall under Article 4 of this Law works on a part time basis in accordance with specialized legislation or regulations, the Basic Monthly Salary under Article 2, 3 and 4 of this Law respectively shall be adjusted according to the number of days worked in relation to the number of normal working days in that month.

Article 8

Annual Paid Leave and Leave for Religious Purposes

1. Judges and Prosecutors shall be entitled to 30 working days of paid annual leave and Judicial Associates who fall under Article 4 of this Law shall be entitled to 20 working days of paid annual leave.
2. In addition to the annual leave entitlement regulated at paragraph 1 of this Article, Judges and Prosecutors and Judicial Associates who fall under Article 4 of this Law shall be entitled to two paid and two unpaid days of leave in order to fulfill their religious obligations.
3. All Judges and Prosecutors Law shall be entitled to a net holiday allowance amounting to 50% of the Basic Monthly Salary as stipulated in item a) of Article 2 and item a) of Article 3 of this Law respectively. Judicial Associates who fall under Article 4 of this law shall be entitled to a net holiday allowance amounting to 50% of their salary stipulated in item 1 of Article 4.
4. The net holiday allowance referred to in paragraph 3 of this Article shall be paid in addition to the ordinary salary in July of each year regardless of when annual leave is taken.
5. The Annual Paid Leave for each Judge and Prosecutor and Judicial Associates who fall under Article 4 of this Law shall be regulated in an Annual Leave Plan to be determined by the Court President or Chief Prosecutor on an annual basis in accordance with the Book of Rules for the operation of courts and prosecutors office.

Article 9

Extraordinary Paid Leave

In addition to the Annual Leave and Leave for Religious Purposes as provided for in Article 8 of this Law, Judges,

Prosecutors and Judicial Associates who fall under Article 4 of this Law shall be entitled to up to seven paid leave days in a calendar year, as follows:

- (i) In the event of his/her marriage: 5 days;
- (ii) In the event of the death of his/her Close Relative (Spouse, Partner, Father, Mother, Step Father, Step Mother, Child, Step-Child, Brother, Sister, Step-Brother, Step-Sister): 3 days;
- (iii) In the event of the death of his/her Less Close Relative (Grand-Father, Grand- Mother or a Close Relative of his/her spouse or partner): 1 day;
- (iv) In the event of the birth of his child: 2 days;
- (v) In the event of a move from one permanent residence to another: 1 day.

Article 10

Leave of Absence with Pay

1. The High Judicial and Prosecutorial Council may decide that a Judge or Prosecutor shall continue to receive his/her salary during a leave of absence granted by the High Judicial and Prosecutorial Council in accordance with Article 17, item 13 of the Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, no. 25/04).

2. Regulations shall be promulgated by the High Judicial and Prosecutorial Council, in cooperation with the Federal Ministry of Justice in respect of the circumstances in which a Judge or Prosecutor shall continue to receive his/her salary during a leave of absence referred to in paragraph 1 of this Article.

Article 11

Compensation when Retiring

Judges and Prosecutors are entitled to one Basic Monthly Salary, as stipulated under Article 2 or 3 of this Law respectively as compensation when retiring.

Article 12

Health Insurance and Sick Leave

Judges, Prosecutors and Judicial Associates who fall under Article 4 of this Law are entitled to health insurance and sick leave in accordance with the relevant law on health insurance of the Federation of Bosnia and Herzegovina.

Article 13

Pension and Disability Insurance

Judges, Prosecutors and Judicial Associates who fall under Article 4 of this Law are entitled to pension and disability insurance in accordance with the relevant law on pensions and disability insurance of the Federation of Bosnia and Herzegovina.

Article 14

Travel Costs

Judges, Prosecutors and Judicial Associates who fall under Article 4 of this Law are entitled to compensation for travel costs in accordance with the Book of Rules for the operation of courts and prosecutors offices and within the approved budget of the court/prosecutor's office.

Article 15

Compensation for Educational Expenses

Judges, Prosecutors and Judicial Associates who fall under Article 4 of this Law are entitled to compensation for

educational expenses in accordance with the Book of Rules for the operation of courts and prosecutors' offices within the approved budget of the court/prosecutor's office.

Article 16

Compensation for Assignment with or without Consent

In the event that a judge is assigned to perform judicial service at another court in accordance with Article 50 or Article 51 of the Law on the High Judicial and Prosecutorial Council, he/she shall be entitled to compensation for his/her expenses in accordance with regulations promulgated by the High Judicial and Prosecutorial Council in cooperation with the Federation Ministry of Justice.

II

FINAL PROVISIONS

Article 17

Repealing of Provisions

The provisions contained in other laws, regulations or decisions of the Federation of Bosnia and Herzegovina that conflict with this Law shall cease to have effect on the day of the entry into force of this Law.

Article 18

Publication and Entering into Force

This law shall enter into force from 1 January 2006.