

Decision Enacting the Law on Salaries and Other Compensations in Judicial and Prosecutorial Institutions at the Level 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 a Decision on Temporary Financing of Court and Prosecutor’s Office of Bosnia and Herzegovina was adopted by the Council of Ministers and published in the Official Gazette of Bosnia and Herzegovina No 29/03;

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 ;

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 in the Entities in 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 the 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;

Noting that the Registry of the Court of Bosnia and Herzegovina was created by an international agreement, but is planned to be integrated into the Court some time in the future;

Mindful of the Communiqué by the Steering Board of the Peace

Implementation Council of 24, June 2005 by which it indicated that it remained worried “over the fiscal sustainability challenge faced by Bosnia and Herzegovina ’s governments”;

Realizing that implementation of the recommendations of the Working Group is 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 in Judicial and Prosecutorial Institutions at the Level 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 20 thereof, unless the said Law is adopted in the same text, in due form, without amendment and with no conditions attached by the Parliamentary Assembly of Bosnia and Herzegovina before 31 December 2005. Should such a Law be adopted by the Parliamentary Assembly 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 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 the Bosnia and Herzegovina”.

Sarajevo, 9 December 2005

*Paddy Ashdown
High Representative*

LAW ON SALARIES AND OTHER COMPENSATIONS

IN JUDICIAL AND PROSECUTORIAL INSTITUTIONS AT THE LEVEL 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, Prosecutors and certain categories of professional staff in judicial institutions at the level of Bosnia and Herzegovina.

II

SALARY AND OTHER RIGHTS AND COMPENSATIONS

FOR JUDGES AND PROSECUTORS

Article 2

Basic Monthly Salary of Judges of the Constitutional Court

of Bosnia and Herzegovina

The Basic Monthly Salary shall be as follows:

(a) For Judges of the Constitutional Court of Bosnia and Herzegovina: 4.200 KM.

(b) For the President of the Constitutional Court of Bosnia and Herzegovina: 4.800 KM.

Article 3

Basic Monthly Salary of Judges of the Court of Bosnia and Herzegovina

The Basic Monthly Salary shall be as follows:

(c) For Judges of the Court of Bosnia and Herzegovina: 3,800 KM

(d) For Heads of Departments of the Court of Bosnia and Herzegovina: 4,000 KM.

(e) For the President of the Court of Bosnia and Herzegovina: 4,400 KM.

Article 4

Basic Monthly Salary of Prosecutors of the Prosecutor's Office of Bosnia and Herzegovina

The Basic Monthly Salary shall be as follows:

a) For Prosecutors of the Prosecutor's Office of Bosnia and Herzegovina : 3,800 KM.

b) For Heads of Sections of the Prosecutor's Office of Bosnia and Herzegovina : 4,000 KM.

c) For the Chief Prosecutor of the Prosecutor's Office of

Bosnia and Herzegovina : 4,400 KM.

Article 5

Supplement for Experience

The Basic Monthly Salary for each category of Judge and Prosecutor under Articles 2, 3 and 4 of this Law 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 and Prosecutors as stipulated in Articles 2, 3 and 4 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 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 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 shall be 40 hours per week.

2. If a Judge or a Prosecutor 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.

2. In addition to the annual leave entitlement in paragraph 1 of this Article, Judges and Prosecutors shall be entitled to two paid and two unpaid days of leave in order to fulfil their religious obligations.

3. All Judges and Prosecutors shall be entitled to a net holiday allowance amounting to 50% of the Basic Monthly Salary stipulated in item a) of Article 2 of this Law.

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 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 internal regulations for the operation of the Constitutional Court of Bosnia and Herzegovina, the Court of Bosnia and Herzegovina and the Prosecutor's Office of Bosnia and Herzegovina respectively.

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 and Prosecutors 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 Ministry of Justice of Bosnia and Herzegovina 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, 3 and 4 of this Law respectively as compensation when retiring.

Article 12

Health Insurance and Sick Leave

Judges and Prosecutors are entitled to health insurance and sick leave in accordance with the relevant laws on health insurance in either the Republika Srpska or the Federation of Bosnia Herzegovina depending on the permanent residence of the Judge or Prosecutor.

Article 13

Pension and Disability Insurance

Judges and Prosecutors are entitled to pension and disability insurance in accordance with the relevant laws on pensions and disability insurance in either the Republika Srpska or the

Federation of Bosnia Herzegovina depending on the permanent residence of the Judge or Prosecutor.

Article 14

Travel Costs

Regulations shall be promulgated by the High Judicial and Prosecutorial Council in cooperation with the Ministry of Justice of Bosnia and Herzegovina in respect of the circumstances in which a Judge or Prosecutor shall be entitled to compensation for costs incurred for travel undertaken in the course of carrying out their official duties (per diem, transport and accommodation expenses) and the amount of such compensation. For the Constitutional Court of Bosnia and Herzegovina such regulations shall be promulgated by the Constitutional Court of Bosnia and Herzegovina in cooperation with the Ministry of Justice of Bosnia and Herzegovina.

Article 15

Compensation for Educational Expenses

Judges and Prosecutors are entitled to compensation for educational expenses in accordance with the internal regulations for the operation of the Constitutional Court of Bosnia and Herzegovina, the Court of Bosnia and Herzegovina and the Prosecutor's Office of Bosnia and Herzegovina respectively.

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 Ministry of Justice of Bosnia and Herzegovina.

III

SALARY AND OTHER RIGHTS AND COMPENSATIONS

FOR CERTAIN CATEGORIES OF PROFESSIONAL STAFF

Article 17

Basic Monthly Salary

1. The Basic Monthly Salary of the following professional staff shall be:

a) For the General Secretary of the Constitutional Court of Bosnia and Herzegovina and the Director of the Secretariat of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina : 3.800 KM.

b) For the Registrar of the Constitutional Court of Bosnia and Herzegovina, the Registrar of the Court of Bosnia and Herzegovina and the Deputy Director of the Secretariat of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina: 3.400 KM.

c) For the General Secretary of the Court of Bosnia and Herzegovina and the Secretary of the Prosecutor's Office of Bosnia and Herzegovina and the Disciplinary Counsel of the Secretariat of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina : 3,000 KM.

d) For Heads of Department of the Constitutional Court of Bosnia and Herzegovina: 2.800 KM.

e) For Senior Legal Advisors of the Constitutional Court of Bosnia and Herzegovina and Heads of Department and Senior Advisors of the Secretariat of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina : from 2.400 to 2.600 KM.

f) For Legal Advisors of the Constitutional Court of Bosnia Herzegovina, Assistant General Secretary of the Court of Bosnia and Herzegovina, Legal Advisors of the Court of Bosnia Herzegovina and Senior Lawyers and Deputy Heads of Department of the High Judicial and Prosecutorial Council of Bosnia Herzegovina: from 1,900 to 2,400 KM.

g) For Judicial Associates of the Constitutional Court of Bosnia Herzegovina, Judicial Associates and Secretaries of Departments of the Court of Bosnia Herzegovina, Prosecutorial Associates/Assistants of the Prosecutor's Office of Bosnia Herzegovina and Junior Lawyers/Professional Staff of the Secretariat of the High Judicial and Prosecutorial Council of Bosnia Herzegovina: from 1,200 to 1,800 KM.

2. The criteria for determining salaries in the ranges prescribed in paragraphs 1 (e), (f) and 1(g) of this Article shall be regulated in the internal regulations of the respective institutions.

Article 18

Other Compensations and Material Rights

1. Articles 5 – 7, paragraphs 2, 4 and 5 of Article 8, Article 9 and Articles 11-15 of this Law shall be applicable to all categories of staff stipulated in Article 17 of this Law.

2. Those categories of staff referred to in paragraph 1(a) to 1(e) of Article 17 of this Law shall be entitled to 30 days of paid annual leave.

3. Those categories of staff referred to in paragraph 1(f) and 1(g) of Article 17 of this Law shall be entitled to 25 days of paid annual leave.

4. All categories of staff referred to in Article 17 shall be entitled to a net holiday allowance amounting to 50% of their Basic Monthly Salary stipulated in Article 17.

IV

FINAL PROVISIONS

Article 19

Repealing of Provisions

The provisions contained in other laws, regulations or decisions at the level 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 20

Publication and Entering into Force

This law shall enter into force from 1 January 2006.