

F BiH Criminal Procedure Code, F BiH OG 35/03 published on 28 July 2003; Correction and amendments included as published in FBiH OG: No. 37/03; FBiH OG No. 56/03; FBiH OG No. 78/04; FBiH OG No. 28/05; FBiH OG No. 55/06; FBiH OG No. 27/07; FBiH OG No. 53/07; FBiH OG No. 9/09; FBiH OG No. 12/10; FBiH OG No. 8/13; FBiH OG No. 59/14; FBiH OG No. 74/20

## UNOFFICIAL CONSOLIDATED VERSION

AMENDMENTS PUBLISHED IN THE OG FBiH 9/09 ARE MARKED **BOLD/ UNDERLINE** AND ~~STRIKETHROUGH~~ (PREVIOUS AMENDMENTS ARE INDICATED IN FOOTNOTES)

Amendments to Custody (OG FBiH 12/10) are marked *Italic*

Amendments published in the OG FBiH 8/13, applicable as off 31 January 2013, are marked **BOLD/UNDERLINE/ITALIC**, AND ~~DOUBLE STRIKETHROUGH~~

Amendments published in the OG FBiH 59/14, applicable as of 25 July 2014, are marked ~~DOUBLE STRIKETHROUGH~~ and **UNDERLINE**

Amendments published in OGFBiH74/20, applicable as of 17 October 2020 are marked **YELLOW HIGHLIGHT AND** ~~DOUBLE STRIKETHROUGH~~

**Comment [F1]:** In cases where an order to conduct investigation had been issued before this Code entered into force the proceedings shall continue to be conducted according to the provisions of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation BiH, 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07, 9/09, 12/10, 8/13, and 59/14). The provisions under Articles 144a., 144b., 144c., 144d., and 144e. shall become applicable six months from entering into force of this Code.

## THE FEDERATION OF BOSNIA AND HERZEGOVINA CRIMINAL PROCEDURE CODE

### PART ONE - BASIC PROVISIONS

#### CHAPTER I BASIC PRINCIPLES

##### Article 1

##### ~~Scope and Application of This Code~~ Application of Rules of Criminal Procedure

This Code sets forth the rules of criminal procedure that are mandatory for the proceedings of the municipal courts, cantonal courts and the Supreme court of the Federation of Bosnia and Herzegovina (hereinafter: the Supreme Court of the Federation), the prosecutor and other participants in the criminal proceedings provided by this Code, when acting in criminal matters.

##### Article 2

##### Principle of Legality

- (1) The rules set forth in this Code shall provide for an innocent person to be acquitted and against a perpetrator of an offense to be subject to a criminal sanction under the conditions provided by the Criminal Code of the Federation of Bosnia and Herzegovina (hereinafter: the Criminal Code) other laws of the Federation of Bosnia and Herzegovina (hereinafter: Federation), cantonal laws and laws of Bosnia and Herzegovina that prescribe criminal offenses.

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- (2) Prior to the rendering of a finally binding verdict the freedom and other rights of the suspect or accused may be limited only under the conditions set forth in this Code.
- (3) A criminal penalty may be pronounced against the perpetrator only by a competent court or the court to which the Court of Bosnia and Herzegovina transferred the case and in the proceedings instituted and conducted in accordance with this Code.

### Article 3

#### Presumption of Innocence and *In Dubio Pro Reo*

- (1) A person shall be considered innocent of a crime until he is proven guilty by a finally binding verdict.
- (2) A doubt with respect to the existence of facts composing characteristics of a criminal offense or on which the application of certain provisions of criminal legislation depends shall be resolved by the court by a decision and in a manner that is the most favorable for the accused.

### Article 4

#### Prohibition of Double Jeopardy

No person shall be tried again for a criminal offense that he has been already tried for and for which a legally binding decision has been rendered.

### Article 5

#### Rights of a Person Deprived of Liberty

- (1) A person deprived of liberty must, in his native tongue or any other language that he understands, be immediately informed about the reasons for his apprehension and, before the first interrogation, and advised that he is not obliged to make a statement **nor respond to questions asked**, on his right to a defense attorney of his own choice as well as on the fact that his family, consular officer of the foreign state whose citizen he is, or other person designated by him shall be informed about his deprivation of liberty.
- (2) A defense attorney shall be appointed to represent a person deprived of liberty, at the person's request, if he cannot pay the expenses of defense due to his financial condition.

### Article 6

#### Rights of a Suspect or the Accused

- (1) The suspect, upon first being questioned, must be informed about the offense that he is suspected of and the grounds for suspicion against him **and that statement of his may be used as evidence in further proceeding**.

- (2) The suspect or accused must be provided with an opportunity to make a statement regarding all the facts and evidence incriminating him and to present all facts and evidence in his favor.
- (3) The suspect or accused shall not be bound to present his defense or to answer questions posed to him.

#### **Article 7**

##### **Right to Defense**

- (1) The suspect or accused has a right to present his own defense or to defend himself with the professional assistance of a defense attorney of his own choice.
- (2) If the suspect or accused does not have a defense attorney, a defense attorney shall be appointed for him in cases as stipulated by this Code.
- (3) The suspect or accused must be given sufficient time to prepare a defense.

#### **Article 8**

##### **Language and Alphabet**

The Bosnian language, the Croatian language and the Serbian language and both the Latin and Cyrillic alphabets shall be in equal official use in criminal proceedings.

#### **Article 9**

##### **Right to Use Language and Alphabet**

- (1) The criminal proceedings shall be conducted in one of the languages referred to in Article 8 and one of the alphabets referred to in Article 8 shall be used in the criminal proceedings.
- (2) Parties, witnesses and other participants in the proceedings shall have the right to use ~~their own language in the course of the proceedings~~ **mother tongue or the language they understand**. If such a participant does not understand one of the official languages of Bosnia and Herzegovina, provision shall be made for oral interpretation of the testimony of that person and other persons, and translations of official documents and IDs and other written pieces of evidence.
- (3) Person referred to in Paragraph 2 of this Article shall be informed of the right referred to in Paragraph 2 of this Article prior to first questioning and may waive such right if the person knows the language in which the proceedings are being conducted. A note shall be made in the record that the participant has been so informed, and his response thereto shall also be noted.
- (4) Interpretation shall be performed by a court interpreter.

## **Article 10**

### **Sending and Delivery of Court Papers**

- (1) The court and other bodies participating in the proceedings shall issue summonses, decisions and other papers in the official languages referred to in Article 8 of this Code.
- (2) ~~Indictments, appeals, and other court documents shall be submitted~~ **Documents shall be submitted** to the court and other bodies participating in the proceedings in the official languages referred to in Article 8.
- (3) Any person who is deprived of freedom or in custody, serving a sentence or committed for mandatory psychiatric treatment or to mandatory treatment of addiction, shall also be delivered the translation of the papers referred to in Paragraphs 1 and 2 of this Article in ~~the language used by the person in question in the proceedings~~ **mother tongue or the language they understand.**

## **Article 11**

### **Legally Invalid Evidence**

- (1) No confession or any other statement shall be extorted from the suspect, the accused or any other participant in the proceedings.
- (2) The court may not base its decision on evidence obtained through violation of human rights and freedoms prescribed by the Constitution and international treaties ratified by Bosnia and Herzegovina, nor on evidence obtained through essential violation of this Code.
- (3) The court may not base its decision on evidence derived from the evidence referred to in Paragraph 2 of this Article.

## **Article 12**

### **Right to Compensation and Rehabilitation of Reputation**

A person who has been unjustifiably convicted of a criminal offense or deprived of freedom without cause shall have the right to rehabilitation of reputation, compensation for damage from the budget, as well as other rights as stipulated by law.

## **Article 13**

### **Instruction on Rights**

The court, prosecutor and other bodies participating in the proceedings shall instruct a suspect or the accused or any other participants in the criminal proceedings, who could, out of ignorance, fail to carry out a certain action in the proceedings or fail to exercise his rights, on his rights under this Code and the consequences of such failure to act.

#### **Article 14**

##### **Right to Trial without Delay**

- (1) The suspect or accused shall be entitled to be brought before the court in the shortest reasonable time period and to be tried without delay, and no later than one year from the date of confirmation of the indictment.
- (2) The court shall also conduct the proceedings without delay and to prevent any abuse of the rights of any participant in the criminal proceedings.
- (3) The duration of custody must be for the shortest necessary time.

#### **Article 15**

##### **Equal Attention to Facts**

**(1) The Court shall treat equally the parties and the defence attorney and provide each party an equal opportunity with regards to the access to the evidences and presenting them at the main trial.**

**(2)** The court, the prosecutor and other bodies participating in the proceedings are bound to objectively study and establish with equal attention facts that are exculpatory as well as inculpatory for the suspect or the accused.

#### **Article 16**

##### **Free Evaluation of Evidence**

The right of the court, prosecutor and other bodies participating in the criminal proceedings to evaluate the existence or non-existence of facts shall not be related or limited to special formal evidentiary rules.

#### **Article 17**

##### **Accusatory Principle**

Criminal proceedings may only be initiated and conducted upon the request of the prosecutor.

#### **Article 18**

##### **Principle of Legality of Prosecution**

~~The prosecutor is obliged to initiate a prosecution if there is evidence that a criminal offense has been committed unless otherwise prescribed by this Code.~~

The prosecutor shall initiate a prosecution if there is evidence that a criminal offense has been committed unless otherwise prescribed by law.

## **Article 19**

### **Consequences of Initiation of the Proceedings**

When it is prescribed that the initiation of criminal proceedings entails the restriction of certain rights, such restrictions, unless this Code specifies otherwise, shall commence when the indictment is confirmed. And for the criminal offenses punishable by a fine or imprisonment of up to five (5) years, those consequences shall commence as of the day the verdict of guilty is rendered, regardless of whether the verdict has become legally binding.

## **Article 20**

### **Preliminary Issues**

- (1) If application of the Criminal Code depends on a prior ruling on a point of law that falls under the jurisdiction of a court in other proceedings, or within the jurisdiction of another body, the court trying the criminal case may itself rule on that point in accordance with applicable provisions concerning the presentation of evidence in criminal proceedings of this Code. The court's ruling on that point of law takes effect only with respect to the particular criminal case that the court is trying.
- (2) If a court in other proceedings or another body has already ruled on the preliminary issue, such ruling shall not be binding on the court with respect to its assessment of whether a particular criminal offense has been committed.

## **CHAPTER II**

### **DEFINITION OF TERMS**

## **Article 21**

### **Basic Terms**

Unless otherwise provided under this Code, the particular terms used for purposes of this Code shall have the following meaning:

- a) The term "suspect" refers to a person with respect to whom there are grounds for suspicion<sup>1</sup> that the person may have committed a criminal offense;
- b) The term "accused" refers to a person against whom one or more counts in an indictment have been confirmed;

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<sup>1</sup> Official Gazette of the Federation of BiH No. 56/03 (please note that amendments/correction have been made to Bosnian language version of the Code due to language inconsistencies between the Bosnian, Serbian and Croatian version of the Code. Although these corrections in local language versions do not affect English language version we still mark them in this text for the sake of keeping the track of such corrections)

- c) The term "convicted person" refers to a person pronounced criminally responsible for a particular criminal offense in a finally binding verdict;
- d) "The preliminary proceedings judge" is a judge who, during the investigative procedure acts in cases as prescribed by this Code;
- e) The term "preliminary hearing judge" refers to a judge who after filing of the indictment acts in cases as prescribed by this Code and who has the same powers as the preliminary proceedings judge;
- f) The term "parties" refers to the prosecutor and to a suspect or accused;
- g) The term "authorised official" refers to a person who has appropriate authority within the police bodies of Bosnia and Herzegovina, including the State Investigation and Protection Agency and the State Border Service, the police bodies of the responsible ministries of interior in the Federation, judicial and financial police, as well as within the customs bodies, tax bodies and military police bodies of Bosnia and Herzegovina or in the Federation of Bosnia and Herzegovina<sup>2</sup> **Expert associates as well as investigators working for the Prosecutor's Office under the authorization of the Prosecutor shall also be considered as authorized officials;**
- h) the term "injured party" refers to a person whose personal or property rights have been threatened or violated by a criminal offense;
- i) The term "Legal persons" refers to all persons as defined in the Criminal Code of the Federation including: corporations, companies, associations, firms and partnerships and other business enterprises;
- j) The term "investigation" refers to all activities undertaken by the prosecutor or by authorized officials in accordance with this Code, including the collection and preservation of statements and evidence;
- k) The term "cross-examination" refers to the questioning of a witness or expert witness by the party or the defense attorney who has not called the witness or expert witness to testify;
- l) The term "direct examination" refers to the questioning of a witness or expert witness by the party or the defense attorney who called the witness or expert witness to testify;
- m) The term "grounded suspicion" refers to a higher degree of suspicion based on collected evidence leading to the conclusion that a criminal offense may have been committed;
- n) the terms "writings" and "recordings" refer to the contents of letters, words, or numbers, or their equivalent, generated by handwriting, typewriting, printing, photocopying, photographing, magnetic impulse recording, mechanical or electronic recording, or other form of data compilation;

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<sup>2</sup> Official Gazette of Federation BiH No. 28/05; (imposed by Decision of High Representative dated 11 December 2004, published in OG FBiH No. 78/04), Comm: sub-paragraph g) was amended to read as inserted in the text

- o) The term "photographs" refers to still and digital photographs, X-ray films, videotapes, and motion pictures;
- p) The term "original" refers to an actual writing, recording or similar equivalent intended to have the same effect by a person writing, recording or issuing it. An "original" of a photograph includes the negative or any copy therefrom. If data is stored on a computer or a similar automatic data processing device, any printout or other output readable by sight is considered an "original";
- r) The term "copy" refers to a copy generated by copying the original or matrix, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques that accurately reproduce the original;
- s) The term "telecommunication address" means any telephone number, either landline or cellular, or e-mail or internet address held or used by a person.
- t) The terms "spouse" and "extramarital partner" refer to a person having such status pursuant to family law.<sup>3</sup>
- u) The term "computer system" is any device or a group of mutually connected or linked devices, out of which one or more are automatically processing data on the basis of a programme.**
- v) The term "computer data" denotes any presentation of facts, information or concepts in a form suitable for processing in a computer system, including any programme that is able to cause the computer system to execute certain function.**

### CHAPTER III LEGAL ASSISTANCE AND OFFICIAL COOPERATION

#### Article 22 Legal Assistance and Official Cooperation

- (1) All courts of the Federation shall provide legal assistance to the court conducting a criminal proceeding.
- (2) All authorities of the Federation shall maintain official cooperation with courts, prosecutors and other bodies participating in criminal proceedings.

#### Article 23 Rendering Legal Assistance

- (1) The court shall file a request for legal assistance or official cooperation with the competent court or authority.

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<sup>3</sup> OG FBiH 28/05, Comm: New sub-paragraph t) was added and reads as inserted in the text



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- (2) Such legal assistance or official cooperation shall be provided without compensation.
- (3) Paragraphs 1 and 2 of this Article shall be applied to requests issued by the prosecutor to the prosecutor's office or other authorities of the Federation.

## **CHAPTER IV JURISDICTION OF THE COURT**

### **Section 1 – SUBJECT MATTER JURISDICTION AND COMPOSITION OF THE COURT**

#### **Article 24 Subject Matter Jurisdiction of a Court**

The Supreme Court and cantonal courts shall adjudicate criminal matters within the bounds of their subject matter jurisdiction provided for in the law.

#### **Article 25 Composition of the Court**

- (1) The Panel of the court's criminal division composed of three (3) judges shall adjudicate in first instance;
- (2) A single trial judge shall try all criminal cases punishable by a fine or a prison term of up to ~~five~~ **ten** years.
- (3) In the second instance, the court's appellate division shall adjudicate by way of a Panel composed of three (3) judges.
- (4) Motions for reopening proceedings shall be adjudicated by panels of three judges of the court's criminal division.
- (5) The preliminary proceedings judge, the preliminary hearing judge, the president of the court and the presiding judge shall decide cases as provided in this Code.
- (6) A panel of three judges shall decide the appeals filed against the court's decisions when prescribed by this Code and shall issue other decisions outside the main trial.

### **Section 2 - TERRITORIAL JURISDICTION**

#### **Article 26 *Forum Delicti Commissi***

1. The court covering a defined territory shall have territorial jurisdiction over any criminal offense committed within the court's territory.
2. If a criminal offense was committed or attempted in territories covered by different courts, or on the boundaries of the territories or in an uncertain territory, the territorial jurisdiction shall be exercised by the court which was the first to confirm the indictment,

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but if the indictment has not been confirmed yet, it shall be exercised by the court which was the first to receive the indictment for confirmation.

#### **Article 27**

##### **Specific Jurisdiction**

If a criminal offense was committed aboard a national vessel or craft while in a national port or airport, the court in whose territory the port or airport is located shall have territorial jurisdiction. In all other cases of a criminal offense having been committed aboard a national vessel or craft, the court in whose territory the vessel or craft is registered or the court in whose territory the port or airport, in which the vessel or craft first stopped is located, shall have jurisdiction over the case.

#### **Article 28**

##### ***Forum Domicilii***

1. If the crime scene is unknown or outside the territory of the Federation, the court in the territory of the defendant's domicile or temporary residence shall have jurisdiction over the case.
2. If the court in the territory of the defendant's domicile or temporary residence has initiated the criminal proceeding, it shall have jurisdiction over the case even when the crime scene has been discovered afterwards.

#### **Article 29**

##### ***Forum Deprehensionis***

If both the crime scene and the defendant's domicile or temporary residence are unknown or both are outside the territory of the Federation, the court in whose territory the defendant was caught or surrendered shall have jurisdiction over such case.

#### **Article 30**

##### **Jurisdiction over Criminal Offenses Committed Abroad**

If a person committed criminal offences both within and outside the territory of the Federation and the criminal offences are linked and supported with same evidence, the court that has jurisdiction over the criminal offence committed in the Federation shall have jurisdiction over such case.

#### **Article 31**

##### ***Forum Ordinatum***

If it is impossible to decide which court has territorial jurisdiction pursuant to provisions above, the Supreme Court shall designate one of the courts having subject-matter jurisdiction to have territorial jurisdiction over the case.

### **Section 3 - SEVERANCE AND JOINDER OF PROCEEDINGS**

#### **Article 32 Joinder of Proceedings**

- (1) If the same person is charged with several different criminal offenses falling under the subject matter jurisdiction of both lower and higher court, the competent court to try him shall be the higher court; if the competent courts are of the same level, the court that was the first to confirm the indictment shall have jurisdiction over the case and if the indictment has not been confirmed yet, the court first to receive the indictment for confirmation shall have jurisdiction.
- (2) The competent court shall be decided in pursuance of Paragraph 1 of this Article also if at the same time the injured party committed a criminal offense against the accused.
- (3) The court competent to try accomplices, as a general rule, shall be a court which was the first to confirm the indictment.
- (4) As a general rule, the court having jurisdiction over the offender shall have jurisdiction also over the accomplices, accessories before the fact, accessories after the fact and persons having known of the preparation, commission and perpetrator of the criminal offence but failing to report them.
- (5) In all cases under Paragraphs 1 through 4 the court shall conduct, as a general rule, joint proceedings and render a single verdict.
- (6) The court may decide to conduct joint proceedings and render a single verdict if several persons are accused to have joined in the commission of several criminal offenses under condition that there is a mutual relation between those criminal offenses. If the criminal offenses fall under subject matter jurisdiction of both a lower and a higher court, the competent court shall be the higher court
- (7) The court may decide to conduct joint proceedings and render a single verdict if separate proceedings are currently conducted before the same court against the same person for several criminal offenses or against several persons for the same criminal offenses.
- (8) The court that has jurisdiction over a joinder shall decide the issue of joinder of the proceedings. No appeal is allowed against the decision ordering joinder of the proceedings or overruling the motion for joinder of the proceedings.
- (9) The provisions of this Article shall be applied if a joinder of several criminal offenses, over which several cantonal courts have jurisdiction, is to take place.

### **Article 33**

#### **Severance of Proceedings**

- (1) The competent court under Article 32 of this Code may, for important reasons or for reasons of purposefulness, decide to separate the proceedings for certain criminal offenses or against certain accused persons and complete them separately.
- (2) The decision on separation of proceedings shall be made by the judge or the Panel upon hearing the parties and the defense attorney.
- (3) No appeal shall be permissible against the decision ordering the separation of proceedings or rejecting the motion for separation of proceedings.

### **Section 4 - TRANSFER OF TERRITORIAL JURISDICTION**

#### **Article 34**

##### **Transfer of Jurisdiction for Legal or Subject Matter Related Reasons**

- (1) If the competent court is prevented from proceeding for legal or subject-matter related reasons it shall so inform the higher court which shall designate the case to a court having subject-matter jurisdiction over the case in its territory, after having heard the parties and the defense attorney.
- (2) No appeal is allowed against this decision.

#### **Article 35**

##### **Transfer of Jurisdiction for Important Reasons**

1. The competent court may transfer the case from one court to another in its territory with the same subject-matter jurisdiction if important reasons exist.
2. The Supreme Court may transfer the case from one court to another with the same subject-matter jurisdiction if important reasons exist.
3. The decision under Paragraph 1 and 2 of this Article, against which no appeal is allowed, may be issued at the motion by preliminary proceedings judge, preliminary hearing judge, judge, presiding judge, one of the parties or defense attorney.

### **Section 5 - CONSEQUENCES OF LACK OF JURISDICTION AND CONFLICT OF JURISDICTION**

#### **Article 36**

##### **Consequences of Lack of Jurisdiction**

- (1) The court shall be cautious of its subject matter and territorial jurisdiction and as soon as it becomes aware that it is not competent, it shall issue a decision that it lacks

jurisdiction. Once such a decision has taken legal effect, it shall forward the case to the competent court.

- (2) If during the main trial proceedings the court finds that a lower court has jurisdiction over the case, it shall not transfer the case to the lower court but shall conduct the proceedings and render a decision.
- (3) After the indictment has been confirmed, the court may not issue a decision on the lack of territorial jurisdiction, nor may the parties challenge its territorial jurisdiction.
- (4) Even if the court has not jurisdiction over a case, it shall undertake those actions in the proceedings, whose delay would be detrimental.

#### **Article 37**

##### **Institution of Conflict of Jurisdiction Proceedings**

- 1) If the court to which a case has been transferred deems that the court which transferred the case or another court is competent, it shall institute the conflict of jurisdiction proceedings.
- 2) If the appellate court has decided an appeal against the decision on the lack of jurisdiction by the court of first instance, the decision disposing of the appeal shall dispose also of the issue of jurisdiction concerning the other court to which the case has been removed, if the appellate court has jurisdiction to decide the conflict of jurisdiction.

#### **Article 38**

##### **Resolution of Conflict of Jurisdiction Proceedings**

- (1) The common immediate higher court shall decide on a conflict of jurisdiction among courts.
- (2) The court shall ask for an opinion of the parties and defense attorney before issuing the decision on the conflict of jurisdiction. No appeal is allowed against this decision.
- (3) When deciding on the conflict of jurisdiction, at the same time, the court may issue, ex officio, a decision on transfer of territorial jurisdiction if the requirements under Article 35 have been met.
- (4) Until the issuance of the decision on a conflict of jurisdiction, each of the courts is obliged to undertake those actions in the proceedings whose delay would be detrimental.

### **CHAPTER V DISQUALIFICATION**

#### **Article 39 Reasons for Disqualification**

A judge cannot perform his duties as a judge if:

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- a) he is personally injured by the offense;
- b) if the suspect or accused, his defense attorney, the prosecutor, the injured party, his legal representative or attorney in fact is his spouse or cohabitee or direct blood relative to any degree whatsoever, and in a lateral line to the fourth degree, or relative by marriage to the second degree;
- c) if he is a guardian, ward, adoptive parent, adopted child, foster parent or foster child with respect to the suspect or accused, his defense attorney, the prosecutor or the injured party;
- d) if he has participated in the same case in the capacity of preliminary proceedings judge or preliminary hearing judge or if he participated in the proceedings in the capacity of prosecutor, defense attorney, legal representative or attorney in fact of the injured party or if he was heard as a witness or expert witness;
- e) if, in the same case, he participated in rendering a decision contested by the legal remedy;
- f) if circumstances exist that raise a reasonable suspicion as to his impartiality.

#### **Article 40**

##### **Disqualification upon the Motion of the Party or Defence Attorney**

- (1) The parties and the defense attorney may seek disqualification of the president of the court and of the judge.
- (2) The motion referred to in Paragraph 1 of this Article may be filed before the beginning of the main trial and if later the parties and the defense attorney learn of reasons for disqualification referred in Article 39 Item a) to e)<sup>4</sup> e) of this Code, they can submit a motion as soon as they learn of these reasons.
- (3) The parties and defense attorney may file a motion for disqualification of a judge of the appellate division in the appeal or in an answer to the appeal.
- (4) The parties or the defense attorney may seek to disqualify only a particular judge or president of the court conducting the case.
- (5) In the motion, a party or defense attorney shall set forth the circumstances and evidence for legal justification for disqualification. Reasons stated in a previous motion for disqualification that was refused may not be included in the motion for disqualification.

#### **Article 41**

##### **Disqualification Procedure**

- (1) As soon as a judge learns of any of the reasons for his disqualification referred to in Article 39 Item a) to e) of this Code, he shall be bound to interrupt any work on the

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<sup>4</sup> OG FBiH 56/03: In Article 40, paragraph 2, replace letter “f)” with letter “c)”.

case and inform the president of the court. If the judge believes that circumstances referred to in Article 39 Item f) exist, he shall inform the President of the court accordingly.

- (2) The court shall decide the issue of disqualification and replacement in the case referred to in Paragraph 1 of this Article as well as in the case of disqualification of the President of the court in plenary session or in a session of the Collegium of judges

#### **Article 42**

##### **Decision on the Motion for Disqualification**

- (1) The court in plenary session or in session of Collegium of judges shall decide the motion for disqualification referred to in Article 40 of this Code.
- (2) Before rendering a decision on disqualification, a statement shall be taken from the judge or president of the court and if required other investigations shall be conducted.
- (3) No appeal is allowed against the decision on disqualification.
- (4) If the motion for disqualification referred to in Article 39 Item f) of this Code was submitted after the beginning of the main trial or if actions were taken contrary to the provision of Article 40 Paragraph 4 or 5 of this Code, the motion shall be rejected in whole or in part. The decision rejecting the motion shall be issued by the Panel. The judge whose disqualification is required may not participate in the issuance of that decision. No appeal shall be permissible against the decision rejecting the motion.

#### **Article 43**

##### **Validity of Actions Taken after Filing of the Motion for Disqualification**

When a judge learns that a motion has been filed for his disqualification, he shall be bound immediately to cease all work on the case and if the issue is disqualification referred to in Article 39 Item f) of this Code, until issuance of a decision upon the motion, he may take only those actions whose delay would be detrimental.

#### **Article 44**

##### **Disqualification of the Prosecutor and Other Participants in the Proceedings**

- (1) The provisions on disqualification of a judge shall accordingly be applied to the prosecutor and persons authorized to represent the prosecutor in the proceedings, record takers, court interpreters and specialists as well as to expert witnesses, unless otherwise regulated.
- (2) The prosecutor shall decide the disqualification of persons who pursuant to the law are authorized to represent him in criminal proceedings. The Collegium of the prosecutor's office shall decide the disqualification of the prosecutor.
- (3) The Panel, presiding judge or judge, **and until the indictment is filed, the Prosecutor** shall decide the disqualification of record takers, court interpreters and specialists as well as expert witnesses.

- (4) When authorized officials take investigative actions pursuant to this Code, the prosecutor shall decide their disqualification. An authorized official taking the actions shall decide the disqualification of the record taker if the latter participates in such actions.

## CHAPTER VI PROSECUTOR

### Article 45 Rights and Duties

- (1) The basic right and the basic duty of the prosecutor shall be the detection and prosecution of perpetrators of criminal offenses falling within the jurisdiction of the court.
- (2) The prosecutor shall have the following rights and duties:
- a) as soon as he becomes aware that there are grounds for suspicion<sup>5</sup> that a criminal offense has been committed, to take necessary steps to discover it and investigate it, to identify the suspect(s), guide and supervise the investigation, as well as direct the activities of authorized officials pertaining to the identification of suspect(s) and the gathering of information and evidence;
  - b) to conduct an investigation in accordance with this Code;
  - c) to grant immunity in accordance with ~~the law~~ **Article 98 of this Code**;
  - d) to request information from governmental bodies, companies and physical and legal persons in the Federation;
  - e) to issue summonses and orders and to propose the issuance of summonses and orders in accordance with this Code;
  - f) to order authorized officials to execute an order issued by the court as provided by this Code;
  - g) **to establish facts necessary for deciding claim under property law in accordance with Article 211 and for forfeiture of property gain obtained by commission of criminal offense in accordance with Article 413 of this Code,**
  - g) ~~h)~~ **h)** to propose the issuance of a warrant for pronouncement of the sentence pursuant to Article 350 of this Code;
  - h) ~~i)~~ **i)** to issue and defend indictment before the court;
  - i) ~~j)~~ **j)** to file legal remedies;
  - j) ~~k)~~ **k)** to perform other tasks as provided by law.
- (3) In accordance with Paragraphs 1 and 2 of this Article, all bodies participating in the investigative procedure are obliged to inform the prosecutor on each undertaken action and to act in accordance with every prosecutor's request.

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<sup>5</sup> OG FBiH 56/03



## **Article 46**

### **Acting Before Courts**

The Chief Federal Prosecutor or Cantonal Prosecutor shall take actions before courts pursuant to the federal or cantonal law, as applicable.

## **Article 47**

### **Taking Actions**

The prosecutor shall take all actions in the proceeding for which he is himself authorized by law or through the persons who are authorized pursuant to the law to act at his request in criminal proceedings.

## **Article 48**

### **Territorial Jurisdiction of Prosecutor**

The prosecutor's territorial jurisdiction shall be determined in accordance with provisions referring to territorial jurisdiction of the court for which the prosecutor has been appointed.

## **Article 49**

### **Actions of Incompetent Prosecutor**

If a delay would be detrimental, an incompetent cantonal prosecutor shall take actions but he must immediately inform the competent prosecutor about it.

## **Article 50**

### **Giving Instructions**

In order to exercise his rights and duties, the Chief Federal Prosecutor may, in concrete cases, give necessary instructions to prosecutor's offices in the Federation.

## **Article 51**

### **Conflict of Jurisdiction**

The Chief Federal Prosecutor shall resolve the issue of conflict of jurisdiction among prosecutors.

## **Article 52**

### **Abandoning Prosecution**

The prosecutor may abandon prosecution before the end of a main trial or during the proceedings, and before the appellate division when provided by this Code.

## **CHAPTER VII DEFENSE ATTORNEY**

### **Article 53**

#### **Right to a Defense Attorney**

- (1) The suspect or accused shall be entitled to have a defense attorney throughout the course of the criminal proceedings.
- (2) Only a lawyer who fulfils the requirements set forth in the Law on Bar Association of the Federation of Bosnia and Herzegovina may be engaged as a defense attorney, legal representatives of cantonal as well as federation institutions (legal aid offices) who have completed the bar exam and who have minimum experience of three years of legal work<sup>6</sup>.
- (3) If the suspect or accused does not himself hire a defense attorney, a defense attorney may be engaged for him by his legal representatives, spouse or cohabitee, blood relatives in a direct line to any degree whatsoever, adoptive parents, adopted children, brothers, sisters or foster parents, if the suspect or the accused does not explicitly oppose it.
- (4) The defense attorney must submit his authorization to act on the occasion of taking his first action in the proceedings.

### **Article 54**

#### **Number of Defense Attorneys**

- (1) Several suspects or accused may have one common defense attorney unless the attorney has been appointed by the court in accordance with Article 59 and Article 60 of this Code.

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<sup>6</sup> OG FBiH 55/06

- (2) A suspect or accused may have more than one defense attorney, but only one of them shall have the status of primary defense attorney, and the suspect or accused shall decide which one shall it be. The defense is deemed to be present when one of the defense attorneys is participating in the proceedings.

#### **Article 55**

##### **Persons who May Not Act as Defense Attorneys**

- (1) An injured party, spouse or cohabitee of the injured party or of the prosecutor, or their blood relative in a direct line to whatever degree, in a lateral line to the fourth degree, or their relative by marriage to the second degree may not act as a defense attorney.
- (2) A defense attorney who has been duly summoned to the main trial **or heard** as a witness may not act as a defense attorney in the case that is being triad.
- (3) A person who has acted as the judge or the prosecutor in the instant case may not act as a defense attorney in such case.

#### **Article 56**

##### **Disqualification of a Defense Attorney**

- (1) Grounds for disqualification shall also exist for a defense attorney misusing a contact with the suspect or accused in custody to the effect that the suspect or accused commits a criminal offense or threatens the security of an institution where custody takes place.
- (2) In the event referred to in Paragraph 1 of this Article, the suspect or accused shall be requested to hire another defense attorney within a given deadline.
- (3) If the suspect or the accused in cases of mandatory defense fails to retain a defense attorney or the defense attorney fails to be retained by the persons referred to in Article 53 Paragraph 3 of this Code, the procedure provided under Paragraph 4 of Article 59 of this Code shall be followed.
- (4) In cases referred to in Paragraphs 2 and 3 of this Article, the new defense attorney shall be given enough time to prepare his defense for the suspect or the accused.
- (5) During the disqualification, the defense attorney shall not be allowed to defend the suspect or the accused in another proceeding. The defense attorney shall not be allowed to defend other suspects or accused persons in the same or in separated proceedings.

#### **Article 57**

##### **Procedure to Disqualify the Defense Attorney**

- (1) The decision for disqualification of a defense attorney shall be issued at a separate hearing attended by the prosecutor, the suspect or the accused, the defense attorney and a representative of the Bar Association to which the defense attorney belongs, or

legal representatives of cantonal as well as federation institutions (legal aid offices) the defense attorney is employed with<sup>7</sup>.

- (2) The disqualification proceedings may also be conducted without the presence of the defense attorney, provided that the defense attorney has been duly summoned and that the summons to the hearing contains a statement warning the defense attorney that the proceeding shall be conducted even without his presence. Records shall be kept about the hearing.

### **Article 58** **Decision on Disqualification**

- (1) The decision on disqualification referred to in Article 57 of this Code shall prior to the commencement of the main trial be made by the panel (Article 25, Paragraph 6) whereas at the main trial it shall be made by the judge or the panel. In the proceedings before the appellate division the decision on disqualification of the defense attorney shall be made by the Panel competent for ruling in the appellate proceedings.
- (2) No appeal is allowed against the decision referred to in Paragraph 1 of this Article.
- (3) If the defense attorney has been disqualified from the proceedings, he may be ordered to bear the costs generated as a result of the discontinuation of or delay in the proceedings.

### **Article 59** **When the right to Mandatory Defense Applies**

- (1) A suspect shall have a defense attorney at the first questioning if he is mute or deaf or if he is suspected of a criminal offense for which a penalty of long-term imprisonment may be pronounced.
- (2) A suspect or accused must have a defense attorney ~~immediately after he has been assigned to pre-trial custody~~ **while deciding the proposal for ordering pre-trial custody**, throughout the pre-trial custody.
- (3) After an indictment has been brought for a criminal offense for which a prison sentence of ten (10) years or more may be pronounced, the accused must have a defense attorney at the time of the delivery of the indictment.
- (4) If the suspect, or the accused in the case of a mandatory defense, does not retain a defense attorney himself, or if the persons referred to in Article 53, Paragraph 3, of this Code do not retain a defense attorney, the preliminary proceedings judge, preliminary hearing judge, the judge or the Presiding judge shall appoint him a defense attorney in the proceedings. In this case, the suspect or the accused shall have

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<sup>7</sup> OG FBiH 55/06

the right to a defense attorney until the verdict becomes finally binding and, if a long-term imprisonment is pronounced, in appellate proceedings.

- (5) If the court finds it necessary for in the interest of justice, due to the complexity of the case, ~~or~~ the mental condition of the suspect or the accused or the other circumstances, it shall appoint an attorney to defend him.
- (6) In the case of appointing a defense attorney, the suspect or the accused shall be asked to select a defense attorney from the presented list himself. If the suspect or the accused does not select a defense attorney from the presented list himself, the defense attorney shall be appointed by the court.

#### Article 59a

- (1) List of defense attorneys shall be determined by the decision of the competent minister of justice in cooperation with the competent bar association and *sui generis* institutions (legal aid offices).
- (2) List of defense attorneys shall be submitted to all courts, competent prosecutor's office and competent Ministry of Interior.<sup>8</sup>

#### Article 60

##### Appointment of Defense Attorney for the Indigent Person

- (1) When conditions are not met for the mandatory defense, and the proceedings are conducted for an offense for which a prison sentence of three or more years may be pronounced or when the interests of justice so require, regardless of the prescribed punishment, an attorney shall be assigned to the suspect or accused at his request if due to an adverse financial situation, he is not able to pay the expenses of the defense.
- (2) The request for appointment of a defense attorney referred to in Paragraph 1 of this Article may be filed at any time during the criminal proceedings. The preliminary proceedings judge, preliminary hearing judge, the judge or the Presiding judge shall appoint the defense attorney after the suspect or the accused was given an opportunity to select a defense attorney from the presented list.
- (3) **The Request for Appointment of a Defense Attorney due to adverse financial situation shall be recorded in the case file. After having established the financial situation of the suspect or accused, the Court shall issue a decision on the request without delay.**

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<sup>8</sup> OG FBiH 55/06

## Article 61

### The Right of a Defense Attorney to Inspect Files and Documentation

- (1) During an investigation, the defense attorney has a right to inspect the files and obtained items that are in favor of the suspect. This right can be denied to the defense attorney if the disclosure of the files and items in question would endanger the purpose of the investigation.
- (2) ~~Notwithstanding Paragraph 1 of this Article, when the suspect or the accused is in pre trial custody, the prosecutor shall submit the evidence to the preliminary proceedings judge or preliminary hearing judge for the purpose of informing the defense attorney.~~ **Notwithstanding Paragraph 1 of this Article, the Prosecutor shall submit with a request for ordering custody to the preliminary proceedings judge or preliminary hearing judge evidence relevant for assessment of lawfulness of custody also for the purpose of informing the defence attorney.**
- (3) After the indictment is issued ~~the defense attorney of the suspect or accused has~~ **the suspect, accused or defence attorney have** a right to inspect all files and pieces of evidence.
- (4) Upon obtaining any new piece of evidence or any information or facts that can serve as evidence at a trial, ~~the preliminary proceedings, the preliminary hearing judge, the judge or the Panel, as well as the prosecutor, shall be bound to submit them for inspection to the defense attorney,~~ **suspect or the accused.**
- (5) In cases referred to in Paragraphs 3 and 4 of this Article, the defense attorney, **suspect or the accused** may make copies of all files or documents.

## Article 62

### Communication between a Suspect or Accused and Defense Attorney

- (1) If the suspect or accused is in custody, he shall immediately be entitled to communicate with the defense attorney, orally or in writing.
- (2) During the conversation, the suspect or accused and his defense attorney may be observed, but their conversation may not be heard.

## Article 63

### Dismissal of the Appointed Defense Attorney

- (1) The suspect or accused may retain another defense attorney on his own instead of the appointed defense attorney. In this case, the appointed defense attorney shall be dismissed.
- (2) A defense attorney may seek to withdraw from the case only as provided by law.
- (3) The dismissal of the defense attorney referred to in Paragraph 1 and Paragraph 2 of this Article shall be decided during investigation by the preliminary proceedings judge, after the issuance of indictment by the preliminary hearing judge, whereas

during the main trial by the judge trying the case or the Panel. No appeal shall be allowed against this decision.

- (4) The preliminary proceedings judge, the preliminary hearing judge, the judge or the Panel may, at the request of the suspect or accused or with his consent, dismiss a defense attorney who is not performing his duties properly. Another defense attorney shall be appointed instead of the dismissed defense attorney. The Bar Association to which the dismissed defense attorney belongs shall be informed immediately about the dismissal of the defense attorney.

#### **Article 64** **Defense Attorney's Actions**

- (1) The defense attorney in representing a suspect or an accused must take all necessary steps aimed at the establishment of the facts and the collection of evidence in favor of the suspect or accused as well as the protection of his rights.
- (2) The rights and duties of the defense attorney shall not cease when his authorization to act is withdrawn, until the trial judge or the Panel releases the defense attorney from his rights and duties.

### **CHAPTER VIII** **ACTIONS AIMED AT OBTAINING EVIDENCE**

#### **Section 1 - SEARCH OF DWELLINGS OR OTHER PREMISES AND PERSONS**

##### **Article 65** **Search of dwellings, other premises and personal property**

- (1) A search of dwellings and other premises of the suspect, accused or other persons, as well as his personal property outside the dwelling may be conducted only when there are sufficient grounds for suspicion that a perpetrator, an accessory, evidence of a certain criminal offense or objects relevant to the criminal proceedings might be found there.
- (2) ~~Search of personal property pursuant to Paragraph 1 of this Article shall include a search of the computer and similar devices for automated data processing connected with it. At the request of the court, the person using such devices shall be obliged to allow access to them, to hand over diskettes and magnetic tapes or other forms of saved data, as well as to provide necessary information concerning the use of the devices. A person, who refuses to do so, without cause for reasons that are referred to in Article 98 of this Code, may be punished under the provision of Article 79 Paragraph 5 of this Code.~~ **Search of personal property pursuant to Paragraph (1) of this Article shall include a search of the computer systems, devices for automated and electronic data processing and mobile phone devices. Persons using such devices shall be obligated to allow access to them, to hand over the**

**media with saved data, as well as to provide necessary information concerning the use of the devices. A person, who refuses to do so, may be punished under the provision of Article 79 Paragraph (5) of this Code.**

- (3) The search of a computer and similar devices under Paragraph 2 of this Article shall be conducted by an information technology specialist.

#### **Article 66**

##### **Search of Persons**

- (1) The search of a person shall be permitted if it is likely that the person has committed a criminal offense or that through a search some objects or traces relevant to the criminal proceedings may be found on that person.
- (2) The search of a person shall be conducted by a person of the same sex.

#### **Article 67**

##### **A Search Warrant**

- (1) The court may issue a search warrant under the conditions provided by this Code.
- (2) A search warrant may be issued by the court on the request of the prosecutor or on the request of authorized officials upon the approval of the prosecutor.

#### **Article 68**

##### **A Form of the Request for the Search Warrant**

A request for the issuance of a search warrant may be submitted in writing or orally. If the request is submitted in writing, it shall be drafted, signed and certified in the manner stipulated in Article 69 Paragraph 1 of this Code. The request for the issuance of a search warrant may be submitted in accordance with Article 70 of this Code.

#### **Article 69**

##### **Written Request for a Search Warrant**

- (1) The request for a search warrant must contain:
  - a) the name of the court and the name and title of the applicant;
  - b) facts indicating the likelihood that the persons, or traces and objects referred to in Article 65 Paragraph 1 of this Code shall be found at the designated or described place, or with a certain person;
  - c) a request that the court issue a search warrant in order to find the person in question or to forfeit the object.
- (2) The request may also suggest that:
  - a) the search warrant be enforceable at any time of the day or night, where there is grounded suspicion that if the search is not conducted between the hours of 6:00 A.M. and 9:00 P.M., the property sought will be removed or destroyed if not



seized immediately, or the person sought is likely to flee or commit another criminal offense or may endanger the safety of the executing authorized official or another person, if not seized immediately or between the hours of 9:00 P.M. and 6:00 A.M.;

- b) the executing authorized official enforce the warrant without prior presentation of the warrant, when there is grounded suspicion to believe that the property sought may be easily and quickly destroyed if not seized immediately, the presentation of such warrant may endanger the safety of the executing authorized official or another person or the person sought may commit another criminal offense or endanger the safety of the executing authorized official or another person.

#### Article 70

##### Oral Request for a Search Warrant

- (1) An oral request for a search warrant may be filed when a delay would be detrimental. An oral request for a search warrant may be communicated to ~~a preliminary proceedings judge~~ **the court** also by telephone, radio or other means of electronic communication.
- (2) ~~Upon being advised that an oral request for a search warrant is being made, the preliminary proceedings judge shall record all of the remaining communication. If a voice recording device is used or a stenographic record made, the preliminary proceedings judge must have the record transcribed, certify the accuracy of the transcription and file the original record and transcript with the court within 24 hours of the issuance of the warrant. If longhand notes are taken, the judge shall sign a copy and file it with the court within 24 hours of the issuance of the warrant.~~ **If an oral request for a search warrant is filed, the Court shall record the further course of communication. If an audio recording device is used or a stenographic record made, the record shall be sent to transcribed within 24 hours, its accuracy shall be verified and it shall be kept along with the original record.**

#### Article 71

##### The Issuance of a Search Warrant

- (1) If the preliminary proceedings judge determines that the request for a search warrant is justified, he shall grant the request and issue a search warrant.
- (2) When the preliminary proceedings judge decides to issue a search warrant based upon an oral request, the applicant shall draft the warrant in accordance with Article 72<sup>9</sup> of this Code, and shall read it, verbatim, to the preliminary proceedings judge.

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<sup>9</sup> OG FBiH 56/03: In Article 71, paragraph 2, line four, number “58” replace with number “72”.

## **Article 72**

### **Contents of a Search Warrant**

A search warrant must contain:

- a) the name of the issuing court and, except where the search warrant has been obtained through an oral request, the signature of the preliminary proceedings judge who is issuing the warrant;
- b) where the search warrant has been obtained through an oral request, it shall so indicate and it shall state the name of the issuing judge and the time, date and place of issuance;
- c) the name, department or rank of the authorized person to whom it is addressed;
- d) the purpose of the search;
- e) a description of the person being sought or a description of the property that is the subject of the search;
- f) a description of the dwelling or other premises or person to be searched, by indicating the address, ownership, name or any other means essential for identification with certainty;
- g) a direction that the warrant be executed between hours of 6:00 A.M. and 9:00 P.M., or, where the court has specifically so determined, an authorization for execution thereof at any time of the day;
- h) an authorization, where the court has specifically determined, for the executing authorized official to enter the premises to be searched without giving prior notice;
- i) a direction that the warrant and any property seized pursuant thereto be delivered to the court without delay;
- j) an instruction that the suspect is entitled to notify the defense attorney and that the search may be conducted without the presence of the defense attorney if required by the extraordinary circumstances.

## **Article 73**

### **Time of Enforcement of a Search Warrant**

- (1) A search warrant must be executed not later than 15 days from the day of its issuance and it must thereafter be returned to the court without delay.
- (2) A search warrant may be executed on any day of the week. It may be executed only between the hours of 6:00 A.M. and 9:00 P.M., unless the warrant expressly authorizes execution thereof at any time of the day or night, as provided for in Article 69 Paragraph 2 of this Code.

## **Article 74**

### **Procedure of the Enforcement of a Search Warrant**

- (1) Prior to the commencement of a search, an authorized official shall give notice of his authority and of the purpose of his arrival and show the warrant to the person whose property is to be searched or who himself is to be searched. If the authorized official is not thereafter admitted, he may resort to use of force in accordance with law.
- (2) In executing a search warrant that directs a search of a dwelling or other premises, an authorized official need not give notice to anyone of his authority and purpose, but may promptly enter the same, if such premises are at the time unoccupied or reasonably believed by the authorized official to be unoccupied or if the search warrant expressly authorizes entry without notice.
- (3) The occupant of the dwelling or other premises shall be called to be present at the search, and if he is absent, his representative or an adult member of the household or a neighbor shall be called to be present. If the occupant of the dwelling or other premises is not present, the search warrant shall be left in the premise subject to search, and the search shall be conducted without the presence of the occupant.
- (4) A search of the dwelling or other premises or of a person shall be witnessed by two adult citizens. Witnesses of the same gender shall be present at the search of a person. A search shall be conducted by the person of the same gender. Witnesses shall be instructed to pay attention as to how the search is conducted, and that they have the right to make comments before signing the record on the search if they believe that the content of the record is not truthful.
- (5) In conducting a search of official premises, the manager or person in charge shall be called in to be present at the search.
- (6) If a search is to be conducted in a military facility, a written search warrant shall be delivered to the military authority which shall assign at least one military person to be present at the search.

## **Article 75**

### **Enforcement of a Warrant to Search a Person**

In executing a search warrant directing or authorizing the search of a person, an authorized official must give notice of his authority and purpose to the person and must produce the warrant to the person to be searched. The authorized official may use physical force in accordance with law.

## **Article 76**

### **Record of Search**

- (1) A record shall be made regarding every search of dwellings or other premises or of a person, and shall be signed by the person whose dwellings or other premises or who
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(In case of any issue regarding authenticity of text or translation, the local language version shall prevail)

is being searched, and by the persons whose presence is mandatory. In executing a search, only those objects and documents that relate to the purpose of the search in that individual case shall be seized. The record shall include and clearly identify the objects and documents subject to seizure, which shall be indicated in a receipt immediately to be given to the person from whom the objects or documents are being seized.

- (2) If, during a search of dwellings or other premises or a person, objects are found that are unrelated to the criminal offense for which the search warrant was issued, but indicate another criminal offense, they shall be described in the record and temporarily seized and a receipt on the seizure shall be issued immediately. The prosecutor shall be notified thereof. Those objects shall be returned immediately if the prosecutor establishes that there are no grounds for initiating criminal proceedings, and there is no other legal ground for seizing the objects.
- (3) The objects used in the search of the computer and similar electronic devices for automatic data processing shall be returned to their users after the search, unless they are required for the further conduct of the criminal proceedings. Personal data obtained by the search may be used only for the purpose of the criminal proceedings and shall be deleted immediately after the purpose is fulfilled.

#### **Article 77**

##### **Seizure of Objects under a Search Warrant**

- (1) Upon seizure of objects pursuant to a search warrant, an authorized official must draft and sign a receipt indicating the objects seized and the name of the issuing court.
- (2) If an object has been seized from a person, the receipt referred to in Paragraph 1 of this Article must be given to that person. If an object has been seized from a dwelling or other premises, such receipt must be given to the owner, tenant or user, as applicable.
- (3) Upon seizing objects pursuant to a search warrant, an authorized official must, without delay, return the warrant and the property and an inventory of seized objects to the court.
- (4) Upon receiving objects seized pursuant to a search warrant, the court shall either retain them in the custody of the court pending further disposition; or direct that they be held in the custody of the applicant for the warrant or of the authorized official who executed it.

#### **Article 78**

##### **Search without Warrant and Witnesses**

- (1) An authorized official may enter a dwelling or other premises without a warrant and without a witness and, if necessary, conduct a search if the occupant so desires, if someone calls for their help, if this is required to apprehend a suspect of a criminal offense who has been caught in the act, or for the sake of the safety of a person or

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(In case of any issue regarding authenticity of text or translation, the local language version shall prevail)

property, if the person who is to be apprehended under the court order is in the dwelling or other premises or if the person is hiding in the dwelling or in other premises.

(2) An authorized official may search a person without a search warrant and without witnesses:

- a) when executing an apprehension warrant;
- b) when arresting the person;
- c) when there is suspicion that the person possesses a firearm or knife;
- d) when there is suspicion that the person will conceal or destroy objects that are to be taken from him and used as evidence in criminal proceedings.

(3) After an authorized official conducts a search without a search warrant **and without the presence of witnesses**, he must immediately submit a report to the prosecutor, who shall inform the preliminary proceedings judge of the search. The report shall state the reasons why the search was completed without a warrant **or witnesses**.

## **Section 2 - SEIZURE OF OBJECTS AND PROPERTY**

### **Article 79**

#### **Warrant for Seizure of Objects**

- (1) Objects that are the subject of seizure pursuant to the Criminal Code or that may be used as evidence in the criminal proceedings shall be seized and their custody shall be secured pursuant to a court decision.
- (2) The seizure warrant shall be issued by the court on the motion of the prosecutor or on the motion of authorized officials upon the approval of the prosecutor.
- (3) The seizure warrant shall contain the name of the court, legal grounds for undertaking the action of seizure of objects, indication of the objects that are subject to seizure, the name of persons from whom objects are to be seized, **and** the place where the objects are to be seized, a timeframe within which the objects are to be seized, ~~and a notification of the right of the affected person to a legal remedy.~~
- (4) The authorized official shall seize objects on the basis of the issued warrant.
- (5) Anyone in possession of such objects must turn them over at the request of the court. A person who refuses to surrender objects may be fined in an amount up to 50,000 KM, and may be imprisoned if he persists in his refusal. Imprisonment shall last until the object is surrendered or until the end of criminal proceedings, but no longer than 90 days. An official or responsible person in a governmental body or a legal entity shall be dealt with in the same manner.
- (6) The provisions of Paragraph 5 of this Article shall also apply to the data stored in a computer or similar devices for automatic or electronic data processing. In obtaining such data, special care shall be taken with respect to regulations governing the maintenance of confidentiality of certain data.
- (7) An appeal against a decision on a fine or on imprisonment shall be decided by the panel. An appeal against the decision on imprisonment shall not stay execution of the decision.

- (8) When objects are seized, a note shall be made of the place where they were found, and they shall be described, and if necessary, establishment of their identity shall also be provided for in some other manner. A receipt shall be issued for seized objects.
- (9) Forceful measures referred to in Paragraph 5 and 6 of this Article may not be applied to the suspect or accused or to persons who are exempt from the duty to testify.

#### **Article 80**

##### **Seizure without Seizure Warrant**

- (1) If a delay would be detrimental, the items referred to in Paragraph 1 of Article 79 of this Code may be seized even without the court order. If the person affected by the search explicitly opposes the seizure of items, the prosecutor shall, within 72 hours following the completion of the search, file to a preliminary proceedings judge a motion for a subsequent approval of the seizure of items.
- (2) If the preliminary proceedings judge denies the prosecutor's motion, the items seized may not be used as evidence in the criminal proceedings. The seized items shall be immediately returned to the person from whom they have been seized.

#### **Article 81**

##### **Seizure of Mail and Telegrams and other Consignments**

- (1) Seizure may be performed with respect to letters, telegrams and other mail addressed to or sent by the suspect or the accused and found with a company or persons engaged in postal and telecommunication activities.
- (2) A seizure may also be performed with respect to the mail and telegrams referred to in Paragraph 1 of this Article when it can reasonably be expected that they shall serve as evidence in the proceedings.
- (3) A warrant for the seizure of objects referred to in Paragraph 1 of this Article shall be issued by the court on the motion of the prosecutor.
- (4) A warrant for the temporary seizure of objects may also be issued by the prosecutor, if a delay would be detrimental. ~~Such warrant must, however, be confirmed by the~~ **The** preliminary proceedings judge **shall decide on its confirmation** within 72 hours following the seizure.
- (5) If the warrant fails to be confirmed pursuant to the provision of the Paragraph 4 of this Article, the seized objects may not be used as evidence in the proceedings.
- (6) The measures undertaken as provided under this Article shall not apply to the mail exchanged between the suspect or the accused and his defense attorney.
- (7) The seizure warrant referred to in Paragraph 3 of this Article shall include: information on the suspect or the accused whom the warrant concerns, the manner of execution of the warrant and the duration of the measure, and the company that will execute the measure imposed. The measures taken may not last longer than three (3) months, but for an important reason, the preliminary proceedings judge may extend

the measures for three (3) additional months. The measures taken shall, however, be terminated as soon as the reasons for taking them cease to exist.

- (8) If the interests of the proceedings permit, the suspect or the accused who is the subject of the measures referred to in Paragraph 1 shall be informed of those measures taken.
- (9) Mail delivered shall be opened by the prosecutor in the presence of two witnesses. In opening the mail, care shall be taken not to break the seal and the packaging and the address shall be kept. A record shall be made regarding the opening.
- (10) The content of a part of the mail or the mail, as applicable, shall be communicated to the suspect or the accused or the recipient, and a part of the mail or the mail shall be handed over to that person, unless the prosecutor, exceptionally, considers the transfer to be detrimental to the success of the criminal proceedings. If the suspect or the accused is absent, his family members shall be notified of the mail delivery. If the suspect or the accused does not request the delivery of the mail thereafter, the mail shall be returned to the sender.

## **Article 82**

### **Written Inventory of Seized Objects and Documentation**

- (1) After the seizure of objects and documentation, an inventory list of the seized objects and documents shall be made and a receipt concerning the objects and documents seized shall be given.
- (2) If making an inventory list of objects and documentation is impossible, the objects and documentation shall be wrapped and sealed.
- (3) Objects seized from a physical person or legal person may not be sold, given as a gift or otherwise transferred.

## **Article 83**

### **Right to Appeal**

- (1) The person from whom objects or documentation are seized shall have the right to appeal.
- (2) The appeal referred to in Paragraph 1 of this Article shall not stay the seizure of objects.
- (3) The prosecutor has the right to appeal a decision of the court pursuant to which the seized objects and documents are to be returned.

## **Article 84**

### **Safekeeping of Seized Objects and Documentation**

The seized objects and documentation shall be deposited with the court, or the court shall otherwise provide for their safekeeping.

## **Article 85**

### **Opening and Inspection of Seized Objects and Documents**

- ~~(1) The opening and inspection of seized objects or documentation shall be done by the prosecutor.~~
- ~~(2) The prosecutor shall notify the person or the business enterprise from which the objects were seized, the preliminary proceedings judge and the defense attorney about the opening of the seized objects or documentation.~~
- ~~(3) When opening and inspecting the seized objects and documents, attention shall be paid that no unauthorized person gets the insight into their contents.~~
- (1) The opening and inspection of temporary seized objects or documentation for which an inventory list cannot be made and are therefore suitably wrapped and sealed shall be done by the prosecutor or an authorized person on the basis of a written approval issued by the prosecutor.
- (2) The person from whom the objects or documents were seized shall be summoned to be present at the opening of the package. If the said person does not come or is absent, the package shall be opened and the objects and documents inspected in his/her absence.
- (3) When opening and inspecting the seized objects and documents, attention shall be paid that no unauthorized person gets the insight into their contents. Minutes on the opening of the package shall be taken.

## **Article 86**

### **Order Issued to a Bank or to Another Legal Person**

- (4) If there are grounds for suspicion that a person has committed a criminal offense related to the acquisition of material gain, the court may, at the motion of the prosecutor, issue an order to a bank or another legal person performing financial operations to disclose information concerning the bank accounts and other financial transactions of the suspect or of persons who are reasonably believed to be involved in the financial transactions or affairs of the suspect, if such information could be used as evidence in the criminal proceedings.
- (5) ~~The preliminary proceedings judge~~ **court** may, on the motion of the prosecutor, order that other necessary measures referred to in Article 130<sup>10</sup> of this Code be taken in order to enable the detection and finding of the illicitly gained property and collection of evidence about it.

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<sup>10</sup> OG FBiH 56/03: In Article 85, paragraph 2, line three, replace number “116” with number “130”.



- (6) In case of an emergency, any of the measures under Paragraph 1 of this Article may be ordered by the prosecutor on the basis of an order. The prosecutor shall immediately inform the ~~preliminary proceedings judge who~~ **court that** shall issue a court warrant within 72 hours. The prosecutor shall seal the obtained information until the issuance of the court warrant. In case the ~~preliminary proceedings judge~~ **court** fails to issue the said order, the prosecutor shall be bound to return such data without opening them.
- (7) The court may issue a decision ordering a legal or physical person to temporarily suspend a financial transaction that is suspected to be a criminal offense or intended for the commission of the criminal offense, or suspected to serve to conceal a criminal offense or conceal of the proceeds of crime.
- (8) The decision referred to in Paragraph 4 of this Article shall order that the financial resources designated for the transaction referred to in Paragraph 4 of this Article and cash amounts of domestic or foreign currency be seized pursuant to Article 79 Paragraph 1 of this Code and be deposited in a special account and kept until the end of the proceedings or until the conditions for their return are met.
- (9) An appeal may be filed against a decision referred to in Paragraph 4 of this Article by the prosecutor, the owner of the assets or cash in domestic or foreign currency, the suspect, the accused and the legal or physical person referred to in Paragraphs 4 and 5 of this Article.

#### Article 86a

##### **Order to Telecommunication Operator**

- (1) If there are grounds for suspicion that a person has committed a criminal offence, on the basis of motion of the Prosecutor or officials authorized by Prosecutor, the Court may issue an order to a telecommunication operator or another legal person performing telecommunication services to turn over information concerning the use of telecommunications services by that person, if such information could be used as evidence in the criminal proceedings or be useful in collection of information that could be useful to the criminal proceedings.**
- (2) In the case of emergency, any of the measures under Paragraph (1) of this Article may be ordered by the Prosecutor and received information will be sealed until the issuance of the court order. The Prosecutor shall immediately inform the preliminary proceedings judge who may issue a warrant within 72 hours. In case the preliminary proceedings judge fails to issue the said order, the Prosecutor shall be obliged to return such information without accessing it.**
- (3) Measures under Paragraph (1) of this Article may also be ordered against person against whom there are grounds for suspicion that he will deliver to the perpetrator or will receive from the perpetrator the information in relation to**

**the offence, or grounds for suspicion that the perpetrator uses a telecommunication device belonging to this person.**

- (4) Telecommunication operators or other legal person who provides telecommunication services shall be obliged to enable enforcement of the measures by the Prosecutor and police bodies under Paragraph (1).**

#### **Article 87**

##### **Seizure of Property**

- (1) At any time during the proceedings, the court may, upon the motion of the prosecutor, issue an interlocutory order for seizure, confiscation or arrest of illicitly gained property under the Criminal Code or shall issue other necessary interlocutory orders to prevent any use, transfer or disposal of such property.
- (2) If there is danger in delay, an authorized official may seize property referred to in Paragraph 1 of this Article, may carry out an arrest in property or take other necessary temporary measures to prevent any use, transfer or disposal of such property. An authorized official shall immediately inform the prosecutor about the measures taken and ~~the measures taken must be confirmed by the preliminary proceedings judge~~ **shall decide about the measures taken** within 72 hours ~~following the undertaking of the measures.~~
- (3) ~~If the court denies the approval,~~ **the approval is denied** the measures taken shall be terminated and the objects or property seized returned immediately to the person from whom they have been seized.

#### **Article 88**

##### **Return of the Seized Objects**

**(1)** Objects that have been seized during the criminal proceedings shall be returned to the owner or possessor once it becomes evident during the proceedings that their retention runs contrary to Article 79 of this Code and that there are no reasons for their seizure (Article 412).

**(2) The court shall decide about the request for return of the seized objects upon hearing the prosecutor within 15 days the latest.**

### **Section 3 - PROCEDURE OF DEALING WITH SUSPICIOUS OBJECTS**

#### **Article 89**

##### **Posting and Publishing A Description of Suspicious Objects**

- (1) If another person's object is found with the suspect or the accused and it is not known to whom it belongs, the body conducting the proceedings shall describe the object and post the description thereof on the notice board of the municipality of the residence of the suspect or the accused and the municipality where the criminal offense has been

committed. The notice shall invite the owner to come forward within one (1) year from the date of the posting, otherwise, the object will be sold. The proceeds from the sale shall be credited to the Federation Budget.

- (2) If the object is of high value, a description may also be published in a daily newspaper.
- (3) If the object is perishable or its safekeeping would entail significant costs, the object shall be sold pursuant to the provisions governing the judicial enforcement procedure and the proceeds shall be delivered for safekeeping to the court.
- (4) The provision of Paragraph 3 of this Article shall also be applied when the object belongs to a runaway or the unknown perpetrator of a criminal offense.

#### **Article 90** **Decisions on Suspicious Objects**

- (1) If, within one (1) year, no one comes forward as the owner of the object or of the proceeds from the sale of the object, a decision shall be taken that the object shall become the property of the Federation or that the proceeds shall be credited to the Federation Budget.
- (2) The owner of the object is entitled to claim the object or the proceeds from the sale of the object in a civil action. The statute of limitations with respect to this right shall commence from the date of the posting or publication, as applicable.

### **Section 4 - QUESTIONING OF THE SUSPECT**

#### **Article 91** **~~Summoning the Suspect~~ Basic Rules on Questioning**

- (1) The suspect shall be questioned by the prosecutor **or an authorised official** during the investigation.
- (2) The questioning of the suspect must be conducted with full respect for the personal integrity of the suspect. During questioning of the suspect it shall be forbidden to use force, threat, fraud, narcotics or other means that might affect the freedom of decision-making and expression of will while giving a statement or confession.
- (3) If actions were taken contrary to ~~the provisions of~~ **paragraph (2) of** this Article, the verdict of the court may not be based on the statement of the suspect.

#### **Article 92** **Instructing the Suspect on His Rights**

- (1) At the first questioning, the suspect shall be asked the following questions: his name and surname; nickname if he has one; name and surname of his parents; maiden name of his mother; place of birth; place of residence; date, month and year of birth; ethnicity and citizenship; identification number of Bosnia and Herzegovina citizen;

profession; family situation; if he is literate; completed education; if he has served in the army, and if so, when and where; whether he has a rank of a reserve officer; whether he is entered in the military records and if yes, with which authority in charge of defense affairs; whether he has received a medal; financial situation; previous convictions and, if any, reasons for the conviction; if convicted whether he has served the sentence and when; if there are pending proceedings for some other criminal offense; and if he is a minor, who is his legal representative. The suspect shall be instructed to obey summonses and to inform the authorized officials immediately about every change of address or intention to change his residence, and the suspect shall also be instructed about consequences if he does not act accordingly.

- (2) At the beginning of the questioning, the suspect shall be informed of the criminal offense he is suspected of, the grounds of the suspicion and he shall be informed of the following rights:
- a) the right not to give evidence or answer questions (*right to remain silent*);
  - b) the right to retain a defense attorney of his choice who may be present at questioning and the right to a defense attorney at no cost in such cases as provided by this Code;
  - c) the right to comment on the suspicion against him, and to present all facts and evidence in his favor **and that, if he does so in the presence of the defence attorney, the statement made is allowed as evidence at the main trial and may, without his consent, be read and used at the main trial;**
  - d) that during the investigation, he is entitled to study files and view the collected items in his favor unless the files and items concerned are such that their disclosure would endanger the aim of investigation;
  - e) the right to an interpreter at no cost if the suspect does not understand the language used for questioning.
- (3) The suspect may voluntarily waive the rights stated in Paragraph 2 of this Article but his questioning may not commence unless his waiver has been recorded officially and signed by the suspect. To waive the right to a defense attorney shall not be possible for the suspect under any circumstances in case of a mandatory defense under this Code.
- (4) In the case when the suspect has waived the right to a defense attorney, but later expressed his desire to retain one, the questioning shall be immediately suspended and shall resume when the suspect has retained or has been appointed a defense attorney, or if the suspect has expressed a wish to answer the questions.
- (5) If the suspect has voluntarily waived the right to remain silent, he shall be allowed to present views on all facts and evidence that speak in his favor.
- (6) If any actions have been taken contrary to the provisions of this Article, the court's verdict shall not be based on the statement of the suspect.

### **Article 93**

#### **Manner of Questioning of the Suspect**

- (1) A record shall be made each time a suspect is questioned. The important parts of the statement shall be entered in the record word for word. After the record has been completed, the record shall be read to the suspect and the copy of it shall be given to him.
- (2) As a general rule, the questioning of a suspect shall be electronically recorded under the following conditions:
  - a) the suspect shall be informed in the language he speaks and understands that the questioning is being electronically recorded;
  - b) if the questioning is adjourned, the reason and time of the adjournment shall be indicated in the record, as well as the time of resumption and the completion of the hearing;
  - c) at the end of the questioning, the suspect shall be allowed to explain whatever he has said and to add whatever he wants;
  - d) the recording thus made shall be transcribed after the completion of the questioning, and a copy of the transcript shall be handed to the suspect along with a copy of the recording, or if a device for making several recordings simultaneously was used, he shall be handed one of the originals;
  - e) once a copy of the original recording has been made for the purpose of making a transcript, the original recording or one of the originals shall be sealed in the presence of the suspect and authenticated by the respective signatures of the authorized official and the suspect.

### **Article 94**

#### **Questioning through an Interpreter**

The suspect shall be questioned through an interpreter in cases referred to in Article 101 of this Code.

## **Section 5 - EXAMINATION OF WITNESSES**

### **Article 95**

#### **Summons to Witnesses**

- (1) Witnesses shall be heard when there is likelihood that their statements may provide information concerning the offense, the perpetrator or any other important circumstances.
- (2) The prosecutor or the court shall serve the summons. Any summoning of a minor under 16 as the witness shall be done through the parents or legal representative,

except for the cases where this is not possible due to a need to act urgently, or other circumstances as the prosecutor or the court considers important.

- (3) Witnesses who cannot answer a summons because of age, illness or serious physical handicaps may be questioned at their residence, hospital or any other place.
- (4) Witnesses shall be notified in the summons of their being summoned as a witness, of where and when to appear upon being summoned, as well as what consequences shall follow if the witness fails to appear.
- (5) Should the witness fail to appear or justify his absence the court may fine him in an amount up to 5,000 KM, or may order the apprehension of the witness.
- (6) The apprehension of a witness shall be performed by the Judicial Police. Exceptionally, the order may be given by the prosecutor if a duly summoned witness does not appear or justify his absence, provided that this order must be confirmed by the preliminary proceedings judge within 24 hours following the issuance of the order.
- (7) Should the witness **after being warned of the consequences, without legal reasons** refuse to testify, the court may, at the proposal of the prosecutor, issue a decision on fining the witness in an amount up to 30,000 KM. An appeal against this decision is allowed, but shall not stay the execution of the decision.
- (8) Appeals against a decision ~~imposing a fine~~ **from paragraph (5) and (7) of this Article** shall be decided by the Panel (Article 25, Paragraph 6).

#### Article 96

##### Persons Who Shall Not Be Heard As Witnesses

- (1)** The following persons shall not be heard as witnesses:
  - a) A person who by his statement would violate the duty of keeping state, military or official secrets until the competent body releases him from that duty;
  - b) A defense attorney of the suspect or accused with respect to the facts that became known to him in his capacity as a defense attorney;
  - c) A person who by his statement would violate the duty of keeping professional secrets, including the religious confessor, professional journalists for the purpose of protecting the source of information, attorneys-at-law, notary, physician, midwife and others, unless released from that duty by a special regulation or statement of the person who benefits from the secret being kept;
  - d) A minor who, in view of his age and mental development, is unable to comprehend the importance of his right not to testify.

**(2) If the person who is not allowed to be heard as a witness has been heard as a witness, the Court decision shall not be based on his testimony.**

#### Article 97

##### Persons Allowed to Refuse to Testify (*Privileged Witnesses*)

- (1) The following persons may refuse to testify:

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- a) the spouse or the cohabitee of the suspect or accused;
  - b) a parent or child, an adoptive parent or adopted child of the suspect or accused;<sup>11</sup>
- (2) The authority conducting the proceedings shall caution the persons referred to in Paragraph 1 of this Article, prior to their examination or as soon as it learns about their relation to the accused, about the privilege. The caution and answer shall be entered in the record of proceedings.
- (3) A person who has grounds to refuse to testify against one of the suspects or accused shall be relieved from the duty to testify against other co-defendants if his testimony, by its nature, cannot be restricted solely to the other suspects or accused.
- (4) If a witness has been heard whose testimony is inadmissible or the person testifying has not been cautioned thereof or the caution has not been entered into the records, the court verdict shall not be based on such testimony.

#### **Article 98**

##### ***Right of Witness to Refuse to Respond (Privilege Against Self-Incrimination)***

- (1) The witness shall be entitled to refuse to answer such questions with respect to which a truthful reply would result in the danger of bringing prosecution upon himself.
- (2) Witnesses exercising the right referred to in Paragraph 1 of this Article shall answer the same questions provided that immunity is granted to such witnesses.
- (3) Immunity may be granted by the decision of the **chief** prosecutor.
- (4) The witness who has been granted immunity and is testifying as a result of the granted immunity shall not be prosecuted except in case of false testimony.
- (5) A lawyer may **shall** be assigned to the witness as an advisor by the court decision during the hearing if it is obvious that the witness himself is not able to exercise his rights during the hearing and if his interests cannot be protected in any other manner.

#### **Article 98**

##### ***Right of Witness to Refuse to Respond (Privilege against Self-Incrimination)***

- (1) A witness shall have the right to refuse to answer certain questions when it is likely that the answer to those questions would render him liable to criminal prosecution.

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<sup>11</sup> OG FBiH 28/05: "In Article 97 (Persons Allowed to Refuse to Testify), paragraph 1, sub-paragraph b) shall be amended to read:

"b) a parent or child, an adoptive parent or adopted child of the suspect or accused."

Sub-paragraph c) shall be deleted."

- (2) The witnesses exercising the right referred to in the Paragraph 1 of this Article shall answer those questions providing that the competent chief prosecutor issues a written statement that such witness shall not be prosecuted for the criminal acts to which the witness refers to in his statement. A copy of the chief prosecutor's written statement shall be delivered to the witness.
- (3) The statement referred to in the Paragraph 2 of this Article may be issued by the chief prosecutor providing that the statement of the witness is important for proving that another person committed a crime referred to in the Paragraph 4 of this Article.
- (4) Chief prosecutor may issue the statement referred to in the Paragraph 2 of this Article in the proceedings conducted for the following criminal offenses under the CC FBiH:
- a) Criminal Offenses against the constitutional order of the Federation of Bosnia and Herzegovina,
  - b) criminal offenses of terrorism,
  - c) criminal offenses of: Murder (Article 166), Prevention of Return of Refugees and Displaced Persons (Article 178), Unlawful Deprivation of Freedom (Article 179 Paragraphs 2 and 3), Abduction (Article 180), Extraction of Statements (Article 181 Paragraph 2), Rape (Article 203), Sexual Intercourse with a Helpless Person (Article 204), Sexual Intercourse with a Child (Article 207), Trafficking in Human Beings (Article 210a), Abuse of a Child or Juvenile for Pornography (Article 211), Domestic Violence (Article 222 Paragraphs 5 and 6), Prohibited Transplanting of Parts of a Human Body (Article 231 Paragraph 7), Unauthorized Production and Sale of Narcotics (Article 238), Possessing and Enabling Another to Enjoy Narcotics (Article 239 Paragraph 2), Money Laundering (Article 272), Tax Evasion (Article 273), Extortion (Article 295 Paragraph 3), Blackmail (Article 296 Paragraph 2), Arson (Article 301 Paragraph 2), Pollution of the Environment (Article 303 Paragraph 4 and 5), Causing Forest Fire (Article 317 Paragraph 2), Organized Crime (Article 342), Accessory After the Fact (Article 346 Paragraph 3), Accepting Gifts and Other Forms of Benefits (Article 380 Paragraph 1), Giving Gifts and Other Forms of Benefits (Article 381 Paragraph 1), Accepting Reward or Other Form of Benefit for Illegal Interceding (Article 382), Offering Reward or Other Form of Benefit for Illegal Interceding (Article 382a Paragraph 1), Abuse of Office or Official Authority (Article 383), Embezzlement in Office (Article 384), Fraud in Office (Article 385), Unlawful Release of a Detainee (Article 391), Computer Fraud (Article 395 Paragraph 1, 2 and 3),
  - d) other criminal offenses punishable by long-term imprisonment,
  - e) when criminal proceedings are conducted for criminal offenses in relation to which the Criminal Procedure Code of Bosnia and Herzegovina provides for the possibility of granting immunity to a witness, and the Court of Bosnia and Herzegovina has transferred the proceedings to a court in the Federation.
- (5) The statement referred to in the Paragraph 2 of this Article shall indicate that it refers only to the criminal acts of witnesses which constitute a criminal offense punishable with lesser punishment than the punishment prescribed for the criminal offense in



respect of which the testimony is given or proceedings are conducted and that it cannot relate to offenses punishable by imprisonment of at least ten years.

- (6) The court shall render a decision determining whether the statement of the chief prosecutor referred to in the Paragraph 2 of this Article is in accordance with the Paragraphs 4 and 5 of this Article and assign an attorney to counsel the witness during questioning.
- (7) After the court renders the decision referred to in the Paragraph 6 of this Article, the chief prosecutor shall summon the witness to give a statement. Prior to the questioning, the witness shall give a written statement that as a witness in criminal proceedings he will give a true statement and that he will not withhold anything s/he knows about the criminal offense about which s/he is testifying or its perpetrator.
- (8) After the witness has given a statement, the chief prosecutor shall issue a decision on the immunity of the witness for the criminal offense arising from the statement of the witness given in accordance with the Paragraph 2 of this Article. The decision shall state the factual description and legal qualification of the criminal offense for which no criminal prosecution of the witness shall be undertaken.
- (9) If during the criminal proceedings the witness does not act in accordance with the Paragraph 7 of this Article, the chief prosecutor shall issue a reasoned decision denying the witness immunity for the criminal offense that the statement referred to in Paragraph 2 of this Article pertained to. The Prosecutor shall also deny immunity in the event that the criminal acts stated by the witness in his statement relate to criminal offenses for which immunity cannot be granted in terms of the Paragraphs 4 and 5 of this Article. In such cases the witness's statement with the answers referred to in the Paragraph 1 of this Article shall be removed from the case file and kept separately and may not be used in criminal proceedings against the witness.
- (10) In case the chief prosecutor does not issue a decision referred to in the Paragraph 8 of this Article the witness's statement with answers to questions referred to in the Paragraph 1 of this Article shall be removed from the case file and kept separately, and cannot be used in criminal proceedings against the witness.
- (11) Witness referred to in Paragraph 2 of this Article may be prosecuted for the criminal offense of giving a false statement.

## Article 99

### Method of Examination, Confrontation and Identification

- (1) Witnesses shall be examined individually and in the absence of other witnesses.
- (2) At all times during the proceedings, witnesses may be confronted with other witnesses or with the suspect or accused **if their statements differ regarding important facts.**
- (3) If necessary to ascertain whether the witness knows the person or object, the witness shall first be required to describe him/her/it or to indicate distinctive signs, and then a

line-up of persons shall follow, or the object shall be shown to the witness, if possible among objects of the same type.

- (4) **If it is not possible to make an identification in accordance with Paragraph (3) of this Article, the identification shall be done by viewing a photograph of that person or objects placed amongst photographs of persons unknown to the witness or amongst objects of the same kind.**

#### **Article 100**

##### **Course of the Examination of a Witness**

- (1) The witness must answer orally.
- (2) Before examination, the witness shall be called upon to tell the truth and not to withhold anything and shall then be cautioned that giving false testimony is a criminal offense. **The witness shall be cautioned on his right not to answer questions listed in Article 98, Paragraph (1) of this Code and this caution shall be entered into record.**
- (3) Subsequently, the witness shall be asked the following questions: his name and surname, names of father and mother, occupation, residence, place and date of birth and relation to the suspect, accused or injured party. The witness must also be cautioned that it is his duty to inform **the Prosecutor or** the court regarding a change of address or residence.
- (4) When examining a minor and, in particular if the minor was injured by the criminal offense, the participants in the proceedings shall act with circumspection in order not to have an adverse effect on the minor's mental condition. ~~If necessary, the~~ **The** minor shall be examined with the assistance of a psychologist, pedagogue or other professional.
- (5) It is not allowed to ask the injured party about his/her sexual behavior prior to the commission of the criminal offense and if such questioning has already been carried out, the court verdict shall not be based on such statement.
- (6) Given the age, physical and mental condition, or other justified reasons the witness may be examined using technical means for transferring image and sound in such manner as to permit the parties and the defense attorney to ask questions although not in the same room as the witness. An expert may be assigned for the purpose of the examination.
- (7) After general questions, the witness shall be invited to present everything that he knows about the case and then the witness shall be asked questions aimed at checking, supplementing and explaining his statement. When examining the witness, it is prohibited to practice deceit or ask leading questions.
- (8) The witness shall be asked how he came to know the facts he is testifying about.
- (9) Witnesses may be confronted if their testimony conflict with important facts. The confronted witnesses shall be examined individually about each circumstance that their testimony conflict and their responses shall be entered into records. Only two witnesses at a time may be confronted.

- (10) The injured party being examined as the witness shall be asked about his desires with respect to satisfaction of a property claim in the criminal proceedings.

#### **Article 101**

##### **Examination of a Witness through a Person Using the Sign Language**

- (1) If a witness is deaf or mute, he shall be examined through a person using the sign language.
- (2) If the witness is deaf the questions shall be asked in writing and if he is mute he shall be asked to answer in writing. If the hearing cannot be conducted in this manner then a person who can communicate with the witness shall be invited to be an interpreter.
- (3) If the interpreter has not previously taken the oath, the interpreter shall take the oath that he shall faithfully communicate the questions to the witness as well as his testimony.

#### **Article 102**

##### **Oath or Affirmation of a Witness**

- (1) If the conditions for hearing have been fulfilled, the court may request the witness to take an oath or affirmation prior to testimony.
- (2) Prior to the main trial, the witness may take the oath or affirmation only if there is a fear that due to illness or other reasons he shall not appear at the main trial. The oath or affirmation shall be taken before the judge or the Presiding judge. The reason for taking the oath or affirmation shall be entered into the records.
- (3) The text of the oath or affirmation is as follows: "I swear/ I affirm that I shall speak the truth about everything I am going to be asked before this court and that I shall withhold nothing known to me."
- (4) The oath or affirmation shall be taken orally by reading its text or with a confirmation after the text of the oath or affirmation has been read by the judge or the Presiding judge. Mute witnesses who can read and write shall take the oath or affirmation by signing the text of the oath or affirmation, whereas deaf or mute witnesses who cannot read or write shall take the oath or affirmation through an interpreter.
- (5) A refusal and the reasons for refusal of the witness to take an oath or affirmation shall be entered into records.

#### **Article 103**

##### **Individuals Who May Not Take the Oath or Affirmation**

The individuals who shall not take the oath or affirmation are persons who are minors at the time of examination, those for whom it has been proved that there is a grounded suspicion that they have committed or participated in the commission of an offense for which they are being examined or those who due to their mental condition are unable to comprehend the importance of the oath or affirmation.

#### **Article 104**

##### **Audio or Audio-Visual Recording of the Examination of Witnesses**

The examination of witnesses may be recorded using **audio or** audio-visual equipment at all stages in the proceedings. It must be recorded in case of minors under sixteen (16) years of age who were injured by the offense, and if there are grounds for fearing that the witness cannot be examined at the main trial.

#### **Article 105**

##### **(Anonymous) Protected Witness**

With respect to protected witnesses in proceedings before the court, the provisions of the special law shall be applied.

#### **Section 6 - CRIME SCENE INVESTIGATION AND RECONSTRUCTION OF EVENTS**

#### **Article 106**

##### **Conducting a Crime Scene Investigation**

A crime scene investigation shall be conducted when a direct observation is needed to establish relevant facts in the proceedings.

#### **Article 107**

##### **Reconstruction of Events**

- (1) In order to verify the evidence presented, or to establish facts that are important to clarify matters, the body in charge of the proceedings may order a reconstruction of the event. The reconstruction shall reproduce the actions or situations with the conditions under which the event occurred according to the evidence presented. If statements by individual witnesses or the suspects or the accused describing the actions or situations are inconsistent or contradictory, the reconstruction shall, as a general rule, reproduce each version of events.
- (2) A reconstruction may not be performed in such a manner as to violate public peace and order or morality or endanger human life or health.
- (3) Certain evidence may be presented again if necessary during the reconstruction.

#### **Article 108**

##### **Aid of an Expert or a Specialist**

- (1) A crime scene investigation or reconstruction shall be conducted with the aid of a criminal/forensic specialist or some other specialist who shall assist in finding,

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protecting and describing traces, take certain measurements or photographs, or make sketches or photo-records or gather other data.

- (2) An expert may also be invited to the crime scene investigation or reconstruction if his presence would be useful for opinions and findings.

## **Section 7 - EXPERT EVALUATION**

### **Article 109**

#### **Ordering Expert Evaluation**

Expert evaluation shall be ordered when the findings and opinion of a person possessing the necessary special knowledge of the subject are required to establish or evaluate some important facts. If scientific, technical or other special knowledge, skill or experience will assist the court in understanding the evidence or determining a factual issue, an expert as a special witness may testify by providing his findings on the facts and opinion that contains the evaluation of the facts.

### **Article 110**

#### **Order for Expert Evaluation**

- (1) Expert evaluation shall be requested in writing by the prosecutor or court. The request shall indicate the facts in respect of which the evaluation is conducted.
- (2) If there is a specialized institution for performing the particular kind of expert evaluation, or if the expert evaluation could be performed by a state body, such expert evaluation, especially if it is complicated, shall as a general rule be assigned to that institution or body. The institution or body shall name one or more specialists who will make the expert evaluation.

### **Article 111**

#### **Duties of an Expert Appointed by the Prosecutor or the Court**

The expert appointed by the prosecutor or court shall provide a report to the prosecutor or court that shall contain the evidence examined, the tests performed, the findings and opinion reached, and any other relevant information the expert considers necessary for a fair and objective analysis. The expert shall provide a detailed explanation of how he came to a particular opinion.

### **Article 112**

#### **Persons Who Cannot be Engaged as Experts**

- (1) A person, who may not testify as a witness (Article 96), who has been exempted from the duty to testify (Article 97), as well as the injured party shall not be engaged as an

expert witness. If nevertheless such a person is engaged, the court shall not base its decision on his findings and opinion.

(2) Grounds for disqualification of experts (Article 44) also exist when the expert is employed in the same agency or business enterprise or other private legal entity as the suspect, the accused or injured party, or when the expert is employed by the suspect, the accused or the injured party.

(3) As a general rule, a person who has been questioned as a witness shall not be engaged as an expert.

### **Article 113**

#### **Expert Evaluation Procedure**

(1) The body ordering an expert evaluation shall manage the expert evaluation. Before commencement of the presentation of expert testimony the expert shall be invited to carefully study the subject of his testimony, and shall precisely present everything he knows and finds, and shall be invited to give his opinion without bias and in conformity with the rules of his science or art. He shall be specifically warned that presentation of false testimony is a criminal offense.

(2) An expert witness shall rely on evidence presented to him by authorized officials, the prosecutor or the court in forming findings and opinions and on the subject being examined. An expert witness may testify only as to facts found by his own consideration and determination, unless the information he is relying on in forming his findings and opinion, is the type of information reasonably relied on by other experts in the same field.

(3) An expert may be given clarifications, and he may also be allowed to review the file. An expert may propose that evidence be presented or articles and data be obtained that are of relevance for the presentation of his findings and opinion. If he is present at a crime scene investigation, reconstruction, or other investigative proceedings, the expert may propose that certain circumstances be clarified or that certain questions be asked of the persons involved.

### **Article 114**

#### **Examination of Items**

(1) The expert shall examine the items ordered to be examined at the place where the evidence is stored, unless examination requires extended tests or if the tests are to be performed in institutions, or state bodies or if ethical considerations so require.

(2) If analysis of some substance must be performed for the purposes of expert evaluation, only a portion of the substance shall be made available to the expert, if this is possible, while the remainder shall be set aside in the necessary amount to allow for subsequent analysis.

## **Article 115**

### **Presentation of Findings and Opinion**

The expert witness shall present his findings and opinion as well as worksheets, drawings, and notes to his appointing authority.

## **Article 116**

### **Expert Evaluation in a Specialized Institution or State Body**

- (1) If a specialized institution or a state body is commissioned to make the expert evaluation, the court or the prosecutor shall caution the institution or the body conducting the evaluation that the persons who provide the findings and opinion shall not be any person under Article 112 of this Code or a person for whom there are grounds for disqualification from expert evaluation as provided by this Code, and the court or the prosecutor shall warn them of the consequences of giving a false finding or opinion.
- (2) The materials necessary for the expert evaluation shall be made available to the specialized institution or state body and if necessary, the procedure described in the provision of Article 113 of this Code shall be followed.
- (3) The specialized institution or state body shall deliver the written findings and opinion of the persons who made the expert evaluation.

## **Article 117**

### **Autopsy and Exhumation Examination, Autopsy and Exhumation of Corpse**

- (1) Examination and autopsy of a corpse shall be conducted if in a case of death there is suspicion ~~that the death was not natural~~ **that the death was caused by a criminal offence or that it is related to the commission of a criminal offence**. If the corpse has already been buried, the exhumation of such corpse shall be ordered for the purpose of examination and autopsy.
- (2) During the **examination and** autopsy of a corpse, all the necessary actions for identification of the corpse shall be taken and to that end in particular the data on external and internal bodily characteristics of the corpse shall be described.

## **Article 118**

### **Autopsy Outside a Specialized Medical Facility Examination and Autopsy of the Corpse outside a Specialized Medical Facility**

- (1) Examination and autopsy of the body shall be performed by a specialized medical facility.
- (2) If an expert evaluation is not made in a specialized medical facility, examination and autopsy of a corpse shall be conducted by a physician-forensic specialist. ~~The~~

Unofficially consolidated by Halisa Skopljak

(In case of any issue regarding authenticity of text or translation, the local language version shall prevail)<sup>47</sup>

~~prosecutor shall direct the expert evaluation and shall record the findings and opinion of the expert~~ **The Prosecutor shall conduct the expert evaluation and shall make a report on it. The findings and opinion of the expert shall be integral part of the report.**

- (3) The physician who normally treated the deceased may not be given the task of performing the autopsy. However, the physician who treated the deceased may be questioned as a witness in order to provide an explanation on the course and the circumstances of the illness of the deceased.

#### **Article 119** **Forensic Report on Examination and Autopsy**

- (1) A forensic pathologist shall include the cause and estimated time of death in his report.
- (2) Should any sort of injury be found on the corpse, it shall be ascertained whether that injury was caused by someone else, and if so, then by what means, in which manner, at what interval before death, and whether such injury was the cause of death. If several injuries have been found on the corpse, it shall be ascertained whether all of the injuries were inflicted by the same means and which injury caused death; if more than one injury could have been fatal, it shall be stated which one(s) were the cause of death.
- (3) In cases referred to in Paragraph 2 of this Article, it shall specifically be ascertained whether the death was caused by the type of injury and general nature of the injury or due to personal characteristics or specific conditions of the body of the deceased or by coincidence or circumstances under which the injury was inflicted.
- (4) The expert shall pay attention to discovered biological material, including blood, saliva, semen, and urine, to describe it and preserve it for biological evaluation if ordered.

#### **Article 120** **Examination and Autopsy of Fetus or an Infant**

- (1) In the examination and autopsy of a fetus, a specific determination shall be made as to the stage of pregnancy, the fetus' ability to live outside the uterus, and the cause of death.
- (2) In an examination and autopsy of the corpse of an infant a specific determination shall be made as to whether the infant was born alive or stillborn, if it was capable of living, how long the infant lived, and the time and cause of death.



## **Article 121**

### **Toxicological Tests**

- (1) If there is suspicion that a poisoning occurred, the suspicious substances found on the corpse or in another place shall be sent for expert evaluation to the institution or state body performing toxicological tests.
- (2) When examining suspicious substances the expert shall specifically ascertain the type, amount and effects of the discovered toxic substances and, if the substances taken from the body are being tested, if possible, the amount of that toxic substance.

## **Article 122**

### **Expert Evaluation of Physical Injuries**

- (1) Expert evaluation of physical injuries shall be done, as a general rule, by examining the injured party. If it is not possible to examine the injured party or if it is unnecessary, an expert evaluation shall be based on medical records or other available information.
- (2) After providing a precise description of the injuries, the expert shall give his opinion, especially concerning the type and severity of each individual injury and their total effect in view of their nature or the specific circumstances of the case, the type of effect such injuries usually cause, the type of effect they have caused in this specific case, the means by which the injuries were inflicted and the manner of their infliction.

## **Article 123**

### **Physical Examination of the Accused and Other Actions**

- (1) A physical examination of a suspect or the accused shall be performed, even without his consent, if necessary to determine the facts important for criminal proceedings. A physical examination of other persons may be performed without their consent only when it has to be established whether a specific trace or other consequence of a criminal offense may be found on their body.
- (2) In accordance with the rules of medical science, blood tests and other medical procedures may be taken for analysis and determination of other facts important to criminal proceedings even without the consent of the person being examined, if it would not pose any harm to the health of person examined.
- (3) A physical examination of the suspect or the accused shall be ordered by the court, and if a delay would be detrimental, then it shall be ordered by the prosecutor.
- (4) It shall be forbidden to perform a medical intervention on the suspect, accused or witness or to administer to them agents that would affect their will in giving testimony.
- (5) If actions are taken contrary to the provisions of this Article, the decision of the court may not be based on the evidence obtained in this manner.

## **Article 124**

### **Psychiatric Examination**

- (1) If a suspicion arises diminished capacity or incapacity of the suspect or the accused, or that the suspect or the accused has committed a criminal offense due to drug or alcohol addiction, or that he is not capable of participating in the proceedings due to the mental disturbance, expert evaluations consisting of examination of the suspect or the accused by a psychiatrist shall be ordered.
- (2) If during the investigation the suspect refuses to voluntarily undergo the psychiatric examination for the purpose of an expert witness evaluation or if according to the opinion of the expert witness an extended observation is required, the suspect shall be committed to the appropriate medical institution for the purpose of psychiatric examination. A decision to that effect shall be rendered by the preliminary proceedings judge on the motion of the prosecutor. The examination may not exceed two (2) months.
- (3) Should experts establish that the mental condition of the suspect or accused is disturbed, they shall define the nature, type, degree and duration of the disorder and shall furnish their opinion concerning the type of influence this mental state has had and still has on the comprehension and actions of the suspect or the accused as well as concerning whether and to what degree the disturbance of his mental state existed at the time when the criminal offense was committed.
- (4) If a suspect or accused who is in pre-trial custody is sent to a medical institution, the judge shall inform that institution of the reasons why pre-trial custody was ordered so that the necessary measures can be taken to achieve the purposes of custody.
- (5) The time, which a suspect or an accused spent in a medical institution, shall be included in the time of custody or credited to his sentence, should a sentence be pronounced.

## **Article 125**

### **Audit of Business Books**

- (1) If an audit of business books is required, the body conducting the proceedings shall indicate to the auditors the line of inquiry and the scope of the audit and other facts and circumstances that are to be determined.
- (2) If the books of a business enterprise, other legal entity or an individual entrepreneur first need to be put in order before being audited, the costs of putting books in order shall be charged to their account.
- (3) The decision to put books in order shall be made by the body conducting the proceedings on the basis of the written documented report of the experts ordered to audit the business books. The decision shall also indicate the amount that the legal entity or the individual entrepreneur must deposit with that authority as an advance for the cost of putting its books in order.

F BiH Criminal Procedure Code, F BiH OG 35/03 published on 28 July 2003; Correction and amendments included as published in FBiH OG: No. 37/03; FBiH OG No. 56/03; FBiH OG No. 78/04; FBiH OG No. 28/05; FBiH OG No. 55/06; FBiH OG No. 9/09; FBiH OG No. 12/10; FBiH OG No. 8/13; FBiH OG No. 59/14; FBiH OG No. 74/20

- (4) The costs, if their amount has not been advanced, shall be collected and credited to the authority that has already paid the costs and compensated the experts.

#### **Article 126** **DNA Analysis**

DNA analysis may be made exclusively by an institution specialized in this type of expert evaluation.

#### **Article 127** **When to Perform a DNA analysis**

A DNA analysis may be performed when it is required to establish identity or facts as to whether discovered trace substances originate from the suspect, the accused or the injured party.

#### **Article 128** **Use of DNA Analysis Results in Other Criminal Proceedings**

For the purpose of establishing the identity of the suspect or the accused, cells may be taken from his body in order to perform a DNA analysis. All data obtained thereby may be used in other criminal proceedings against the same person.

#### **Article 129** **Registry of DNA Analyses and Data Protection**

- (1) All DNA analyses shall be kept in a special registry within the competent ministry.  
**(2) The Federation Minister of Justice shall issue a Book of Rules on collection and taking of samples of biological material for the purpose of DNA analyses in criminal proceedings and on packing of collected biological material and on preserving, treatment and storing of samples and results of the DNA analyses in the Federation.**  
~~(2)~~**(3)** Protection of data obtained from the analyses referred to in Paragraph 1 of this Article shall be regulated under a separate law.

## CHAPTER IX SPECIAL INVESTIGATIVE ACTIONS

### Article 130

#### Types of Special Investigative Actions and Conditions of Their Application

- (1) If evidence cannot be obtained in any another way or its obtaining would be accompanied by disproportional difficulties, special investigative actions may be ordered against a person against whom there are grounds for suspicion<sup>12</sup> that he has committed or has along with other persons taken part in committing or is participating in the commission of an offense referred to in Article 131 of this Code.
- (2) The investigative actions under Paragraph 1 of this Article are as follows:
  - a) surveillance and technical recording of telecommunications;
  - b) access to computer systems and computerized data processing;
  - c) surveillance and technical recording of premises;
  - d) covert following and technical recording of individuals, **means of transport** and objects **related to them**;
  - e) **use of** undercover investigators and informants;
  - f) simulated **and controlled** purchase of certain objects and simulated bribery;
  - g) supervised transport and delivery of the objects of a criminal offense.
- (3) The investigative actions referred to in Item a) of Paragraph 2 of this Article may also be ordered against persons against whom there are grounds for suspicion<sup>13</sup> that he will deliver to the perpetrator or will receive from the perpetrator of the offenses referred to in Article 131 of this Code information in relation to the offenses, or grounds for suspicion that the perpetrator uses a telecommunication device belonging to those persons.
- (4) Provisions regarding the communication between the suspect and his or her defense attorney shall apply accordingly to the discourse between the person referred to in Paragraph 1 of this Article and his or her defense attorney.
- (5) In executing the actions referred to in Items e) and f) of Paragraph 2 of this Article police authorities or other persons shall not undertake activities that constitute an incitement to commit a criminal offense. If nevertheless such activities are undertaken, this shall be an instance precluding the criminal prosecution against the incited person for a criminal offense committed in relation to those actions.
- (6) **Undercover investigator is specially trained authorised official who investigates under his or her changed identity. The undercover investigator may participate**

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<sup>12</sup> OG FBiH 56/03

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**in legal transactions under his or her changed identity. If it is necessary to establish and keep the identity, appropriate documents may be issued, changed or used.**

#### **Article 131**

#### **Criminal Offenses as to Which Special Investigative Measures May Be Ordered**

~~The investigative actions under Article 130 Paragraph 2 of this Code may be ordered in case of criminal offenses punishable by at least imprisonment ranging from three years to a more severe sentence.~~

#### **Article 131**

#### **(Criminal Offenses for which Special Investigative Measures May be Ordered)**

Special investigative measures referred to in the Article 130 Paragraph 2 of this Code may be ordered for the following criminal offenses:

a) Importing Hazardous Material into the Federation of Bosnia and Herzegovina (Article 160), Inciting National, Racial or Religious Hatred, Discord or Hostility (Article 163), Unlawful Deprivation of Freedom (Article 179), Unauthorized Tapping and Sound Recording (Article 188), Unauthorized Photographing and Filming (Article 189), Violating the Free Decision-making of Voters (Article 195), Abduction of a Child or a Juvenile (Article 217), Prohibited Transplanting of Parts of a Human Body (Article 231), Damage, Destruction and Unauthorized Export of Cultural Monuments and Protected Natural Objects (Article 321), Unauthorized Research and Appropriation of Cultural Monuments (Article 322), Associating for the Purpose of Committing Criminal Offences (Article 340), Coercion of a Judicial Official (Article 359a), Destroying or Concealing Archive Materials (Article 368), Giving Gifts and Other Forms of Benefits (Article 381), Damaging Computer Data and Programs (Article 393), Forging Computer Data and Programs (Article 394), Computer Fraud (Article 395), Disrupting a System or Network of Electronic Data Processing (Article 396), Unauthorized Access to Protected Electronic Data Processing Systems and Networks (Article 397).

b) for other criminal offenses punishable by imprisonment of five years or longer.

#### **Article 132**

#### **Competence to Order the Actions and the Duration of the Actions**

- (1) The investigative actions referred to in Article 130 Paragraph 2 of this Code shall be ordered by the preliminary proceedings judge in an order upon the properly reasoned motion of the prosecutor containing: the data on the person against whom the action

is to be applied, the grounds for suspicion<sup>14</sup> referred to in Paragraphs 1 or 3 of Article 130 of this Code, the reasons for undertaking the actions and other important circumstances necessitating the application of the actions, the reference to the type of required action and the method of its implementation and the extent and duration of the action. The order shall contain the same data as those featured in the prosecutor's motion as well as a determination of the duration of the measure ordered.

- (2) Exceptionally, if a written order cannot be received in due time and if a delay would be detrimental, the execution of an action referred to in Article 130 of this Code may commence on the basis of a verbal order pronounced by the preliminary proceedings judge. The written order of the court must be obtained within 24 hours following the issue of the verbal order.

~~(2) The investigative actions referred to in Items a), through d) and g) of Paragraph 2 of Article 130 of this Code may last up to one (1) month, while on account of particularly important reasons the duration of such actions may upon a properly reasoned motion of the prosecutor be prolonged for a term of another month, provided that the actions referred to in items a), b) and c) may last up to six (6) months in total, while the actions referred to in items d) and g) may last up to three (3) months in total. The motion as to the action referred to in Item f) of Paragraph 2 of Article 130 may refer only to a single act, whereas a motion as to each subsequent action against the same person must contain a statement of reasons justifying its application.~~

- (3) Special investigative measures referred to in Article 130 Paragraph 2 items a) through d) and item g) of this Code, may last up to one month, and should they yield results and there is a reason to continue with their implementation for the purpose of collecting evidence, the duration of such measures may be prolonged for another month upon reasoned motion of the prosecutor, while the measures referred to in items a) through c) Paragraph 2 of Article 130 of this Code may last up to six months in total for criminal offenses punishable by imprisonment of over five years or longer, and for other criminal offenses up to four months in total. Measures referred to in items d) and g) Paragraph 2 of Article 130 of this Code may last up to three months in total for criminal offences punishable by imprisonment of over five years or longer and for other criminal offenses up to two months. Exceptionally, with regards to the criminal offense of organized crime and criminal offenses of terrorism the special investigative measures referred to in Article 130 Paragraph 2, items a) through d) and item g) of this Code, if they yield results and there is a reason to continue with their implementation for the purpose of collecting evidence, the duration of such measures may be prolonged for another three months and upon reasoned motion of the prosecutor. The motion relating to the measure referred to in the Article 130 Paragraph 2 item f) of this Code may pertain only to a single act, whereas the motion

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<sup>14</sup> OG FBiH 56/03

for each subsequent measure against the same person must contain reasons that justify its application.

- (4) The order of the preliminary proceedings judge and the motion of the prosecutor referred to in Paragraph 1 of this Article shall be kept in a separate envelope. By compiling or transcribing the records without making references to the personal data therein about the undercover investigator and informant, or in another appropriate way, the prosecutor and the preliminary proceedings judge shall prevent unauthorized persons as well as the suspect and his defense attorney from establishing the identity of the undercover investigator and of informant.
- (5) By means of a written order the preliminary proceedings judge must suspend forthwith the execution of the undertaken actions if the reasons for previously ordering the actions have ceased to exist.
- (6) The orders referred to in Paragraph 1 of this Article shall be executed by the police authorities. Companies performing the transmission of information shall be bound to enable the prosecutor and police authorities to enforce the actions referred to in Item a) of Paragraph 2 of Article 130 of this Code.

### **Article 133**

#### **Materials Obtained through the Actions and Notification of the Actions Undertaken**

- (1) Upon the completion of the application of the actions referred to in Article 130 of this Code, all information, data and objects obtained through the application of the actions as well as a report must be submitted by police authorities to the prosecutor. The prosecutor shall be bound to provide the preliminary proceedings judge with a written report on the actions undertaken. On the basis of the submitted report the preliminary proceedings judge shall evaluate compliance with his order.
- (2) Should the prosecutor refrain from prosecution, or should the data and information obtained through the application of the ordered actions not be needed for the criminal proceedings, they shall be destroyed under the supervision of the preliminary proceedings judge, of which event he shall make separate records. The person against whom any of the actions referred to in Article 130 Paragraph 2 of this Code were undertaken, shall be notified of the undertaking of the actions, the reasons for their undertaking and information stating that the received materials did not constitute sufficient grounds for criminal prosecution and were thereafter destroyed.
- (3) The preliminary proceedings judge shall forthwith and following the undertaking of the actions referred to under Article 130 of this Code inform the person against whom the actions were undertaken. That person may request from the court a review of the legality of the order and of the method by which the order was enforced.
- (4) Data and information received through the undertaking of the actions referred to in Paragraph 2 of Article 130 of this Code shall be stored and kept as long as the court file is being kept.

#### **Article 134** **“Incidental Findings”**

No data or information received through the undertaking of actions referred to in Article 130 of this Code shall be used as evidence if they are not related to a criminal offense referred to in Article 131 of this Code.

#### **Article 135** **Acting Without a Court Order or Beyond Its Extent**

If the actions referred to in Article 130 of this Code have been undertaken without the order of the preliminary proceedings judge or contrary to it, the court cannot base its decision on the data or evidence thereby obtained.

#### **Article 136** **Admissibility of Evidence Obtained through the Special Actions**

Technical recordings, documents and objects obtained under the conditions and in the manner prescribed by this Code may be used as evidence in the criminal proceedings. The undercover investigator and informant referred to in Article 130 Paragraph 2 Item e) and the persons who have undertaken the actions referred to in Article 130 Paragraph 2 Item f) of this Code may be questioned as witnesses, or as protected witnesses in the course of the actions or on the other significant circumstances.

### **CHAPTER X** **MEASURES TO GUARANTEE THE PRESENCE OF A SUSPECT OR** **ACCUSED AND THE SUCCESSFUL CONDUCT OF CRIMINAL** **PROCEEDINGS**

#### **Section 1 - GENERAL PROVISIONS**

#### **Article 137** **Types of Measures**

- (1) Measures that may be taken against the accused in order to secure his presence and successful conduct of the criminal proceedings shall be: summons, apprehension, house arrest, bail and custody/detention.
- (2) When deciding which of the above mentioned measures to take, the competent body shall meet certain requirements for application of the measures, attempting not to apply a more severe measure if the same effect can be achieved by application of a less severe measure.



- (3) These measures shall also be cancelled *ex officio* immediately when the reasons for their application cease to exist, or they shall be replaced with a less severe measure when the conditions for it are created.
- (4) The provision of this Chapter shall be applied equally to the suspect, as appropriate.

## **Section 2 - SUMMONS**

### **Article 138**

#### **Service and Contents of Summons**

- (1) The presence of the accused for the execution of an action in the criminal proceedings shall be ensured through the summons.
- (2) A summons shall be served by delivering a sealed written summons containing the following: the name of the body issuing the summons, the first and last name of the accused, the criminal offense with which he is charged, the place where the accused is to appear, the date and hour when he is to appear, an indication that he is being summoned as accused, and a warning that he will be apprehended should he fail to appear, that he must immediately inform the prosecutor or the court of any change of the address and of any intention to change his residence, the official stamp, and the signature of the prosecutor or the judge issuing the summons.
- (3) The first time an accused is summoned, he shall be instructed of his right to engage a defense attorney who may be present at his questioning.
- (4) The first time a suspect is summoned, in the summons he shall be informed about his rights as specified in Article 92 of this Code. Before the issuance of the indictment, the suspect shall be summoned by the prosecutor.
- (5) If the accused is unable to comply with the summons because of illness or other impediment that cannot be removed, he shall be examined where he is or shall be provided transportation to the courthouse or any other place where the proceedings are to be conducted.

## **Section 3 - APPREHENSION**

### **Article 139**

#### **Arrest Warrant**

- (1) The court may order an arrest warrant if the decision on detention has been issued or if the accused duly summoned has failed to appear without justification, or if the summons could not have been properly served and the circumstances obviously indicate that the accused is evading service of summons.
- (2) Exceptionally, in emergency cases, the warrant referred to in Paragraph 1 of this Article may be issued by the prosecutor if the duly summoned suspect has without justification failed to appear ~~provided that this warrant shall be confirmed by the preliminary proceedings judge within 24 hours after issuance of the warrant.~~

- (3) The arrest warrant shall be executed by the judicial police.
- (4) The arrest warrant shall be given in writing. The arrest warrant shall contain: the name and last name of the accused who is to be apprehended, the criminal offense with which he is charged, the specific citation of the relevant criminal provisions, the grounds for ordering the person to be apprehended, the official stamp and the signature of the judge ordering the apprehension.
- (5) The person authorized to execute the arrest warrant shall hand the arrest warrant to the accused and instruct the accused to follow him. If the accused refuses, he shall be apprehended by force.

#### **Section 4 - ~~HOUSE ARREST~~ PROHIBITING MEASURES**

##### **Article 140 ~~Prohibitory Orders~~**

- ~~(1) In a reasoned decision, the court may place the accused under house arrest if there are circumstances indicating that the accused might flee, hide or go to an unknown place or abroad.~~
- ~~(2) In addition to the order referred to in Paragraph 1 of this Article the accused may be prohibited from visiting certain places or from meeting with certain persons or be ordered to report occasionally to a specified authority or his travel document or driver's license may be temporary confiscated. The accused may also be prohibited from performing certain business activities.~~
- ~~(3) The orders referred to in Paragraphs 1 and 2 of this Article may not restrict the right of the accused to communicate with his defense attorney.~~
- ~~(4) The accused shall be warned in the decision imposing the orders referred to in Paragraphs 1 and 2 of this Article that he may be ordered into custody if he violates the prohibitions imposed.~~
- ~~(5) In the course of an investigation, the orders referred to in Paragraph 1 and 2 of this Article shall be issued 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 of the main trial — by that judge or the presiding judge.~~
- ~~(6) The orders referred to in Paragraphs 1 and 2 of this Article may last as long as they are needed, but no later to the date on which the verdict becomes legally binding. The preliminary proceedings judge, preliminary hearing judge, the judge, or the presiding judge shall review the prohibitory order every two (2) months.~~
- ~~(7) A decision giving, extending or revoking the orders referred to in Paragraphs 1 and 2 of this Article may be appealed by the parties and the defense attorney, while the prosecutor may also appeal a decision rejecting his motion for the application of the order. An appeal shall be decided by the panel referred to in Article 25, Paragraph 6 of this Code within three (3) days following the receipt of the appeal. An appeal shall not stay the execution of the decision.~~

### **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 140a**

#### **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 140 of this Code, or as separate measures.**

### **Article 140b**

#### **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 25 Paragraph (6) of this Code within three days of receipt of the appeal. An appeal shall not stay the execution of decision.**

#### **Article 140c**

##### **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 140d**

##### **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 140e**

##### **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 140f**

##### **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 140g**

##### **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 139, 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.**

## **Section 5 - BAIL**

### **Article 141 Bail Conditions**

The accused who is to be placed in custody or has already been placed in custody only due to the risk that he will flee may be allowed to remain at liberty or may be released if he personally gives a recognizance or someone else on his behalf furnishes a surety that he will not flee before the end of the criminal proceedings and the accused himself pledges that he will not conceal himself and will not leave his residence without permission.

### **Article 142 The Contents of Bail**

- (1) Bail shall always be expressed as an amount of money that is set on the basis of the seriousness of the criminal offense, the personal and family circumstances of the accused, and the property situation of the person posting bail.
- (2) Bail consists of depositing money, securities, valuables or other personal property of a large value that is easily marketable and easily maintained, or of placing a mortgage for the amount of bail on real estate belonging to the person posting bail, or of a personal pledge of one or more individuals that they will pay the amount of bail that has been set should the accused flee.
- (3) A person posting bail shall submit evidence on his financial resources, origin of the property and ownership of the property or right of possession of the property posted as bail.
- (4) If the accused flees, a decision shall be issued ordering that the amount posted as bail shall be credited to the Federation Budget.

### **Article 143 Revocation of Bail**

- (1) Notwithstanding the bail posted, the accused shall be placed in custody if without justification he fails to appear when duly summoned, if he is preparing to flee or if another legal ground for his custody occurs after he has been released.
- (2) In a case referred to in Paragraph 1 of this Article, the bail bond shall be revoked. The money, valuables, securities or other personal property deposited shall be returned, and the mortgage shall be removed. The same procedure shall be followed when the criminal proceedings terminate with a legally binding decision to dismiss proceedings or with a verdict.

- (3) If a prison sentence is pronounced in the verdict, the bail bond shall be revoked only when the convicted person begins to serve the sentence.

#### **Article 144**

##### **Decision on Bail**

In the course of an investigation, a decision on bail and the revocation of the bail shall be issued by the preliminary proceedings judge, and after the issuance of an indictment – by a preliminary hearing judge, and after the case has been submitted to the judge or the Panel for the purpose of scheduling the main trial – by that judge or the presiding judge. A decision setting the bail and a decision revoking the bail shall be taken following the hearing of the prosecutor.

#### **Section 5a - House Arrest with Electronic Monitoring**

**Comment [F2]:** The provisions under Articles 144a, 144b, 144c, 144d, and 144e shall be applicable six months from the day this Code enters into force.

##### **Article 144a**

##### **(Conditions for Ordering House Arrest with Electronic Monitoring)**

- (1) Upon a reasoned motion of the prosecutor, house arrest with electronic monitoring may be ordered against a suspect or an accused if there exist a grounded suspicion that s/he committed a criminal offense and if there exist one or more reasons referred to in the Article 146 Paragraph 1, items a), c), and d) of this Code if the purpose of ordering and/or extending custody may be achieved by the application of house arrest with electronic monitoring.
- (2) The motion by the prosecutor referred to in the Paragraph 1 of this Article shall also contain the information on the technical feasibility of the application of the house arrest with electronic monitoring.
- (3) Court may also order house arrest with electronic monitoring when deciding upon a motion by the prosecutor for ordering or extending custody, if the conditions referred to in the Paragraphs 1 and 2 of this Article are met.
- (4) House arrest with electronic monitoring may be ordered after the court heard a suspect or an accused about the circumstances surrounding the grounds for proposed custody.
- (5) House arrest with electronic monitoring consists of prohibiting the suspect or accused to leave the premises he occupies without permission and, when necessary, of determining the conditions under which he will stay on the premise, such as prohibiting him to maintain contacts with certain persons. When ordering house arrest with electronic monitoring the suspect or accused shall be warned that in case of violating certain obligations a custody against him may be ordered.
- (6) The provision referred to in the Paragraph 5 of this Article shall not be applicable to the suspect or the accused and his defence attorney.



- (7) As an exception to the Paragraph 5 of this Article the suspect or the accused may leave the premises even without permission if this is necessary for emergency medical intervention on him/her or persons s/he lives with on the premises and/or to avoid or prevent grave danger to life or limb of people and/or property on a larger scale. The suspect or the accused must immediately inform the court or the prosecutor about leaving the premises s/he occupies, reasons for it, as well as his current location.
- (8) House arrest with electronic monitoring shall not be ordered against a suspect or an accused for whom there is a grounded suspicion that s/he committed criminal offenses against marriage, family, and youth against the persons with whom s/he lives in the same household.
- (9) The time, which a suspect or an accused spent in a house arrest with electronic monitoring shall be included in the time of custody or credited to his sentence, should a sentence be pronounced.

#### **Article 144b**

##### **(Ordering House Arrest with Electronic Monitoring)**

- (1) Provisions under Articles 148 and 149 of this Code shall be applied to ordering and extending of house arrest with electronic monitoring and its duration.
- (2) Provisions under Article 151 of this Code shall be applied to ordering and extending of house arrest with electronic monitoring and its duration after the confirmation of the indictment.
- (3) Provisions under Article 152 of this Code shall be applied to ordering and extending of house arrest with electronic monitoring and its duration after pronouncing the verdict.

#### **Article 144c**

##### **(Termination of House Arrest with Electronic Monitoring)**

- (1) The duration of house arrest with electronic monitoring must be reduced to the shortest necessary time.
- (2) Throughout the proceedings, house arrest with electronic monitoring shall be terminated as soon as the grounds for which it was ordered cease to exist.
- (3) Upon proposal of the suspect or the accused or defence attorney for termination of house arrest with electronic monitoring that is based on new facts, the court shall hold the hearing about which the parties and defence attorney shall be notified. Absence of duly summoned parties and defence attorney does not prevent the hearing from being held. An appeal against the decision on rejecting proposal for termination of house arrest with monitoring is not allowed.

#### **Article 144d**

**(Appeal against Decision on Ordering, Extending and Terminating House Arrest with Electronic Monitoring)**

- (1) Parties and defence attorney may appeal the decision ordering, extending or terminating house arrest with electronic monitoring, and the prosecutor may also appeal the decision rejecting the motion for ordering the measure.
- (2) Provisions under the Articles 148 through 152 shall be applied accordingly to the deadlines and competence for deciding on appeal.
- (3) An appeal does not stay the execution of the decision.

**Article 144c**

**(Execution of House Arrest with Electronic Monitoring)**

- (1) Installation and removal of equipment for electronic monitoring shall be carried out by the competent institution's specialist.
- (2) The specialist referred to in the Paragraph 1 of this Article shall give instructions to the suspect or the accused on the way the equipment operates.
- (3) The specialist referred to in the Paragraph 1 of this Article shall handle the equipment for remote monitoring of the movements of the suspect or the accused and shall, without delay, inform the court and the prosecutor of any violation of obligations by the suspect or the accused.
- (4) Electronic monitoring is carried out by the institution competent for the execution of prison sentences or other institution prescribed by a special law.
- (5) The decision on ordering, extending or terminating house arrest with electronic monitoring shall be delivered without delay to the police authority that has jurisdiction in the area where the measure is being executed, which is authorized to directly check the compliance with obligations ordered by the house arrest with electronic monitoring. If the suspect or the accused does not comply with the ordered obligations, the competent police authority shall inform the court and the prosecutor about it immediately.
- (6) Court may at any time order the verification of the measure of house arrest with electronic monitoring and request a report from the police authority referred to in the Paragraph 5 of this Article.
- (7) The Federation Minister of Justice shall issue a Book of Rules on Executing House Arrest with Electronic Monitoring within 30 days of this Code entering into force.
- (8) Unless otherwise prescribed by the Law on Execution of Criminal Sanctions in the Federation of Bosnia and Herzegovina, the costs of the execution of house arrest with electronic monitoring shall be borne by the canton.

## Section 6 - CUSTODY

### Article 145

#### **Ordering Custody**

- ~~(1) Custody may be ordered only under the conditions prescribed by this Code and only if the same purpose cannot be achieved by another measure.~~
- ~~(2) The duration of custody must be reduced to the shortest necessary time. It is the duty of all bodies participating in criminal proceedings and of agencies extending them legal assistance to proceed with particular urgency if the suspect or the accused is in custody.~~
- ~~(3) Throughout the proceedings, custody shall be terminated as soon as the grounds for which it was ordered cease to exist, and the person in custody shall be released immediately.~~

#### **General Provisions**

- (1) Custody may be ordered or extended only under the conditions prescribed by this Code and only if the same purpose cannot be achieved by another measure.**
- (2) Custody shall be ordered or extended by a decision of the Court issued on the motion of the Prosecutor after the Court heard the suspect or accused about circumstances surrounding the grounds for proposed custody, except in a case prescribed by Article 146, Paragraph 1, Item a) of this Code.**
- (3) The Prosecutor shall submit to the Court a reasoned proposal for extension of custody latest five days before expiration of a deadline from the decision on ordering custody. The Court shall submit the proposal to suspect or accused and his defence attorney.**
- (4) The duration of custody must be reduced to the shortest necessary time. It is the duty of all authorities participating in criminal proceedings and of agencies extending them legal aid to proceed with particular urgency if the suspect or the accused is in custody.**
- (5) Throughout the proceedings, custody shall be terminated as soon as the grounds for which it was ordered cease to exist, and the person in custody shall be released immediately. Upon proposal of the accused or defence attorney for termination of custody that is based on new facts, the Court shall hold the hearing or panel session about which the parties and defence attorney shall be notified. Absence of duly summoned parties and defence attorney do not prevent the hearing or panel session from being held. The appeal against the decision on rejecting proposal for termination of custody is not allowed.**

## **Article 146**

### **Grounds for Pre-trial Custody**

- (1) If there is a grounded suspicion that a person has committed a criminal offense, custody may be ordered against him:
- a) if he hides or if other circumstances exist that suggest a possibility of flight;
  - b) if there is a justified fear to believe that he will destroy, conceal, alter or falsify evidence or clues important to the criminal proceedings or if particular circumstances indicate that he will hinder the inquiry by influencing witnesses, accessories or accomplices;
  - c) if particular circumstances justify a fear that he will repeat the criminal offense or complete the criminal offense or commit a threatened criminal offense, and for such criminal offenses a prison sentence of<sup>15</sup> ~~five (5)~~ **three** years or more may be pronounced;
  - d) ~~if the criminal offense is punishable by a sentence of imprisonment of ten (10) years or more, where the manner of commission or the consequence of the criminal offense requires that custody be ordered for the reason of public or property safety. If the criminal offense concerned is the criminal offense of terrorism, it shall be considered that there is refutable presumption that the safety of public and property is threatened~~ **in exceptional circumstances, related to criminal offence for which a prison sentence of ten years or more severe punishment may be pronounced, which is of particular gravity taking into account the manner of perpetration or consequence of the criminal offense, if the release would result in an actual threat to disturbance of public order..**
- (2) In a case of Item b), Paragraph 1 of this Article, custody shall be cancelled once the evidence for which the custody was ordered has been secured.

## **Article 147**

### **Citizen's Arrest**

A private person caught committing a criminal offense may be arrested by another private person. The person who is so arrested shall be immediately turned over to the court, prosecutor or to the nearest police authority, and if this may not be done, the court, prosecutor or the police must be notified about it immediately.

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<sup>15</sup> OG FBiH 28/05: In Article 146, paragraph 1c. word "at least" was deleted.

## **Article 148**

### **Competence for Ordering Custody**

- (1) Custody shall be ordered by a decision of the court and on the motion of the prosecutor.
- (2) A decision on custody shall contain: the first and last name of the person being taken into custody, the criminal offense with which he is charged, the legal basis for custody, explanation, instruction as to the right of appeal, the official seal and the signature of the judge ordering custody.
- (3) A decision on custody shall be delivered to the pertinent person at the moment of deprivation of liberty. The files must indicate the hour of the deprivation of liberty and the hour of the delivery of the decision.
- (4) The person taken into custody may appeal against the decision on custody with the panel (Article 25, Paragraph 6) within 24 hours of the receipt of the decision. If the person taken into custody is questioned for the first time after the expiration of this period, he may file an appeal during the questioning. The appeal with a copy of the record of questioning, if the person in custody has been questioned, and **evidences on which the decision on custody has been grounded as well as** the decision on custody shall be submitted immediately to the Panel. An appeal shall not stay the execution of the decision.
- ~~(5) If the preliminary proceedings judge or preliminary hearing judge does not accept the motion of the prosecutor to order custody, he shall request that the panel (Article 25, Paragraph 6) decide the issue. Against the decision of the Panel ordering custody, the person taken into custody may file an appeal, which does not stay the execution of the decision. With respect to the delivery of the decision and the filing of an appeal, the provisions of Paragraphs 3 and 4 of this Article shall apply.~~
- ~~(6)~~ **(5)** In cases **case** referred to in Paragraphs **Paragraph** 4 and 5 of this Article, the Panel deciding the appeal shall take a decision within 48 hours.

## **Article 149**

### **Duration of Investigative Custody**

- (1) Before taking a decision ordering custody, the preliminary proceedings judge shall review whether there are grounds for a motion to order custody. Upon the decision of the preliminary proceedings judge, custody may last no longer than one (1) month following the date of deprivation of liberty. After that period, the suspect may be kept in custody only on the basis of a decision extending the custody.
- (2) Custody may be extended, upon a decision of the panel (Article 25, Paragraph 6), following a reasoned motion of the prosecutor, for no longer than two (2) months. An appeal against the decision of the Panel shall be allowed. An appeal does not stay the execution of the decision.

- (3) If the proceedings are ongoing for the criminal offense for which a prison sentence of ten (10) years or more may be pronounced, and if there are particularly important reasons, custody may be extended by the Panel ~~of the Supreme Court of the Federation~~ referred to in paragraph 2 of this Article following a reasoned motion of the prosecutor, for no longer than three (3) months. An appeal against the decision of the Panel shall be allowed but shall not stay the execution.
- (4) Exceptionally and in an extraordinarily complex case concerning a criminal offense for which a long-term imprisonment is prescribed, custody may again be extended for no longer than three (3) months after the extension of the custody referred to in paragraph 3 of this Article. Such an extension may occur twice consecutively, following a substantiated motion of the Prosecutor for each extension, which needs to contain the statement of the Collegium of the Prosecutor's Office about the necessary measures that have to be undertaken in order to complete the investigation (Article 240, ~~Paragraph 3~~ Paragraph 2). An appeal against the decision of the Panel ~~of the Supreme Court of the Federation~~ referred to in paragraph 2 of this Article on the custody extension does not stay the execution of the decision.<sup>16</sup>
- (5) If, before the expiration of the deadlines referred to in Paragraph 1 through 4<sup>17</sup> of this Article, an indictment has not been brought for confirmation, the suspect shall be released.

#### **Article 150** **Termination of Custody**

- (1) In the course of the investigation and before the expiration of custody, the preliminary proceedings judge may terminate custody by decision after the prosecutor is heard. The prosecutor may file an appeal against the decision to the panel referred to in Article 25, Paragraph 6. The panel shall reach a decision within 48 hours.
- (2) ~~No appeal is allowed against the decision rejecting the motion for termination of the custody.~~

#### **Article 151** **Custody after the Confirmation of the Indictment**

- (1) After the confirmation of indictment, custody may be ordered, extended or terminated. The review of justification of the custody shall be carried out upon the expiration of each two (2) month period following the date of issuance of the most

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<sup>16</sup> OG FBiH (27/07) 53/07

<sup>17</sup> OG FBiH (27/07) 53/07

recent decision on custody. The appeal against this decision shall not stay its execution.

- (2) After the confirmation of an indictment and before the first instance verdict is pronounced, the custody may not last longer than:
- a) one year in the case of a criminal offense for which a punishment of imprisonment for a term up to five years is prescribed;
  - b) one year and six months in the case of a criminal offense for which a punishment of imprisonment for a term up to ten years is prescribed;
  - c) two years in the case of a criminal offense for which a punishment of imprisonment for a term exceeding ten years may be imposed, but not the long-term imprisonment;
  - d) three years in the case of a criminal offense for which a punishment of long-term imprisonment is prescribed<sup>18</sup>.
- (3) If, during the period referred to in Paragraph 2 of this Article, no first instance verdict is pronounced, the custody shall be terminated and the accused released<sup>19</sup>.
- ~~(4) After the pronouncement of the first instance verdict, custody may last for no longer than another nine (9) months. If during that time no second instance verdict is pronounced reversing or confirming the first instance verdict, custody shall be terminated and the accused released. If within nine (9) months a second instance verdict is pronounced reversing the first instance verdict, the custody shall last for no longer than another year after pronouncement of the second instance verdict<sup>20</sup>.~~
- ~~(5) In any event, custody shall be terminated upon the expiration of the verdict pronounced<sup>21</sup>.~~

## Article 152

### ~~Ordering Custody after the Verdict is Pronounced~~

~~(1) When the court pronounces a sentence of imprisonment against an accused, the court shall order custody against the accused or the custody shall be extended if there exist the grounds referred to in Article 146, Paragraph 1, Items a), c) and d) of this Code. The custody shall be terminated if the grounds for which the custody was pronounced no longer exist. In this case, a separate decision shall be issued, and appeal against such decision shall not stay its execution. When the Court pronounces a sentence of imprisonment against an accused, the Court may order custody to the accused or the custody shall be extended if that is necessary in order to ensure an~~

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<sup>18</sup> OG FBiH (27/07) 53/07

<sup>19</sup> OG FBiH (27/07) 53/07

<sup>20</sup> OG FBiH (27/07) 53/07

<sup>21</sup> OG FBiH (27/07) 53/07

~~unhindered conduct of the criminal proceedings, while taking into account all the circumstances related to the commission of the criminal offence and the personality of the perpetrator. If the sentence pronounced is imprisonment of five years or longer, the Court shall order or extend custody immediately. In such case, a special decision shall be issued, and an appeal from such decision shall not stay its execution<sup>22</sup>. When the court pronounces a sentence of imprisonment against an accused, it may order or extend custody if that is necessary for ensuring unobstructed criminal proceedings and taking into account all circumstances related to perpetration of the offence and/or the personality of the perpetrator. In such case, a separate decision shall be issued, and an appeal against such decision shall not stay its execution.~~

- (2) Custody shall be terminated and release of the accused ordered if he has been acquitted or if the charges against him have been rejected **for the reasons other than lack of jurisdiction of the Court** or he has been found guilty but released from punishment or he has only been fined or conditionally sentenced or, due to crediting the time in custody, he has already served the sentence.
- (3) ~~Custody ordered or extended pursuant to the provisions of Paragraph 1 of this Article may last until committing the person to serve the sentence<sup>23</sup> but no longer than until the expiration of the period of sentence pronounced in the legally binding verdict<sup>24</sup>. After pronouncing the first instance verdict, the custody may last no longer than additional nine months. If during that period no second instance verdict to alter or sustain the first instance verdict is pronounced, the custody shall be terminated and the accused shall be released. If within the nine months the second instance verdict is pronounced reversing the first instance verdict, the custody shall last for no longer than another year after pronouncement of the second instance verdict. Exceptionally, in complex cases and for important reasons the panel may extend custody for additional six months<sup>25</sup>.~~
- (4) At the request of the accused, who is in custody after a sentence of imprisonment has been pronounced on him, a judge or the presiding judge may by a decision commit the accused to a penitentiary institution for serving the sentence even before the verdict becomes legally binding.

**(5) Custody shall always be terminated upon the expiration of the pronounced sentence.**

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<sup>22</sup> OG FBiH 12/10

<sup>23</sup> OG FBiH (27/07) 53/07

<sup>24</sup> OG FBiH (27/07) 53/07

<sup>25</sup> OG FBiH 12/10



**(6) The accused placed in custody against whom a sentence of imprisonment has become legally binding, shall remain in custody until he/she is sent to prison but not after the expiration of the prison term he has received.**

### **Article 153 Deprivation of Liberty**

- (1) Police may deprive a person of liberty if there are grounds for suspicion<sup>26</sup> that he has committed a criminal offense and if there are any of the reasons referred to in Article 146 of this Code, but must immediately and no later than within 24 hours, bring that person before the prosecutor. In apprehending the person concerned, the police authority shall notify the prosecutor of the reasons for and time of the deprivation of liberty. The use of reasonable force is allowed when apprehending the person.
- (2) A person deprived of liberty must be instructed in accordance with Article 5 of this Code.
- (3) If a person deprived of liberty is not brought before the prosecutor within the period as specified in Paragraph 1 of this Article, he shall be released.
- (4) The prosecutor is obliged to question the apprehended person without delay, and no later than within 24 hours. The prosecutor shall decide within that time whether he will release the apprehended person or file the request for custody of the person in question to the preliminary proceedings judge. The preliminary proceedings judge shall immediately, and no later than within 24 hours, issue a decision on custody or on releasing of the apprehended person.
- (5) If the preliminary proceedings judge rejects the request for the custody, he shall act in accordance with Paragraph 5 of Article 148 of this Code.
- (1) The police may deprive a person of liberty if there are grounds for suspicion that he may have committed a criminal offence and if there are any of the reasons as referred to in Article 146 of this Code, but they must immediately, but no later than 24 hours, bring that person before the Prosecutor. In apprehending the person concerned, the police authority shall notify the Prosecutor of the reasons for and time of the deprivation of liberty. The use of force in accordance with law is allowed when apprehending the person.**
- (2) As an exception to Paragraph (1) of this Article, for crimes of terrorism, the person must be brought before the Prosecutor, at latest, within 72 hours.**
- (3) A person deprived of liberty must be instructed in accordance with Article 5 of this Code.**
- (4) If a person deprived of liberty is not brought before the Prosecutor within the period specified in Paragraphs 1 and 2 of this Article, he shall be released.**

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<sup>26</sup> OG FBiH 56/03

- (5) The Prosecutor shall be obliged to question the apprehended person without delay and no later than 24 hours and decide within that time whether he will release the apprehended person or file the reasoned request for custody of the person in question to the preliminary proceeding judge ensuring that the person is brought before the judge.**
- (6) The preliminary proceedings judge shall immediately, and no later than within 24 hours, issue a decision on request for custody order.**
- (7) If the preliminary proceedings judge rejects the proposal for the custody, he shall issue a decision rejecting the request and shall immediately release the person. The Prosecutor may file an appeal against decision of the preliminary proceeding judge, which does not stay the execution of the decision.**
- (8) The person taken into custody may appeal the decision on custody, which does not stay the execution of the decision.**
- (9) In the case referred to in paragraphs (7) and (8) of this Article, the Panel referred to in Article 25 Paragraph (6) of this Code shall decide on the appeal and is obliged to issue a decision within 48 hours of receipt of the appeal by the Court.**

## **Section 7 - EXECUTION OF CUSTODY AND PROCEDURE WITH PERSONS TAKEN INTO CUSTODY**

### **Article 154 General Provisions**

Custody shall be executed in the institutions so designated by the Federal Minister of Justice. The task of execution of custody may be performed only by those employees of the Federal Ministry of Justice who have the necessary knowledge and skills and professional qualifications as prescribed by law.

### **Article 155 The Rights and Freedoms of Persons Taken into Custody and Data on Them**

- (1) Custody must be executed in such a manner as not to offend the personal integrity and dignity of the accused. In executing custody, authorized officials of the Judicial Police and guards of the institution may use means of force only in cases prescribed by law.
- (2) The rights and freedoms of the person taken into custody may be restricted only insofar as it is necessary to achieve the purpose for which custody has been ordered and to prevent the flight of the person taken into custody, commission of a criminal offense or endangerment to the life and health of people.
- (3) The administration of the institution shall collect, process and store data on the person taken into custody, including data concerning the identity of the person in custody

and his psycho-physical condition, the duration, extension and termination of his custody, the work performed by the person in custody, and his behavior and disciplinary measures applied.

- (4) Custody records concerning detainees shall be kept by the Federal Ministry of Justice.

#### **Article 156** **Accommodation of Persons in Custody**

Persons in custody shall be accommodated in rooms of appropriate sizes that satisfy required health conditions. Individuals of different sexes may not be accommodated in the same room. As a general rule, persons in custody shall not be put in the same room with persons serving a sentence. A person taken into custody shall not be accommodated together with persons who might have an adverse influence on him or with persons whose company might have adverse influence on the conduct of the proceedings.

#### **Article 157** **Special Rights of Persons Taken into Custody**

- (1) Persons in custody have the right to eight (8) hours of uninterrupted rest within each 24-hour period. In addition, they shall be guaranteed at least two (2) hours of walking in the open air daily.
- (2) A person in custody shall be allowed to have personal belongings and hygienic items in his possession, and shall also be allowed to procure at his own expense books, newspapers and other printed media. A detainee shall also be allowed to keep other objects in such a quantity and size so as not to disturb the living environment in the room and the internal regulations of the detention facility. When a person is admitted to custody, objects related to the criminal offense shall be seized from him during the search of his person, and any other objects that the detainee is not allowed to have in his possession while in custody shall be put aside and stored according to his instruction or delivered to a person designated by him.

#### **Article 158** **Right to Communication of Persons in Custody with the Outside World and Defense Attorneys**

- (1) Upon the approval of the preliminary proceedings judge or the preliminary hearing judge and under his supervision or the supervision of a person designated by him, the detainee may receive visits from his spouse or cohabitee or relatives, and at his request, from a physician and other persons subject to internal regulations of the custody. Certain visits may be prohibited if they could detrimentally affect the conduct of the proceedings.

- (2) The preliminary proceedings judge or the preliminary hearing judge shall allow a consular official of a foreign country to visit the person in custody who is a citizen of that country, subject to the internal regulations of the detention facility.
- (3) ~~A detainee may correspond with persons not in custody with the knowledge and under supervision of the preliminary proceedings judge, the preliminary hearing judge, the judge or the presiding judge. A detainee may be prohibited from sending and receiving letters and other mail, but not from sending a motion, complaint or appeal.~~ **A detainee may have confidential correspondence with any other person. Exceptionally, the Court may issue decision on supervision of such confidential correspondence if so required by the interests of the proceedings. Appeal against this decision is allowed, which does not stay the execution of the decision. A detainee cannot be prohibited from sending a request, complaint or appeal.**
- (4) A detainee shall be prohibited from using a cellular phone but shall have the right, subject to internal regulations of the detention facility, to make telephone calls at his own expense. To that end, the detention facility administration shall provide the detainees with a sufficient number of public telephone connections. The preliminary proceedings judge, the preliminary hearing judge, the single trial judge or the presiding judge may, for reasons of security or due to the existence of one of the reasons referred to in Article 146 Paragraph 1 Item a) through c), of this Code restrict or prohibit, by a decision, the use of the telephone by a detainee.
- (5) A detainee shall be entitled to free and unrestricted communications with his defense attorney.

#### **Article 159** **Disciplinary Violations of a Detainee**

- (1) The preliminary proceedings judge, the preliminary hearing judge, the single trial judge or the presiding judge may, at the proposal of the manager of the institution, impose a disciplinary penalty of restriction of visits and correspondence for a disciplinary violation by a detainee. This restriction shall not apply to the communications of the detainee with the defense attorney or contacts with a consular official.
- (2) A disciplinary violation includes any serious violation pertaining to:
  - a) physical attack on other detainees, employees or authorized persons, or insult of these persons;
  - b) making, receiving, importing or smuggling objects for attack or escape;
  - c) bringing into the institution or preparation in the institution of a narcotic substance or alcohol;
  - d) breach of rules on safety at work, fire protection and prevention of consequences of natural disasters;
  - e) intentional causing of serious material damage;
  - f) indecent behavior in front of other detainees or authorized persons.

- (3) Within 24 hours, an appeal with the panel referred to in Article 25, Paragraph 6 shall be allowed against a decision imposing a disciplinary measure. An appeal shall not stay the execution of the decision.
- (4) The administration of the detention facility shall immediately notify the court of the application of disciplinary measures to the detainee.

#### **Article 160** **Supervision of the Execution of Custody**

- (1) Supervision over the execution of custody shall be carried out by the president of the court.
- (2) The president of the court or a judge designated by him shall be obliged to visit detainees at least once in 15 days, and if he considers necessary, shall inquire, without the presence of the Judicial Police, regarding how the detainees are fed, how other needs are satisfied and how detainees are treated. The president of the court or a judge designated by him shall be obliged to take necessary measures to remedy irregularities noticed during the visit to the detention facility. The president of the court may not delegate supervision over the execution of custody to the preliminary proceedings judge or the preliminary hearing judge.
- (3) Notwithstanding the supervision referred to in Paragraph 2 of this article, the president of the court, the preliminary proceedings judge, the preliminary hearing judge, the single trial judge or the presiding judge may visit the detainees at all times, may talk to them and may hear their complaints.

#### **Article 161** **Internal Regulations of Detention Facility**

The Federal Minister of Justice shall issue internal regulations for the detention facility which shall regulate in detail the execution of custody in accordance with the provisions of this Code.

### **CHAPTER XI** **SUBMISSIONS, RECORDS AND TRANSCRIPTS**

#### **Article 162** **~~Manner of Filing of Submissions~~ Filing and Emendation of Submissions**

- (1) Bills of indictment, motions, legal remedies and other statements and communications shall be submitted in writing or given orally for entry into the minutes.
- (2) A submission referred to in Paragraph 1 of this Article must be comprehensible and shall contain all that is necessary in order to be acted upon.

- (3) Unless otherwise determined by this Code, the person filing a submission that is incomprehensible or does not contain all that is necessary for action on the submission, shall be summoned by the court to correct or supplement the submission; should he not do so within a specified period, the court shall reject the submission.
- (4) The summons to correct or to supplement the submission shall warn the person who filed the submission about the consequences of his failure to correct or to supplement it.

#### **Article 163**

##### **Delivery of the Submission to the Opposing Party**

- (1) Submissions that under this Code must be delivered to the opposing party in the proceedings shall be delivered to the court in a sufficient number of copies for the court and the other party.
- (2) If such submissions have not been filed with the court in a sufficient number of copies, the court shall summon the submitting party to file a sufficient number of copies within a specified period of time. If the submitting party fails to act as ordered by the court, the court shall make a transcript or photocopy the necessary number of copies at the expense of the submitting party.

#### **Article 164**

##### **Punishing Persons Insulting the Court**

The court shall impose a fine of up to 5,000 KM against a prosecutor, defense attorney, attorney in fact, legal representative or injured party who in a submission or verbal statement insults the court. An appeal is allowed against this decision. The High Judicial and Prosecutorial Council of ~~the Federation of~~ Bosnia and Herzegovina shall be informed of the penalty pronounced against the prosecutor, and the appropriate Bar Association shall be informed of a penalty pronounced against an attorney.

#### **Article 165**

##### **Obligation to Take Record of Proceedings**

- (1) A record shall be taken for each step in the course of criminal proceedings at the time when such a step is being taken; if this is not possible, then it shall be done immediately thereafter.
- (2) The record shall be kept by the record taker. Only when a search is made of a dwelling or person or when an action is taken outside the official premises of the respective body or agency, and the record taker is not available, may the record be drawn up by the person undertaking the action.
- (3) When the record is made by the record taker, the record taker shall make the record in such a manner that the person taking the action shall inform the record taker aloud what shall be entered in the record.

- (4) A person being questioned shall be allowed to state his answers for the record in his own words. This right may be denied if it is abused.

#### **Article 166**

##### **Contents of the Minutes/Record of Proceedings**

- (1) The entry in the minutes/record of proceedings shall include: the name of the body before which the action is being taken, the venue where the action is being taken, the date and the hour when the action began and ended, the first and last names of the persons present and the capacity in which they are present, and an identification of the criminal case in which the action/proceeding is being taken.
- (2) The record should contain the essential information about the course and content of the action taken. The questions and responses shall be entered in the records verbatim. If physical objects or papers are seized in the course of the action, this shall be indicated in the record, the articles taken shall be attached to the record, or the place where they are being kept shall be indicated.
- (3) In the conduct of proceedings such as an inquest at the crime scene, search of a dwelling or person, or the identification of persons or objects, information that is important in view of the significance of that action or for establishing the identity of certain articles, including description, dimensions and size of an article or traces and labeling articles, shall also be entered in the record; if sketches, drawings, layouts, photographs, films, and the like are made, this shall be entered in the record, and they shall be attached to the record.

#### **Article 167**

##### **Taking Down the Record of Proceedings**

- (1) The record of proceedings must be kept in a correct way; nothing in the record of proceedings may be deleted, added or amended. Parts that are crossed out must be left legible.
- (2) All changes, corrections, and additions shall be noted at the end of the record of proceedings and must be certified by the persons signing the record of proceedings.

#### **Article 168**

##### **Reading and Signing the Record of Proceedings**

- (1) The suspect or accused or other person being questioned, the defense attorney and the injured party shall be entitled to read the record of proceedings or to demand that they be read to him. The person conducting the proceedings must make the said individuals aware of this right, and it shall be noted in the record of proceedings whether they have been so informed and whether the record of proceedings have been read. The record of proceedings shall always be read if the record of proceedings taker was not present, and that shall be indicated in the record of proceedings.

- (2) The record of proceedings shall be signed by the person being questioned. If the record of proceedings consist of more than one folded sheet, the person being questioned shall sign each folded sheet.
- (3) The record of proceedings shall be signed at the end by the interpreter, if any, by witnesses whose presence was compulsory during the conduct of investigative actions, and, during a search, by the person searched or the person whose dwelling was searched. If the record of proceedings is not kept by the record taker, the record of proceedings shall be signed by persons present on the occasion of the action. If there are no such persons, or if persons present are unable to understand the contents of the record, the record of proceedings shall be signed by two witnesses, except in cases where it has not been possible to provide for their presence.
- (4) An illiterate person shall place the print of the index finger of his right hand in place of a signature, and the record taker shall enter the person's first and last name underneath the fingerprint. If the print is of some other finger or a print of a finger of the left hand is made because it is not possible to make a fingerprint of the right index finger, the record of proceedings shall indicate the finger and hand from which the print was taken.
- (5) If the person being questioned refuses to sign the record of proceedings or to place his fingerprint, this shall be noted in the record of proceedings along with the reason for the refusal.
- (6) If the person being questioned has neither hand, he shall read the record of proceedings, and if he is illiterate the record of proceedings shall be read to him, and this shall be noted in the record of proceedings.
- (7) If the action could not be conducted without an interruption, the record shall indicate the day and hour when the interruption occurred and the day and hour when the action was resumed.
- (8) If there have been objections pertaining to the contents of the record of proceedings, those objections shall also be indicated in the record of proceedings.
- (9) The record of proceedings shall be signed at the end by the person who conducted the action and by the record taker.

## Article 169

### **Tape Audio or Audio-Visual Recording**

- (1) As a general rule, all undertaken actions during the criminal procedure shall be ~~tape~~ **audio or audio-visual** recorded. The prosecutor or authorized official shall inform the person being questioned that the questioning shall be recorded, and inform him that he has a right to ask for a playback of the tape recording in order to verify his statement.
- (2) The tape recording must contain the information referred to in Article 166 Paragraph 1 of this Code, information necessary to identify the individual whose statement is being tape recorded, and information as to the capacity in which that person is making the statement. When the statements of several persons are tape recorded, care must be



taken so that a listener can clearly recognize from the recording who has made the statement.

- (3) The tape recording shall be immediately played back at the request of the person questioned, and the corrections or clarifications of that person shall be tape recorded.
- (4) The record concerning the investigative proceedings shall state that a ~~tape~~ recording was made, shall indicate who made the ~~tape~~ recording, shall state that the person being questioned was informed in advance that the proceedings was being ~~tape~~ recorded and that the ~~tape~~ record was played back, and it shall also indicate where ~~the magnetic tape~~ is kept if it is not attached to the official papers of the case.
- (5) The prosecutor may order that a ~~magnetic tape~~ recording be entirely or partially transcribed. The prosecutor shall examine and certify the transcript and attach it to the record of the investigative proceedings.
- (6) ~~The magnetic tape shall be kept~~ **Recording shall be kept** as long as the criminal file is kept.
- (7) The prosecutor may allow persons with a legitimate interest to ~~electronically~~ **audio or audio-visually** record investigative proceedings.
- ~~(8) The provisions of Paragraphs 1 through 7 of this Article shall also be applied accordingly when an investigative proceeding is filmed or recorded in some other manner.~~
- ~~(9)~~ **(8)** The recordings referred to in Paragraph 1 through ~~8~~ **7** of this Article may not be publicly played without written approval of the parties and other participants in the recorded action.

#### Article 170

##### Appropriate Application of Other Provisions of This Code

The provisions of Articles 268 and 269 of this Code shall also apply to the record of the main trial.

#### Article 171

##### Minutes on Deliberations and Voting

- (1) Separate minutes shall be kept concerning the deliberations and voting process.
- (2) The minutes on the deliberations and voting of the Panel shall contain the course of the voting and the verdict rendered.
- (3) These minutes shall be signed by all the members of the Panel and the record taker. Separate opinions shall be appended to the minutes of the deliberations and voting unless they have been entered in the minutes.
- (4) The minutes concerning the deliberations and voting of the Panel of judges shall be enclosed in a separate envelope. The minutes may be reviewed exclusively by the Panel of the Appellate Division when deciding on legal remedies and in this case the Panel shall be bound to re-enclose the minutes in a separate envelope and indicate on the envelope that it has reviewed the minutes.

## **CHAPTER XII DEADLINES**

### **Article 172 Deadlines for Filing of Submissions**

- (1) The deadlines provided by this Code may not be extended unless explicitly allowed by this Code. If a deadline specified by this Code to protect the right to a defense and other process rights of the suspect or the accused, that deadline may be shortened at the request of the suspect or the accused, in writing, or verbally before the court.
- (2) When a statement must be made within a specified period of time, it shall be assumed that it has been made within the specified period of time if it has been given to the person authorized to receive it before the expiration of that period.
- (3) When a statement has been sent by registered mail or telegraph, the date of mailing or sending shall be taken as the date of delivery to the person to whom it has been sent.
- (4) The suspect or the accused who is in pretrial custody may also make a time- limited statement for the record of the court or deliver it to the administration of the prison, and a person who is serving a prison sentence or who is an inmate in some other institution because of a security measure or correctional measure may deliver such a statement to the administration of the institution in which he is an inmate. The day when the record was made or when the statement was delivered to the administration of the institution as applicable shall be taken as the date of delivery to the body competent to receive it.
- (5) Prior to the expiration of the deadline, if a submission subject to a deadline has been delivered or sent due to ignorance or an obvious mistake of the sender to a court that is not competent, on reaching the court after expiration of the deadline, it shall be considered that it was submitted on time.

### **Article 173 Computing Deadlines**

- (1) Deadlines shall be computed in hours, days, months and years.
- (2) The hour or day when a delivery or communication was made or when an event occurred, which has to serve as the point of commencement of a deadline, shall not be included in the deadline, but the first subsequent hour or day, as applicable, shall be taken as the point of commencement of the period of time. Twenty-four (24) hours shall be taken as a day, but a month shall be computed on the basis of the calendar.
- (3) Deadlines stated in months or years shall expire in the last month or year at the end of the same day of the month or the year on which the period began, as applicable. If there is no such day in the last month, the period shall expire on the last day of that month.

- (4) If the last day of the deadline falls on a state holiday or a Saturday or Sunday, or on any other day when the governmental body in question does not work, the deadline shall expire at the end of the next working day.

#### **Article 174**

##### **Conditions for Allowing Return to *Status Quo Ante***

- (1) If the accused shows good reasons for failing to meet the deadline for making an appeal against a verdict or a decision pronouncing a security measure or correctional measure or a decision to forfeiture the proceeds of crime, the court shall allow return to the *status quo ante* for the purpose of submitting the appeal if, within eight (8) days following termination of the reasons for failing to meet the deadline, the accused submits a request for return to the *status quo ante* and files his appeal simultaneously with the request.
- (2) Return to the *status quo ante* may not be requested if three (3) months have passed from the date of failure to meet the deadline.

#### **Article 175**

##### **Decision on Return to *Status Quo Ante***

- (1) The decision on the return to the *status quo ante* shall be made by the judge or the presiding judge who rendered the verdict or the decision contested by the appeal.
- (2) No appeal shall be permitted against a decision allowing return to the *status quo ante*.

#### **Article 176**

##### **Consequences of Filing a Request for Return to *Status Quo Ante***

As a general rule, a request for return to the *status quo ante* shall not stay execution of a verdict or execution of a decision on security measure or correctional measure or a decision to forfeit the proceeds of crime, but the court may decide to halt the execution until a decision is made on the request.

### **CHAPTER XIII**

#### **RENDERING AND COMMUNICATION OF DECISIONS**

#### **Article 177**

##### **Types of Decisions**

- (1) Decisions shall be rendered in criminal proceedings in the form of a verdict, procedural decision or order.
- (2) A verdict shall be rendered only by a court, while procedural decisions and orders shall also be issued by other bodies participating in criminal proceedings.

## **Article 178**

### **Deciding at the Deliberation and Voting Sessions**

- (1) Decisions of a panel of judges shall be rendered after oral deliberations and voting. A decision has been adopted when a majority of members of the panel have voted in favor of it.
- (2) The presiding judge shall direct both the deliberation and vote and shall cast the final vote. He shall be responsible for ensuring that all issues are examined in a full and comprehensive manner.
- (3) If votes on certain issues have been divided among several different opinions, and if none of them has a majority, the issues shall be separated and the voting shall be repeated until a majority is reached. If no majority has been reached in this manner, the decision shall be adopted by adding those votes that are most unfavorable for the accused to the votes that are less unfavorable until the necessary majority is reached.
- (4) Members of the panel cannot refuse to vote on questions presented by the presiding judge of the panel, but a member of the panel who has voted to acquit the accused or to revoke the verdict and who has remained in the minority shall not be required to vote on the penalty. If he does not vote, it shall be considered that he consented to the vote that was most favorable for the accused.

## **Article 179**

### **Manner of Voting**

- (1) During the adoption of a decision, a vote shall first be taken on whether the court is competent, ~~whether it is necessary to supplement the proceedings,~~ and on other preliminary issues. When a decision has been taken on preliminary issues, the Panel shall begin to consider the main issue.
- (2) During the adoption of a decision on the main issue a vote shall first be taken on whether the accused committed the criminal offense and whether he is criminally responsible, and thereafter a vote shall be taken on the sentence, other criminal sanctions, costs of criminal proceedings, property claims and other issues to be decided.
- (3) If an individual has been charged with several criminal offenses, a vote shall be taken on criminal responsibility and sentences for each criminal offense, and thereafter a vote shall be taken on a single sentence for all criminal offenses.

## **Article 180**

### **Closed Session**

- (1) Deliberations and voting shall be done in a closed session.
- (2) Only members of the panel and a record taker may be present in the room where the court conducts its deliberations and voting.

## **Article 181**

### **Communication of Decisions**

- (1) Unless otherwise prescribed by this Code, decisions shall be communicated to parties by oral announcement if they are present or a certified copy of a decision shall be delivered to them if they are absent.
- (2) If a decision has been orally communicated, this shall be recorded in the relevant record or case file, and the person to whom the decision has been communicated shall confirm this by his signature. If the concerned person declares that he will not appeal, no certified copy of the orally communicated decision shall be delivered to him unless otherwise prescribed by this Code.
- (3) Copies of decisions against which an appeal is permitted shall be delivered, along with the instruction as to the right of appeal.

## **CHAPTER XIV**

### **SERVICE OF COURT PAPERS AND REVIEW OF DOCUMENTS**

## **Article 182**

### **Manner of Service**

- (1) As a general rule, the service of process shall be conducted by mail. The service may also be made through an official person of the body that rendered the decision or directly with that body.
- (2) The court may also communicate a summons to a main trial or other summons orally to a person who is present before the court. Such communication shall include an instruction as to the consequences of a failure to appear. Orally communicated summons shall be noted in the record, which the person summoned shall sign, unless such summons has been recorded in the main trial record. It shall be considered that valid delivery has thereby been made.

## **Article 183**

### **Personal Service**

A writ or notice that under this Code must be personally served shall be served on the person to whom it is directed by actual delivery. If a person on whom a writ or notice must be personally served has not been found where the delivery was to take place, the writ server shall make inquiries as to when and where that person may be found and shall leave with one of the persons under Article 184 of this Code a written notice that the person in question should be in his dwelling or at his workplace at a particular day and hour in order to receive the writ or notice. If even after this the writ server does not find the person to whom the writ or notice is to be delivered, he shall follow the procedure

under the provision of Article 184, Paragraph 1 of this Code, and it shall be assumed that service has been accomplished.

#### **Article 184**

##### **Substituted Service**

- (1) Writs and notices for which this Code does not specify personal delivery shall also be served by actual delivery; but if the recipient is not found at home or at work, such writ or notice may be given to any of adult members of his household, who is obliged to accept the court paper. Should any of the household members not be found at home, the court paper shall be left with a neighbor, if he agrees to accept it. If a writ or notice is delivered to a person at his workplace, and the person concerned has not been found there, the document may be delivered to a person authorized to receive mail, who is obliged to accept the document, or to a person employed at the same workplace, if he agrees to accept it.
- (2) Should it be established that the person to whom a writ or notice is to be delivered is absent and that persons referred to in Paragraph 1 of this Article are therefore not in the position to present the court paper to him in a timely manner, the writ or notice shall be returned with an indication as to whereabouts of the absent person.

#### **Article 185**

##### **Contents of Personally Served Documents**

- (1) The summons for the first examination in the investigation, the summons for the main trial, and the summons to the ~~sentencing~~ **pronouncement of the criminal sanction** hearing shall be personally served on the suspect or accused.
- (2) The indictment, the verdict and other decisions for which the period of time for appeal commences on the date of their service, including the appeal by the opposing party submitted for an answer, shall be personally served on an accused who does not have a defense attorney. At the request of the accused, the verdict and other decisions shall be served on a person designated by him.
- (3) If an accused who does not have a defense attorney is to be delivered a verdict by which a sentence of imprisonment has been pronounced against him, and the verdict cannot be served at his previous address, the court shall *ex officio* appoint an attorney for defense of the accused, who shall perform that duty until the new address of the accused has been ascertained. The appointed defense attorney shall be given the necessary period of time to acquaint himself with the case file, whereupon the verdict shall be served on the appointed defense attorney and proceedings shall resume. If another decision is in question whose date of service becomes the date of commencement of the period of time for an appeal or if it concerns an appeal of the opposing party that is being submitted for an answer, the decision or the appeal shall be posted on the bulletin board of the court, and at the end of eight (8) days from the date of posting it shall be assumed that valid delivery has been made.

- (4) If the accused has a defense attorney, the indictment and all decisions for which the period of time for filing an appeal commences on the date of service, and also the appeal of the opposing party submitted for an answer, shall be served on the defense attorney and the accused in accordance with the provisions of Article 184 of this Code. In such case, the period for pursuing a legal remedy or answering the appeal shall commence on the date when the writ or notice is delivered to the accused or defense attorney. If the decision or appeal cannot be served on the accused because the accused has failed to report a change of address, the decision or the appeal shall be posted on the bulletin board of the court and at the end of eight (8) days from the date of posting it shall be assumed that valid delivery has been made.
- (5) If a writ or notice is to be delivered to the defense attorney of the accused, and he has more than one defense attorney, it shall be sufficient to make delivery to one of them.

#### **Article 186**

##### **Certificate of Service**

- (1) The recipient and the person making the delivery shall sign the certificate of service confirming that service has been made. The recipient shall himself indicate the date of service in the certificate of service.
- (2) If the recipient is illiterate or unable to sign his name, the person performing the service on him shall sign on his behalf, shall indicate the date of service, and shall make a note as to why he signed for the recipient.
- ~~(3) Should the recipient refuse to sign the receipt, the person performing the service on him shall make a note to that effect in the certificate of service and shall indicate the date of service, whereby service has been accomplished.~~

#### **Article 187**

##### **Refusal to Receive a Writ**

If the recipient or an adult member of his family refuses to accept the writ, the person making the delivery shall note on the receipt the date, hour and reason for refusal, and shall leave the writ in the dwelling of the recipient or in his workplace, whereby service has been accomplished.

#### **Article 188**

##### **Special Cases of Delivery**

- (1) A writ or notice shall be served on a person deprived of liberty through the court or through the administration of the detention facility where he is an inmate.
- (2) Persons who enjoy the right of immunity in Bosnia and Herzegovina, unless otherwise specified under international treaties, shall be served a writ or notice through the competent Ministry of Bosnia and Herzegovina.

- (3) Bosnia and Herzegovina nationals abroad shall be served a writ or notice through the diplomatic or consular missions of Bosnia and Herzegovina in a foreign country, provided that the foreign state does not oppose this manner of service and that the person being served a writ or notice voluntarily consents to receive it. An authorized person of the diplomatic or consular mission shall sign the receipt as the person making the delivery if the writ or notice is served within the mission office itself, and if the writ or notice is sent by mail, he shall so indicate in the certificate of service.

#### **Article 189** **Service on the Prosecutor**

- (1) Decisions and other writs or notices shall be served on the prosecutor through the registry office of the prosecutor's office.
- (2) In the case of service of decisions for which a period of time commences on the date of service, the date of presentation of the document to the registry office of the prosecutor's office shall be considered as the date of service.

#### **Article 190** **Applicability of Corresponding Provisions of Other Laws**

In cases not prescribed by this Code, the service shall be made according to the provisions that apply to civil actions.

#### **Article 191** **Informing by Way of Telegram or Telephone**

- (1) The persons other than the accused who are participants in the proceedings, may be informed of a summons to a main trial or other summons and of a decision postponing a main trial or other scheduled actions, by way of telegram or telephone if it can be assumed from the circumstances that notice given in that manner will be received by the persons to whom it is addressed.
- (2) An official note shall be made in the record that a summons or decision has been served in the manner provided by Paragraph 1 of this Article.
- (3) The adverse consequences prescribed for failure to take action may ensue for a person who has been informed or to whom a decision was sent under Paragraph 1 of this Article only if it is ascertained that he received in sufficient time the summons or decision and was made aware of the consequences of a failure to act.



## **CHAPTER XV EXECUTION OF DECISIONS**

### **Article 192 Execution of Finally Binding Verdicts**

- (1) A verdict shall become finally binding when it may no longer be contested by an appeal or when no appeal is admissible.
- (2) A finally binding verdict shall be executed if its delivery has been carried out and if there are no legal obstacles to its execution. If an appeal has not been filed, or if the parties have waived or abandoned the filed appeal, the verdict shall be considered enforceable by the expiration of the time period set forth for appeal, or as of the day of the waiving or abandonment of the appeal filed.
- (3) The court shall be competent for the execution of finally binding verdicts.
- (4) If a military ranking official has been convicted, the court shall deliver a certified copy of the finally binding verdict to the body in charge for the defense in which the convicted person is registered.

### **Article 193 Failure to Collect Fines**

If a fine prescribed by this Code ~~cannot be collected~~ **is not paid within certain deadline**, the court shall proceed in a manner pursuant to the Criminal Code.

### **Article 194 Execution of an Order Concerning the Costs of Proceedings and Forfeiture of Items**

- (1) With respect to the costs of criminal proceedings, forfeiture of the proceeds of crime and property claims, the verdict shall be executed by the court under the provisions that apply to enforcement procedure and that apply on the territory where the delivery of order is to be carried out.
- (2) Forcible collection of the costs of criminal proceedings credited to the Federation Budget shall be carried out *ex officio*. The costs of forcible collection shall be paid first from the court budget.
- (3) If the verdict contains an order for forfeiture of property, the court shall decide whether the property will be sold under the provisions applicable to enforcement procedure, turned over to the criminology museum or some other institution, or destroyed. The proceeds obtained from the sale of such articles shall be credited to the Federation Budget.
- (4) The provision of Paragraph 3 of this Article shall also be applied accordingly when a decision is made to forfeit property on the basis of Article 412 of this Code.

- (5) Aside from the case of reopening/retrial of the criminal case, a finally binding order for forfeiture of property may be revised in a civil action if a dispute arises as to the ownership over the property forfeited.

#### **Article 195**

##### **Other Enforceable Decisions**

- (1) Unless otherwise provided by this Code, decisions shall be executed when they become finally binding. Orders shall be executed immediately unless the issuing body orders otherwise.
- (2) A decision shall become finally binding when it may no longer be contested by an appeal or when no appeal is admissible.
- (3) Unless otherwise specified, decisions and orders shall be executed by the bodies that have rendered those decisions or issued those orders. If, in its decision, a court has pronounced a verdict concerning the costs of criminal proceedings, those costs will be collected under the provisions of Article 194, Paragraphs 1 and 2 of this Code.

#### **Article 196**

##### **Doubts as to whether the Execution is Permissible**

- (1) If doubts arise as to whether execution of a court decision is permissible or as to the computation of a sentence, or if a finally binding verdict failed to make a decision to credit pretrial custody or a previously served sentence, or the computing has not been done correctly, a decision shall be made on those points in a separate decision by the judge or by the presiding judge of the Panel which tried the case in the first instance. An appeal shall not stay execution of the decision unless the court specifies otherwise.
- (2) If doubt arises as to the interpretation of the court decision, the ruling shall be made by the judge or by the Panel of judges that rendered the finally binding decision.

#### **Article 197**

##### **Finality of a Verdict on a Claim under Property Law**

When a decision containing a verdict on a property claim becomes legally binding, at the request of injured party, a certified transcript of the decision shall be issued to him, with a note that the verdict is enforceable.

#### **Article 198**

##### **Criminal Record Regulations**

Regulations on the keeping of criminal records shall be issued by the Federal Ministry of the Interior in agreement with the Federal Minister of Justice.

## CHAPTER XVI COSTS OF CRIMINAL PROCEEDINGS

### Article 199 Types of Costs

- (1) The costs of criminal proceedings are the expenses incurred in connection with criminal proceedings from the time they are instituted until they are completed.
- (2) The costs of criminal proceedings include the following:
  - a) costs for witnesses, expert witnesses, interpreters and specialists and the cost of a crime scene investigation;
  - b) the cost of transporting an accused or a suspect;
  - c) the expenses of requiring a suspect or an accused or a detainee to appear;
  - d) the transportation and traveling expenses of officials;
  - e) expenses of medical treatment of a suspect or an accused while in pretrial custody, including the expenses of childbirth, except for the expenses covered from the health insurance fund;
  - f) costs of technical examination of vehicle, blood sample analysis and transportation of a corpse to the place of autopsy;
  - g) a scheduled amount (*court fee*);
  - h) remuneration and necessary expenses of the defense attorney;
  - i) necessary expenses of an injured party and his legal representative, **as well as remuneration and necessary expenses of his/her attorney in fact.**
- (3) The scheduled amount shall be fixed within the limits of amounts specified by the appropriate regulation based on the duration and complexity of the proceedings and the financial condition of the person required to pay the amount.
- (4) The expenses enumerated under Items a) through f) of Paragraph 2 of this Article and the necessary expenses of an appointed defense attorney shall be paid in advance from the funds of the prosecutor's office or the court, and they shall be collected later from the individuals who are required to reimburse for them under provisions of this Code. The body conducting the criminal proceedings must list all expenses that have been paid in advance and the list shall be appended to the record.
- (5) Costs of interpretation into the language of the party, witness and other participants in the criminal proceedings incurred by enforcing the provisions of this Code shall not be collected from individuals who under the provisions of this Code are required to reimburse for the costs of criminal proceedings.

## **Article 200**

### **Decision Concerning the Costs**

- (1) In every verdict or decision suspending criminal proceedings, a decision shall be made as to who will cover the costs of the proceedings and as to the amount of these costs.
- (2) If data on the amount of costs is not available, a separate decision on the amount of costs shall be made by the court once such data is obtained. The request for the data on the amount of costs may be submitted not later than six (6) months after the day that a finally binding verdict or decision suspending the criminal proceedings is delivered to the person who is entitled to make such a request.
- (3) When the decision on costs of criminal proceedings are contained in a separate decision, an appeal against that decision shall be ruled on by a Panel of the Appellate Division.

## **Article 201**

### **Other Costs**

- (1) The suspect or the accused, defense attorney, legal representative, witness, expert witness, interpreter and specialist, regardless of the results of the criminal proceedings, shall be liable for any costs incurred by police bringing them before the court or postponement of an investigative action or main trial or for any other costs incurred through their own fault and for the corresponding share of the scheduled amount.
- (2) A separate decision shall be rendered concerning the costs referred to in Paragraph 1 of this Article, unless the matter of costs to be paid by the accused is settled in the decision on the main issue.

## **Article 202**

### **Costs of Proceedings when the Accused is Found Guilty**

- (1) When the court finds the accused guilty, it shall declare in the verdict that the accused shall reimburse the costs of criminal proceedings.
- (2) A person who has been charged with several criminal offenses shall not be ordered to reimburse for costs related to criminal offenses of which he has been acquitted if those costs can be determined separately from the total costs.
- (3) In a verdict finding several defendants guilty, the court shall specify what portion of the costs shall be paid by each; but if this is not possible, it shall order that all the defendants be jointly and severally liable for the costs. Payment of the scheduled amount shall be specified for each accused separately.
- (4) In the decision which settles the issue of costs the court may relieve the accused of the duty to reimburse all or part of the costs of criminal proceedings as referred to in

Article 199, Paragraph 2, Items a) through h), of this Code if their payment would jeopardize subsistence of the accused or of persons whom the accused is required to support. If these circumstances are ascertained after the decision on costs has been rendered, the judge may issue a separate decision relieving the accused of the duty to reimburse the costs of criminal proceedings.

#### **Article 203**

##### **Costs of Proceedings in the Event of Dismissal of Proceedings or a Sentence of Acquittal or Rejection of Charges**

- (1) When criminal proceedings are dismissed or when a verdict is rendered that acquits the accused or rejects the charge, the decision or verdict shall pronounce that the costs of criminal proceedings referred to in Article ~~185-199~~ 199, Paragraph 2, Items a) through f) of this Code and the necessary expenditures of the accused and the necessary expenditures and remuneration of defense attorney shall be paid from budget appropriations, except in the cases specified in the Paragraph 2 of this Article.
- (2) A person who deliberately files a false report shall pay the costs of the criminal proceedings.
- (3) When the court rejects the charge because it is not competent, the decision on costs shall be made by the competent court.
- (4) If the request for reimbursement for necessary costs and remuneration referred to in Paragraph 1 of this Article is not approved or the court fails to decide the request within three (3) months following the day of filing the request, the accused and defense attorney shall be entitled to settle their claims against the Federation through the civil action.

#### **Article 204**

##### **Remuneration and Necessary Expenses of the Defense Attorney and Attorney in Fact**

The remuneration and necessary expenses of the defense attorney and attorney in fact must be paid by the person represented regardless of who is ordered to pay the costs of criminal proceedings in the decision of the court, unless under the provisions of this Code the remuneration and necessary expenses of the defense attorney and attorney in fact are to be paid from the court budget. If an attorney was appointed to defend the suspect or the accused, and payment of remuneration and necessary expenses would jeopardize subsistence of the accused or the maintenance of persons whom the accused is required to support, the remuneration and necessary expenses of defense attorney shall be paid from the court budget.

## **Article 205**

### **Costs of the Appellate Proceedings**

It shall be decided in accordance with the provisions of the Articles 199 through 204 of this Code on obligation to pay the costs of the appellate proceedings.

## **Article 206**

### **Separate Regulations Concerning Reimbursement for Costs**

More detailed regulations concerning reimbursement for the costs of criminal proceedings and the scheduled amount shall be issued by the Federal Minister of Justice.

## **CHAPTER XVII**

### **PROPERTY CLAIMS**

## **Article 207**

### **Subject of the Property Claim**

- (1) A property claim that has arisen because of the commission of a criminal offense shall be deliberated on the motion of eligible or authorized person in criminal proceedings if this would not considerably prolong such proceedings.
- (2) A property claim may concern compensation for damage, recovery of items, or annulment of a particular legal transaction.

## **Article 208**

### **Filing a Property Claim**

- (1) A property claim to be adjudicated in criminal proceedings shall be filed only by the person eligible or authorized to pursue that claim in civil proceedings.
- (2) If a criminal offense has caused damage to the property of the Federation, the body empowered by law to protect such property may participate in criminal proceedings in accordance with its powers under that law.

## **Article 209**

### **Property Claim Procedure**

- (1) A property claim to be adjudicated in criminal proceedings shall be filed with the **prosecutor or** court.
- (2) The claim shall be submitted no later than the end of the main trial or sentencing hearing before the court.
- (3) The person eligible or authorized to submit the claim shall specify his demand and shall submit evidence.

- (4) If the eligible or authorized person has not filed the motion to pursue his property claim in criminal proceedings before the indictment is confirmed, he shall be informed that he may file that motion by the end of the main trial or sentencing hearing. If a criminal offense has caused damage to the property of the Federation and no motion has been filed, the court shall so inform the body referred to in Article 208, Paragraph 2 of this Code.
- (5) If the eligible or authorized person does not file the property claim until the end of the main trial or if he moves for a civil action, and the data concerning the criminal proceedings provide a reliable grounds for a complete or partial resolution of the property claim, the court shall order in the judgment of conviction for gained property to be forfeited.

#### **Article 210**

##### **Claim Withdrawal**

- (1) An eligible or authorized person may withdraw a property claim that is to be adjudicate upon in criminal proceedings up to the end of the sentencing hearing and pursue it in a civil action. In the event that a claim has been withdrawn, that same claim may not be filed again unless otherwise provided under this Code.
- (2) If, after a property claim was filed and before the end of the sentencing hearing the property claim has been transferred under the rules of property law to another person, that person shall be summoned to declare whether or not he supports the petition. If he does not appear when duly summoned, he shall be considered to have abandoned the claim.

#### **Article 211**

##### **Obligations of the Prosecutor and the Court in Relation to Finding of Fact**

- ~~(1) The prosecutor has a duty to gather evidence and conduct the investigation necessary for a decision on property claim related to the criminal offense.~~
- ~~(2) The court shall question the accused about the facts related to the petition of the eligible or authorized person.~~
- (1) The Prosecutor has a duty to gather evidence and decide whether the possible claim under property law relates to criminal offence.**
- (2) The Prosecutor or the Court shall question the suspect or the accused in relation to the facts of concern in the petition of authorized officials.**

#### **Article 212**

##### **Ruling on Property Claim**

- ~~(1) The court shall decide property claims.~~ **The Court shall render a verdict on claims under property law. The Court may propose to the injured party or the accused or the defence attorney to carry out the mediation with the assistance of the**

**mediators in accordance with law if it assesses that the mediation can meet the requirements of the claim under property law. The proposal for the mediation can be initiated before the conclusion of the main trial also by the injured party and the accused or the defence attorney.**

- (2) The court may propose mediation through the mediator to the injured party and the accused or to the defense attorney in accordance with law, if the court considers that the property claim is such that it would be beneficial to refer it to the mediation. The injured party, accused and the defense attorney may propose referral to the mediation until the closing of the main trial.
- (3) In a verdict pronouncing the accused guilty, the court may award the injured party the entire property claim or may award him part of the property claim and refer him to a civil action for the remainder. If the data in the criminal proceedings does not provide a reliable basis for either a complete or partial award, the court shall instruct the injured party that he may take civil action to pursue his entire property claim.
- (4) If the court renders a verdict acquitting the accused of the charge or dropping the charges or if it decides to dismiss the criminal proceedings, it shall instruct the injured party that he may pursue his property claim in a civil action.

#### **Article 213**

##### **Decisions to Hand Over the Property to the Injured Party**

If a property claim concerns the recovery of items, and the court finds that the property does belong to the injured party and is in the possession of the accused or one of the participants in the main trial or in the possession of a person to whom those persons gave it for safekeeping, it shall order in the verdict that the item be returned to the injured party.

#### **Article 214**

##### **Decisions to Annul Certain Legal Transactions**

If a property claim pertains to annulment of a specific legal transaction, and the court finds that the motion is well founded, it shall declare in its verdict complete or partial annulment of that legal transaction with the consequences that derive therefrom, without affecting the rights of third parties.

#### **Article 215**

##### **Amending the Decision on a Property Claim**

- (1) A court may revise a finally binding verdict that contains a decision on a property claim only in connection with a reopening of criminal proceedings.
- (2) Notwithstanding cases referred to in Paragraph 1 of this Article, the convicted person or his heirs may seek to revise a court's finally binding verdict containing a decision



on a property claim only in a civil action, as long as grounds exist for reopening under the provisions that apply to civil proceedings.

#### **Article 216**

##### **Interlocutory Orders**

- (1) Interlocutory orders to secure a property claim arising from the commission of a criminal offense may be issued in criminal proceedings according to the provisions that apply to enforcement procedure.
- (2) The decision referred to in Paragraph 1 of this Article shall be made by the court. An appeal is allowed against this decision and it shall be ruled on by the panel referred to in Article 25, Paragraph 6 of this Code. The appeal shall not stay execution of the decision.

#### **Article 217**

##### **Recovery of Property in the Course of the Proceedings**

- (1) If a claim pertains to items that unquestionably belong to the injured party, and they do not constitute evidence in criminal proceedings, those items shall be given to the injured party even before proceedings are completed.
- (2) If the ownership of articles is being disputed by several injured parties, they shall be referred to a civil action, and the court in criminal proceedings shall only order the safekeeping of the items as a temporary security measure.
- (3) Items that serve as evidence shall be seized and at the end of the proceedings shall be returned to the owner. If such an item is urgently needed by the owner, it may be returned to him even before the end of the proceedings, under the provision that it be brought in at the request.

#### **Article 218**

##### **Interlocutory Orders Against Third Parties**

- (1) If an injured party has a claim against a third person because the third person possesses items obtained through a criminal offense or because he gained property as a result of a criminal offense, the court in criminal proceedings, upon the petition of authorized person (Article 208) and according to the provisions that apply to enforcement procedure, may issue, in the criminal proceedings, an interlocutory order even against that third party. The provisions of Article 216, Paragraph 2 of this Code shall apply in this case as well.
- (2) In a judgment of conviction, the court shall either revoke the orders referred to in Paragraph 1 of this Article, if they have not already been revoked, or shall refer the injured party to a civil action, in which case those orders shall be revoked unless the civil action is instituted within the period of time fixed by the court.

## **CHAPTER XVIII MISCELLANEOUS PROVISIONS**

### **Article 219**

#### **Dismissal of the Proceedings if the Suspect or Accused Dies**

When, during the criminal proceedings, it is established that the suspect or accused has died, the proceedings shall be dismissed.

### **Article 220**

#### **Procedure in Case of Mental Incapacity of the Suspect or the Accused**

If in the course of the proceedings it is established that the suspect or the accused lacked mental capacity at the time of committing the criminal offense, the court shall render an appropriate decision in accordance with Article 410 of this Code. ~~If the suspect or the accused is in custody or in a psychiatric institution he shall not be released but instead the court shall issue a decision on temporary detention of the suspect or the accused up to a maximum of 30 days following the day of issuance.~~

### **Article 221**

#### **Mental Disorder Suffered by the Suspect or Accused in the Course of the Proceedings**

If in the course of criminal proceedings it is ascertained that after the criminal offense was committed the accused has become mentally ill, a decision shall be issued to the effect of suspending criminal proceedings. (Article 409)

### **Article 222**

#### **Application of the Rules of International Law**

- (1) The rules of international law shall apply with respect to exemption from criminal prosecution of aliens who enjoy the right of immunity in Bosnia and Herzegovina.
- (2) Should there be any doubt as to the identity of persons referred to in Paragraph 1 of this Article, the **prosecutor or** court shall seek clarification from the Federal Ministry of Justice.

### **Article 223**

#### **Approval to Prosecute**

When the law **or other by-law enacted on the basis of the Constitution or law** prescribes that prior approval of the competent governmental body is required for prosecution of certain persons, the prosecutor may not ~~conduct~~ **initiate or continue** an

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investigation or bring charges without submitting evidence that the approval has been granted.

#### **Article 224**

##### **Temporary Confiscation of Driving License**

- 1) If a criminal proceeding involves traffic related criminal offense, the court may confiscate the driving license from the suspect or accused during the criminal proceedings.
- 2) In urgent cases the prosecutor may order the action under Paragraph 1 and shall inform the preliminary proceedings judge thereof who may decide within 72 hours to issue the decision on temporary confiscation of the driving license. In the event that the preliminary proceedings judge does not decide to issue the decision on temporary dispossession of the driving license, the prosecutor shall give it back to the suspect or accused.
- 3) The driving license shall be given back to the suspect or accused even before the criminal proceedings conclude if it has been established justifiably that the reasons for its confiscation has ceased to exist.
- 4) An appeal is allowed against decisions under Paragraphs 1 and 2 but it shall not stay its execution.
- 5) The period of time during which the driving license was confiscated from the suspect or accused while not in custody shall be counted in the term of pronounced security measure of a ban to drive.

#### **Article 225**

##### **Special Cases of Prosecution**

- (1) In the event that a criminal offense was committed abroad, the prosecution may be initiated by the prosecutor, provided that this criminal offense is envisaged under the law of the Federation.
- (2) In the event referred to in Paragraph 1 of this Article the prosecutor shall undertake the criminal prosecution only if the offense committed is prescribed as the criminal offense under the laws of the country in whose territory the criminal offense was committed. Neither in that case shall the prosecution be undertaken, if under the laws of that country the prosecution is to be undertaken only upon the request of the injured party, whereas no such request has been filed by the injured party.
- (3) Notwithstanding the laws of the country where the criminal offense was committed, the prosecutor may undertake the prosecution if such an act is considered a criminal offense under the rules of international law.

## **Article 226**

### **Fines in Case of Prolonging Criminal Proceedings**

- (1) In the course of proceedings, the court may impose a fine in an amount up to 5,000 KM upon the prosecutor, defense attorney, attorney in fact or legal representative and an injured party if the actions of the prosecutor, defense attorney, or attorney in fact or legal representative or the injured party are obviously aimed at prolonging the criminal proceedings.
- (2) The High Judicial and Prosecutorial Council of the Federation of Bosnia and Herzegovina shall be informed of the fining of the prosecutor, and the Federation Bar Association shall be informed of the fining of the defense attorney.

## **Article 227**

### **Information from Criminal Records**

- (1) Information contained in the criminal record may be revealed to the court, the prosecutors' offices and bodies of internal affairs in connection with criminal proceedings conducted against a person who had been previously convicted, to competent bodies in charge of the execution of criminal sanctions and competent bodies participating in the procedure of granting amnesty, pardon or deletion of sentence.
- (2) Information from the criminal record may, upon the presentation of a justifiable request, be revealed to governmental bodies if certain legal consequences of the conviction or security measures are still in force.
- (3) At their request, citizens may be given information on their criminal record if the information is necessary for exercising their rights.
- (4) No one has the right to demand that citizens present evidence on their being convicted or not being convicted.
- (5) Provisions of Paragraphs 1 through 4 of this Article are special provisions of equal relevance for the Federation Law on Freedom of Access to Information.

## **PART TWO - COURSE OF THE PROCEEDINGS**

### **CHAPTER XIX**

### **INVESTIGATIVE PROCEDURE**

## **Article 228**

### **Obligation to Report the Criminal Offense**

- (1) Official and responsible persons in all governmental bodies in the Federation, public companies and public institutions shall be bound to report criminal offenses of which they have knowledge, through information provided to them or learned by them in

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some other manner. Under such circumstances, the official and responsible person shall take steps to preserve traces of the criminal offense, objects on which or with which the criminal offense was committed, and other evidence, and shall notify an authorized official or the prosecutor's office without delay.

- (2) Medical workers, teachers, pedagogues, parents, foster parents, adoptive parents and other persons authorized or obliged to provide protection and assistance to minors, to supervise, educate and raise the minors, are obliged to immediately inform the authorized official or the prosecutor about their suspicion that the minor is the victim of sexual, physical or any other form of abuse.

#### **Article 229** **Citizens Reporting a Criminal Offense**

- (1) A citizen is entitled to report a criminal offense.
- (2) All persons shall report commission of a criminal offense in those instances where failure to report such a criminal offense itself constitutes a criminal offense.

#### **Article 230** **Filing a Report**

- (1) The report shall be filed with the prosecutor in writing or orally.
- (2) If a person files an oral report concerning a criminal offense, such person shall be warned of the consequences of providing a false report. A record shall be taken concerning oral report and if the report is communicated by telephone, an official note shall be made.
- (3) If the report is filed with the court, authorized official or some other court or the prosecutor in the Federation, they shall accept the report and shall immediately submit the report to the prosecutor.

#### **Article 231** **Order for Conducting an Investigation**

- (1) The prosecutor shall order the conduct of an investigation if grounds for suspicion that a criminal offense has been committed exist.
- (2) The order on conducting the investigation shall contain: data on perpetrator if known, descriptions of the act pointing out the legal elements which make it a crime, the legal title of the criminal offense, circumstances that confirm the grounds for suspicion for conducting an investigation and existing evidence. The prosecutor shall list in the order which circumstances need to be investigated and which investigative actions to be undertaken.
- (3) The prosecutor ~~shall not order the investigation~~ **shall issue order that the investigation shall not be conducted** if it is evident from the report and supporting documents that a reported act is not a criminal offense, if there are no grounds to

suspect that the reported person committed the criminal offense, if the statute of limitations is applicable or if the criminal offense is a subject to amnesty or pardon or if any other circumstances exist that preclude criminal prosecution.

- (4) The prosecutor shall inform the injured party and the person who reported the offense within three (3) days of the fact that the investigation shall not be conducted, as well as the reasons for not doing so. The injured party and the person who reported the offense have a right to file a complaint with the prosecutor's office within eight (8) days.

### **Article 232** **Conducting an Investigation**

- (1) In the course of investigation, the prosecutor may undertake all investigative actions, including the questioning of the suspect and hearing of the injured party and witnesses, crime scene investigation and reconstruction of events, undertaking special measures to protect witnesses and information and may order the necessary expert evaluation.
- (2) The record on the undertaken investigative actions shall be made in accordance with this Code.
- (3) If the suspect is placed in custody, the order for bringing him to questioning shall be issued by the Prosecutor who shall notify the preliminary proceedings judge.**

### **Article 233** **Prosecutor Supervising the Work of the Authorized Officials**

- (1) If there are grounds for suspicion that a criminal offense that carries a prison sentence of more than five (5) years has been committed, an authorized official shall immediately inform the prosecutor and shall under the prosecutor's direction take the steps necessary to locate the perpetrator, to prevent the suspect or accomplice from hiding or fleeing, to detect and secure the traces of the criminal offense and objects which might serve as evidence, and to gather all information that might be of use for the criminal proceedings.
- (2) If there are grounds for suspicion<sup>27</sup> that the criminal offense referred to in Paragraph 1 of this Article has been committed, and the delay would be detrimental, an authorized official is obliged to carry out necessary actions in order to fulfill the tasks referred to in Paragraph 1 of this Article. When carrying out these actions, the authorized official is obliged to act in accordance with this Code. The authorized official is bound to inform the prosecutor on all taken actions immediately and deliver the collected items that may serve as evidence.

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- (3) If there are grounds for suspicion<sup>28</sup> that a criminal offense that carries a prison sentence of up to five (5) years has been committed, an authorized official shall inform the prosecutor of all available information, actions performed no later than seven (7) days after forming the grounds for suspicion that a criminal offense has been committed.
- ~~(4) In cases referred to in Paragraphs 1 through 3 of this Article, the prosecutor shall issue an order on conducting the investigation if he considers it necessary.~~

#### **Article 234**

##### **Collection of Information**

- (1) In order to perform the tasks referred to in Article 233 of this Code, authorized officials may obtain the necessary information from persons; may make a necessary examination of vehicles, passengers and luggage; may restrict movement in a specified area during the time required to complete a certain action; may take the necessary steps to establish identity of persons and objects; may organize search to locate an individual or items being sought; may in the presence of a responsible individual search specified structures and premises of state authorities, public enterprises and institutions, examine specified documents belonging to state authorities or public enterprises or institutions, and take other necessary steps and actions. A record or official notes shall be kept of facts and circumstances ascertained during various actions and also concerning items that have been found or seized.
- (2) In gathering information from persons, an authorized official may issue a written request to a person to appear at the police station, provided that the request designates the reasons for person's appearance. A person is not obliged to give a statement or respond to any question asked by the authorized official, other than to give his own identity data. The authorized official shall inform the person about this right.
- (3) When gathering information from persons, the authorized official shall act in accordance with Article 92 of this Code or in accordance with Article 100 of this Code. In that case, the records on gathered information may be used as evidence in the criminal proceedings.
- (4) A person against whom any of the actions or actions referred to in this Article have been taken shall be entitled to file a complaint with the prosecutor's office within a period of three (3) days. The prosecutor shall verify the grounds of the complaint and if it is determined that the applied steps or measures contain the features of a criminal offense or misconduct in office, the complaint shall be processed in accordance with the law.
- (5) The authorized official shall complete a criminal report based on the information and evidence gathered. The criminal report shall be submitted along with items, sketches,

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photographs, reports obtained, records of the measures and actions taken, official notes, statements taken and other materials, which could contribute to the effective conduct of proceedings, including all facts or evidence in favor of the suspect. If the authorized official learns of new facts, evidence or traces of the criminal offense after submitting the criminal report, he shall have a continuing duty to gather the necessary information and shall immediately submit a supplemental report to the prosecutor.

- (6) The prosecutor may gather information from persons in custody if this is necessary to detect other criminal offenses committed by the same person or his accomplices, or criminal offenses of other suspects.

#### **Article 235**

##### **Restriction of Movement at the Scene of the Crime**

- (1) An authorized official has the right to restrict the movement and question persons found at the scene of a crime, if such persons could provide information important for the criminal proceedings. The authorized official shall be bound to inform the prosecutor about the restriction of movement and questioning. Restriction of movement of such persons at the scene of a crime may not last more than six (6) hours.
- (2) An authorized official may photograph a person and take his fingerprints if there are grounds for suspicion<sup>29</sup> that he has committed a criminal offense. When it will contribute to the effective conduct of proceedings, an authorized official may release the photograph of that person for general publication, but only with the approval of the prosecutor.
- (3) If necessary to establish whose fingerprints are found on certain objects, the authorized official may take fingerprints from persons who have possibly touched those objects.
- (4) A person against whom any of the actions referred to in this Article have been taken shall be entitled to file a complaint with the prosecutor.

#### **Article 236**

##### **Investigation of the Crime Scene and Expert Evaluation**

An authorized official, upon notifying the prosecutor, shall conduct the crime scene investigation and order the necessary expert evaluations, with the exception of **medical examination** an autopsy and the exhumation of a corpse. If the prosecutor is present at the crime scene while it is being investigated by authorized officials, he may direct

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authorized officials to perform certain actions that the prosecutor considers necessary. All actions undertaken at the crime scene must be documented in detail in both a record and a separate official report.

#### Article 237

##### **Autopsy and Exhumation Medical Examination, Autopsy and Exhumation**

If there is a suspicion or if it is evident that a death was caused by criminal offense or that it is related to the commission of a criminal offense the prosecutor shall order **a medical examination and** an autopsy. If the corpse has already been buried, an exhumation of the corpse shall be ordered for the purpose of an examination and autopsy through an order that the prosecutor shall request from the court.

#### Article 238

##### **Preservation of Evidence by the Court**

- (1) Whenever it is in the interest of justice that the witness's testimony be taken in order to use it at the main trial because the witness may be unavailable to the court during the trial, the preliminary proceedings judge may, upon the request of the parties or the defense attorney, order that the testimony of the witness in question be taken at a special hearing (*deposition*). The deposition hearing shall be conducted in accordance with Article 277 of this Code.
- (2) Prior to use of the deposition referred to in Paragraph 1 of this Article, the party or the defense attorney requesting for the deposition to be considered as evidence at the main trial, must prove that despite all efforts to secure the witness's presence at the main trial, the witness remains unavailable. ~~The deposition in question may not be used if the witness is present at the main trial.~~
- (3) If the parties or the defense attorney are of the opinion that a certain evidence may disappear or that the presentation of such evidence at the main trial may not be possible, the parties or the defense attorney shall propose to the preliminary proceedings judge to take necessary actions aimed at the preservation of evidence. If the preliminary proceedings judge accepts the proposal on taking actions of presentation of evidence, he shall inform the parties and defense attorney accordingly.
- (4) If the preliminary proceedings judge rejects the proposal referred to in Paragraphs 1 and 3 of this Article, he shall issue a decision that can be appealed against to the panel referred to in Article 25, Paragraph 6.

#### Article 239

##### **Cessation of Investigation**

- (1) ~~The prosecutor shall order the investigation of a suspect to cease if it is established:~~
  - a) ~~the act committed by the suspect is not a criminal offense;~~

- ~~b) there is insufficient evidence that the suspect committed a criminal offense;~~
- ~~e) that the act is covered by amnesty, pardon or statute of limitations or if there are some other obstacles that preclude prosecution.~~
- ~~(2) The prosecutor shall inform the injured party, who enjoys the rights prescribed by the Paragraph 4 of Article 231 of this Code, on cessation of the investigation.~~
- ~~(3) The prosecutor may, in the cases stated in Item b) of Paragraph 1 of this Article, at a later date reopen the investigation if additional information is obtained and such information provide sufficient reasons to believe that the suspect committed a criminal offense.~~
- (1) The Prosecutor shall order that the investigation of a suspect should cease if it is established that:**
  - d) the act committed by the suspect is not a criminal offence,**
  - e) the circumstances that exclude criminal liability of the suspect exist except in the case under Article 220 of this Code,**
  - f) there is insufficient evidence that the suspect committed a criminal offence;**
  - g) that the act is covered by amnesty, pardon or statute of limitations or if there are some other obstacles that preclude prosecution.**
- (2) The Prosecutor shall inform the injured party enjoying the rights under Article 231 of this Code, the suspect if he was questioned and the person that reported the crime about the cessation and grounds for cessation of the investigation in writing.**
- (3) In the cases under Item c) of Paragraph 1 of this Article the Prosecutor may reopen the investigation at a later date if new facts and circumstances imply that there are grounds for suspicion that the suspect committed a criminal offence.**

#### **Article 240**

#### **Completion of Investigation**

- ~~(1) The prosecutor shall order a completion of investigation after he concludes that the status is sufficiently clarified to allow the bringing of charges. Completion of the investigation shall be noted in the file.~~
- ~~(2) Prior to the completion of the investigation, the prosecutor shall question the suspect if this has not been done previously.~~
- ~~(3) If the investigation has not been completed within six (6) months after the order on its conducting has been issued, the Collegium of the Prosecutor's Office shall undertake the necessary measures in order to complete the investigation.~~
- ~~(3) The indictment shall not be issued if the suspect was not questioned.~~

#### **Article 240**

#### **(Completion of Investigation)**

- (1) The prosecutor shall complete investigation after s/he concludes that the status is sufficiently clarified to allow the bringing of charges. Completion of the investigation shall be noted in the file.
- (2) If the investigation has not been completed within six months after the order on its conducting has been issued, the prosecutor shall inform the chief prosecutor on the reasons for the investigation not having been completed. The chief prosecutor shall set a new deadline for the completion of the investigation, which may not exceed six months, or which may not exceed one year for criminal offenses punishable by imprisonment for a term of 10 years or more, and order undertaking measures necessary to complete the investigation.
- (3) If the investigation could not be completed within the deadline referred to in the Paragraph 2 of this Article, the prosecutor shall notify within eight days the chief prosecutor, the suspect and the injured party of the reasons for which the investigation has not been completed.
- (4) The suspect or the accused may file a complaint with the chief prosecutor regarding the length of the investigation within 15 days from the delivery of the notification referred to in the Paragraph 3 of this Article. If the chief prosecutor finds the complaint justified, s/he shall set a new deadline within which, should there the procedural requirements exist, the investigation must be completed, about which s/he shall inform the complainant.
- (5) The indictment shall not be filed if the suspect was not questioned.

## CHAPTER XX INDICTMENT PROCEDURE

### ~~Article 241~~

#### ~~Issuance of the Indictment~~

- ~~(1) If during the course of an investigation, the prosecutor finds that there is enough evidence for grounded suspicion that the suspect has committed a criminal offense, the prosecutor shall prepare and submit the indictment to the preliminary hearing judge.~~
- ~~(2) After the issuance of the indictment, the suspect or the accused and the defense attorney have a right to examine all the files and evidence.~~
- ~~(3) After the issuance of the indictment, the parties and defense attorney may propose to the preliminary hearing judge to take actions in accordance with Article 238 of this Code.~~

### Article 241

#### (Filing the Indictment)

- (1) When, in the course of an investigation, the prosecutor finds that there is enough evidence for grounded suspicion that the suspect has committed a criminal offense, the prosecutor shall prepare and submit the indictment to the preliminary hearing judge within 30 days from the day the completion of the investigation was recorded in the case file.
- (2) If the prosecutor fails to file the indictment within the deadline referred to in Paragraph 1 of this Article, s/he shall notify the chief prosecutor of the reasons for not filing the indictment within eight days. The suspects and the injured party shall be notified of the additional deadline that has been set.
- (3) If the prosecutor does not file an indictment within the deadline referred to in the Paragraph 2 of this Article, s/he shall notify the chief prosecutor, and the suspect and the injured party who have the right to file a complaint to the chief prosecutor within eight days of the expiring of the deadline. The chief prosecutor shall issue a binding instruction to the prosecutor to file an indictment within a set deadline, which may not be longer than 30 days.
- (4) After the indictment is filed, the suspect or the accused and the defence attorney have a right to examine all the case files and evidence.
- (5) After the indictment is filed, the parties and the defence attorney may propose to the preliminary hearing judge to take actions in accordance with the Article 238 of this Code.

## Article 242 Contents of the Indictment

- (1) The indictment shall contain:
  - a) the name of the court;
  - b) the first and the last name of the suspect and his personal data;
  - c) a description of the act pointing out the legal elements which make it a criminal offense, the time and place the criminal offense was committed, the object on which and the means with which the criminal offense was committed, and other circumstances necessary for the criminal offense to be defined as precisely as possible;
  - d) the legal title of the criminal offense accompanied by the relevant provisions of the Criminal Code;
  - e) proposal of evidence to be presented, including the list of ~~the names of~~ witnesses and experts **or pseudonym of protected witnesses**, documents to be read and objects serving as evidence;
  - f) the results of the investigation;
  - g) ~~material~~ **evidence** supporting the charges in the indictment.
- (2) An indictment may cover more than one criminal offense or more than one suspect.

- (3) If the suspect is not detained, it may be proposed in the indictment that he be detained, and if the suspect is already detained, it may be proposed to extend the detention or that he be released.

### **Article 243**

#### **Decision on Indictment**

- ~~(1) The preliminary hearing judge may confirm or reject all or some of the counts in the indictment within 8 days from the day of the reception of the indictment. If he decides to reject all or some of the counts of indictment, the preliminary hearing judges shall issue a decision on it and send it over to the prosecutor. An appeal is not allowed against this decision.~~
- ~~(2) During the confirmation of the indictment, the preliminary hearing judge shall examine each count in the indictment and materials submitted by the prosecutor in order to establish grounded suspicion.~~
- ~~(3) Upon confirmation of some or all counts in the indictment, the suspect shall have the status of an accused. The preliminary hearing judge shall serve the indictment on the accused and his defense attorney.~~
- ~~(4) The preliminary hearing judge shall serve the indictment on the accused, who is not detained, without delay, and if the accused is already detained, the preliminary proceedings judge shall serve the indictment on him within 24 hours after the confirmation of the indictment. The preliminary hearing judge shall inform the accused that he shall be requested to enter the plea of guilty or not guilty on each count of the indictment within 15 days after the delivery of the indictment, and shall inquire of the accused if he intends to submit the preliminary motions and shall request the accused to list the proposed evidence that needs to be presented at the main trial.~~
- ~~(5) Upon rejection of all or some counts in the indictment, the prosecutor may bring a new or an amended indictment that may be based on new evidence. The new or amended indictment shall be submitted for confirmation.~~
- (1) Immediately on receipt of the indictment the preliminary hearing judge shall examine whether the Court has jurisdiction to try, whether the circumstances under Article 239 Paragraph (1) item d) of this Code exist, and whether the indictment was properly drafted (Article 242 of this Code). If the Court finds that the indictment was not properly drafted it will act in accordance with Article 162 Paragraphs (3) and (4) of this Code.**
- (2) The preliminary hearing judge may confirm or discharge all or some of the counts in the indictment within 8, and in complex cases within 15 days of receipt of the indictment. If the preliminary hearing judge discharges all or some of the counts he shall issue decision that will be delivered to the Prosecutor. An appeal can be filed within 24 hours. The Panel from Article 25 Paragraph (6) of this Code shall decide on this appeal within 72 hours.**
- (3) During the confirmation of the indictment, the preliminary proceedings judge**

shall examine each count in the indictment and evidence submitted by the Prosecutor in order to establish grounded suspicion.

- (4) Upon confirmation of some or all counts in the indictment, the suspect shall have the status of the accused. The preliminary hearing judge shall present the accused and his defense attorney with the indictment.
- (5) The preliminary hearing judge shall present the accused who is not detained with the indictment without delay, and if the accused is already detained, the preliminary proceeding judge shall present him with the indictment within 24 hours after the confirmation of the indictment. The preliminary hearing judge shall inform the accused that within 15 days of delivery of the indictment he has the right to submit the preliminary motions, that the plea hearing shall be scheduled immediately after the decision on preliminary motions is issued or after the expiration of the deadline for submission of preliminary motions, and shall request the accused to list the proposed evidence that he intends to present at the main trial.
- (6) Upon discharge of all or some counts in the indictment, the Prosecutor may bring a new or an amended indictment that shall be based on new evidence. The new or amended indictment shall be submitted for confirmation.

#### Article 244 Guilty or not Guilty Plea

- ~~(1) A plea of guilty or not guilty shall be entered before the preliminary hearing judge in the presence of the prosecutor and the defense attorney. Plea shall be entered in the record. If the accused fails to enter a plea, the preliminary hearing judge shall, *ex officio*, record that the accused enters a plea of not guilty.~~
- ~~(2) If the accused enters a plea of guilty, the preliminary hearing judge shall refer the case to the judge or to the Panel for scheduling the hearing at which it shall be determined whether the conditions referred to in Article 245 of this Code exist.~~
- ~~(3) A plea of not guilty shall never be held against the accused in fashioning a sentence if the accused is found guilty at the trial or subsequently changes his plea from not guilty to guilty.~~
- ~~(4) After entering a plea of not guilty into the record, the preliminary hearing judge shall refer the case to the judge or the panel that has been assigned to try the case so that they can schedule the trial no later than 60 days from the day when the accused entered the plea of not guilty. In exceptional cases, this deadline may be extended for 30 additional days.~~
- (1) A plea of guilty or not guilty shall be entered before the preliminary hearing judge in the presence of the Prosecutor and the defence attorney. Before the plea of guilty or not guilty the accused shall be informed about all possible consequences of plea in sense of Article 245 Paragraph (1) of this Code. In case that the accused does not have the defence attorney the preliminary hearing judge shall check whether the accused understands the consequences of plea and

**whether the conditions for appointment of the defence attorney in accordance with Article 59 Paragraph (5) and Article 60 of this Code exist. The Plea and the given instructions shall be entered in the record. If the accused fails to enter a plea, the preliminary hearing judge shall, *ex officio*, record that the accused enters a plea of not guilty.**

- (2) If the accused enters a plea of guilty, the preliminary hearing judge shall refer the case to the judge or to the Panel for scheduling the hearing at which it shall be determined whether the conditions referred to in Article 245 of this Code exist.**
- (3) A plea of not guilty shall never be held against the accused in fashioning a sentence if the accused is found guilty at the trial or subsequently changes his plea from not guilty to guilty.**
- (4) After entering a plea of not guilty into the record, the preliminary hearing judge shall refer the case to the judge or the Panel that has been assigned to try the case so that they can schedule the trial and the evidence that support the indictment shall return to the Prosecutor. The main trial shall be scheduled within 30 days from the day when the accused entered the plea of guilt. In exceptional cases, this deadline may be extended for 30 additional days.**

#### Article 245 Deliberation on the Guilty Plea

- ~~(1) In the course of deliberation of the statement on the plea of guilty from the accused, the court shall ensure the following:
  - a) that the plea of guilty was entered voluntarily, consciously and with understanding, and that the accused was informed of the possible consequences, including the satisfaction of the property claims and reimbursement for the costs of the criminal proceedings;
  - b) that there is enough evidence proving the guilt of the suspect or the accused.~~
- ~~(2) If the court sustain the plea of guilty, the statement of the accused shall be entered in the record of proceedings. In that case, the court shall set the date for pronouncement of the sentence within three (3) days at the latest.~~
- ~~(3) If the court rejects the plea of guilty, the court shall inform the parties and the defense attorney about the rejection and note it in the record of proceedings. The plea of guilty is inadmissible as evidence in the criminal proceedings.~~
- (1) In the course of deliberation of the statement on the plea of guilty from the accused, the Court must ensure the following:
  - a) that the plea of guilty was entered voluntarily, consciously and with understanding,
  - b) that the accused was informed that by his guilty plea he shall waive the right to trial,
  - c) that there is enough evidence proving the guilt of the suspect or the accused,
  - d) that the accused was informed of and understands the possible consequences in**

**relation to the claim under property law and forfeiture of property gain obtained by commission of criminal offense,**

**e) that the accused was informed of the decision on reimbursement of the expenses of the criminal proceedings and that the accused may be relieved of the duty to reimburse as referred to in Article 202 Paragraph (4) of this Code.**

**(2) If the Court accepts the statement on the plea of guilty, the statement of the accused shall be entered in the record and the Court shall continue with the hearing for the pronouncement of the sentence.**

**(3) If the Court rejects the statement on plea of guilty, the Court shall inform the parties and the defense attorney to the proceeding about the rejection and say so in the record. Statement on the admission of guilt is inadmissible as evidence in the further course of the criminal proceeding.**

#### **Article 246 Plea Bargaining**

- ~~(1) The suspect or the accused and the defense attorney may negotiate with the prosecutor on the conditions of pleading guilty for the criminal offense with which the suspect or the accused is charged.~~
- ~~(2) In the plea bargaining with the suspect or the accused and his defense attorney on the admission of guilt under Paragraph 1 of this Article, the prosecutor may propose a sentence of lesser term of imprisonment than the minimum prescribed by the Law for the criminal offense(s) or a less severe punishment to be received by the suspect or the accused.~~
- ~~(3) An agreement on pleading guilty shall be made in writing. The preliminary hearing judge, judge or the panel may sustain or reject the agreement in question.~~
- ~~(4) In the course of deliberation of the agreement on pleading guilty, the court shall ensure the following:~~
- ~~a) that the agreement on pleading guilty was entered voluntarily, consciously and with understanding, and that the accused is informed of the possible consequences, including the satisfaction of the property claims and reimbursement for the expenses of the criminal proceedings;~~
  - ~~b) that there is enough evidence proving the guilt of the suspect or the accused;~~
  - ~~c) that the suspect or the accused understands that by agreement on pleading guilty he waives his right to trial and that he shall not file an appeal against the pronounced criminal sanction.~~
- ~~(5) If the court sustains the agreement on pleading guilty, the statement of the suspect or the accused shall be entered in the record. In that case, the court shall set the date for pronouncement of the sentence stipulated in the agreement referred to in Paragraph 3 of this Article within three (3) days at the latest.~~
- ~~(6) If the court rejects the agreement on the admission of guilt, the court shall inform the parties to the proceedings and the defense attorney about the rejection and note it in the record of proceedings. Pleading guilty before the preliminary proceedings judge,~~



~~preliminary hearing judge, the judge or the Panel is inadmissible as evidence in the criminal proceedings.~~

(7) ~~The court shall inform the injured party about the results of the plea bargaining.~~

(1) The suspect or the accused and the defense attorney, may negotiate with the Prosecutor about the conditions of admitting guilt for the criminal offence with which the suspect or accused is charged until the completion of the main trial proceedings or the appellate hearing proceedings.

(2) The plea agreement shall not be entered into if the accused pleaded guilty at the plea hearing.

(3) In plea bargaining with the suspect or the accused and his defence attorney on the admission of guilt pursuant to Paragraph 1 of this Article, the Prosecutor may propose an imprisonment sentence below legally prescribed minimum or more lenient criminal sanction for the suspect or accused in accordance with the provisions of the Criminal Code.

(4) An agreement on the admission of guilt shall be made in writing and shall be delivered along with the indictment to the preliminary hearing judge, judge or the Panel. After the confirmation of the indictment, the preliminary hearing judge shall deliberate on the agreement and pronounce the criminal sanction until the case is submitted to the judge or the Panel for the purpose of scheduling the main trial. After the case is submitted for the purpose of scheduling the main trial, judge or the Panel shall decide on the agreement.

(5) The preliminary hearing judge, judge or the Panel may accept or reject the agreement.

(6) In the course of deliberation of the agreement on the admission of guilt, the Court must ensure the following:

d) that the agreement of guilt was entered voluntarily, consciously and with understanding, and that the accused is informed of the possible consequences, including the satisfaction of the claims under property law, forfeiture of property gain obtained by commission of criminal offense and reimbursement of the expenses of the criminal proceedings;

e) that there is enough evidence proving the guilt of the accused;

c) that the accused understands that by agreement on the admission of guilt he waives his right to trial and that he may not file an appeal against the pronounced criminal sanction,

d) that the agreed sanction is in accordance with Paragraph 3 of this Article,

e) that the injured party was given an opportunity before the Prosecutor to give statement regarding the claim under property law.

(7) If the Court accepts the agreement on the admission of guilt, the statement of the accused shall be entered in the record and the Court shall continue with the hearing for the pronouncement of the sentence foreseen by the agreement.

(8) If the Court rejects the agreement on the admission of guilt, the Court shall inform the parties to the proceeding and the defense attorney about the rejection and say so in the record. At the same time, the date of the main trial proceedings

**shall be determined. The main trial shall be scheduled within 30 days. Admission of guilt from this agreement is inadmissible as evidence in the criminal proceedings.**

**(9) The Court shall inform the injured party about the results of the plea bargaining.**

#### **Article 247 Withdrawing the Indictment**

- (1) The prosecutor may withdraw the indictment without prior approval before its confirmation, and after the confirmation and before the commencement of the main trial, only with the approval of the preliminary hearing judge ~~who confirmed the indictment.~~
- (2) In the case referred to in Paragraph 1 of this Article, the proceeding shall be dismissed by the decision, and the suspect or the accused, the defense attorney and injured party shall be promptly notified of such decision.

#### **Article 248 Reasons for Motion and the Decision on Motion**

- (1) ~~Preliminary motions, are motions that:~~
  - a) ~~challenge jurisdiction;~~
  - b) ~~allege formal defects in the indictment;~~
  - c) ~~challenge the lawfulness of evidence obtained or of the confession;~~
  - d) ~~seek joint or separate proceedings;~~
  - e) ~~challenge the refusal of a request for assignment of the defense attorney pursuant to Article 60<sup>30</sup>, Paragraph 1 of this Code.~~
- (2) ~~Preliminary motions shall be filed in writing with the court not later than 15 days after the delivery of the indictment, and they shall be decided prior to referring the case to the judge or the panel for the purpose of scheduling the main trial.~~
- (3) ~~The preliminary hearing judge, who shall not participate in the main trial, shall decide the preliminary motions. No appeal is allowed against the decision on the preliminary motion.~~

**(1) Preliminary motions are motions that:**

- a) **challenge jurisdiction,**
- b) **stress the circumstances from Article 239 Paragraph (1) Item d) of this Code,**
- c) **allege formal defects in the indictment,**
- d) **challenge the lawfulness of evidence obtained,**
- e) **seek joinder or separation of proceedings,**
- f) **challenge the refusal of a request for appointment of the defense attorney**

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<sup>30</sup> OG FBiH 56/03: In Article 248, paragraph 1e, number “46” replace with number “60”.

**pursuant to Article 60 Paragraph 1 of this Code.**

**(2) If the preliminary hearing judge accepts the motion from Paragraph (1) Item d) of this Article he shall decide that such evidence is removed from the case file and returned to the Prosecutor.**

**(3) The preliminary hearing judge who cannot participate in the proceedings shall decide the preliminary motion within 8 days. An appeal cannot be filed on the decision on the preliminary motions.**

**(4) If the preliminary hearing judge establishes that the reasons for issuing decision in favour of the accused based on the filed motion are also useful for any of the co-accused who failed to file motion or failed to file motion referring to that particular issue, it shall act ex officio as if such motions have been filed.**

#### **Article 248.a** **Pre-trial Hearing**

**During the preparation for the main trial, the judge or presiding judge may hold a hearing with the parties to the proceedings and the defence attorney to consider issues relevant to the main trial.**

### **CHAPTER XXI** **THE MAIN TRIAL**

#### **Section 1 – PUBLIC NATURE OF THE MAIN TRIAL**

##### **Article 249** **General Public**

- (1) The main trial shall be public.
- (2) Only adults may attend the main trial.
- (3) Persons attending the main trial shall not carry arms or dangerous weapons, except for the ~~guards of the accused~~ **judicial police** and persons who are permitted to do so by the judge or the presiding judge.

##### **Article 250** **Exclusion of the Public**

From the opening to the end of the main trial, the judge or the Panel may at any time, *ex officio* or on motion of the parties and the defense attorney, but always after hearing the parties and the defense attorney, exclude the public for the entire main trial or a part of it if that is in the interest of the national security, or if it is necessary to preserve a national, military, official or important business secret, if it is to protect the public peace and order, to preserve morality in the democratic society, to protect the personal and intimate life of the accused or the injured party or to protect the interest of a minor or a witness.

Unofficially consolidated by Halisa Skopljak

(In case of any issue regarding authenticity of text or translation, the local language version shall prevail)

## **Article 251**

### **Persons to Whom Exclusion of the Public Is Not Applicable**

- (1) Exclusion of the public shall not include parties, the defense attorney, the injured party, the legal representatives and the attorney-in-fact.
- (2) The judge or the Panel may allow certain officials, scientists and public officials to be present at the main trial from which the public is excluded, and the judge or the Panel, at the request of the accused, may allow the presence also to the spouse of the accused, or his cohabitee and his close relatives.
- (3) The judge or the Panel shall warn persons attending the main trial closed to public that they must keep in secret everything they learn at the main trial and shall warn them that it is a criminal offense to disclose such information.

## **Article 252**

### **Decision on Exclusion of the Public**

- (1) The judge or the Panel shall issue a decision on exclusion of the public. The decision in question must be explained and publicly announced.
- (2) The decision on exclusion of the public may be contested only in the appeal against the verdict.

## **Section 2 – DIRECTION OF THE MAIN TRIAL**

## **Article 253**

### **Mandatory Presence at the Main Trial**

- (1) The judge or the judges in the Panel and the record taker must be continuously present during the main trial.
- (2) If it seems likely that the main trial will continue for a lengthy period of time, the presiding judge may request from the President of the court to appoint one (1) or two (2) judges to be present at the main trial so that they can replace members of the Panel in case of their absence.

## **Article 254**

### **Obligations of the Judge or the Presiding Judge**

- (1) The judge or the presiding judge shall direct the main trial.
- (2) It is the duty of the judge or the presiding judge to ensure that the subject matter is fully examined, ~~that the truth is found~~ and that everything is eliminated that prolongs the proceedings but does not serve to clarify the matter.
- (3) If not prescribed otherwise by this Code, the judge or the presiding judge shall rule on motions of the parties and the defense attorney.

- (4) The decisions of the judge or the presiding judge shall always be announced and entered in the record of proceedings with a brief summary of the facts considered.

#### **Article 255**

##### **Order of Proceedings in the Main Trial**

The main trial shall proceed in the order set forth in this Code, but the judge or the presiding judge may order a departure from the regular order of proceedings due to special circumstances, and especially if it concerns the number of accused, the number of criminal offenses and the amount of evidence. The reasons why the main trial is not conducted in the order prescribed by the law shall be entered in the record of proceedings.

#### **Article 256**

##### **Duties of the Judge or the Presiding Judge**

- (1) It is the duty of the judge or the presiding judge to ensure the maintenance of order in the courtroom and the dignity of the court. The judge or the presiding judge may immediately upon opening the session warn persons present at the main trial to behave courteously and not to disrupt the work of the court. The judge or the presiding judge may order that persons present at the main trial be searched.
- (2) The judge or the presiding judge may order that all persons present at the main trial as observers be removed from the session if the measures for maintaining order stipulated by this Code have been ineffective in ensuring that the main trial is not disrupted.
- (3) Filming is prohibited in the courtroom. As an exception, the President of the court may allow such filming at the main trial. If the filming is approved, the judge or the presiding judge may for justified reasons order that certain parts of the main trial not be filmed.

#### **Article 257**

##### **Penalties for Disruption of Order**

- (1) The judge or the presiding judge may exclude a person from the courtroom in order to protect the right of the accused to a fair and public trial or to maintain the dignity of trial and disturbance-free proceedings.
- (2) The judge or the presiding judge may order that the accused be removed from the courtroom for a certain period if the accused persists in disruptive conduct after having been warned that such conduct may result in his removal from the courtroom. The judge or the presiding judge may continue the proceedings during this period if the accused is represented by the defense attorney.
- (3) Should the prosecutor, defense attorney, injured party, legal representative, attorney-in-fact of the injured party, witness, expert, interpreter or other person present at the

main trial disrupt the order or disobey the orders of the judge or the presiding judge to maintain the order, the judge or the presiding judge shall warn the person in question. If the warning is ineffective, the judge or the presiding judge may order that the person in question be removed from the courtroom and be fined an amount up to 10,000 KM. Should the prosecutor or defense attorney be removed from the courtroom, the judge or the presiding judge shall refer the matter to the High Judicial and Prosecutorial Council of the Federation or the Federation Bar Association with which the defense attorney is affiliated, for further action.

- (4) Should a defense attorney or an attorney-in-fact of the injured continue to disrupt the order even after having been fined, the judge or the presiding judge may prevent him from further representation at the main trial and fine him in the amount up to 30.000 KM. The decision on this issue with explanation shall be entered in the record of proceedings. An interlocutory appeal is allowed against this decision. The main trial shall be adjourned or postponed to allow the accused to engage another defense attorney and prepare a defense.

#### **Article 258**

##### **False Testimony Given by Witness or Expert**

If there is grounded suspicion that a witness or an expert has given false testimony in the main trial, the judge or the presiding judge may order that a separate transcript be made of the witness's or the expert's testimony that shall be delivered to the prosecutor.

### **Section 3 – PREREQUISITES FOR HOLDING THE MAIN TRIAL**

#### **Article 259**

##### **Opening of the Session**

The judge or the presiding judge shall open the session, ~~and~~ announce the subject matter of the main trial and the composition of the panel. The judge or the presiding judge shall then determine whether all summoned persons have appeared, and if not, the judge or the presiding judge shall inspect whether the summons were served on them and whether they have justified their absence.

#### **Article 260**

##### **Failure of the Prosecutor or His Substitute to Appear at the Main Trial**

- (1) If the prosecutor or his substitute was duly summoned but fails to appear in the main trial, the main trial shall be postponed. The judge or the presiding judge shall request the prosecutor or his substitute to explain his reasons for failing to appear. The judge shall decide, based on the prosecutor's explanation, whether the prosecutor should be sanctioned as referred to in Paragraph 2 of this Article. If the prosecutor or his

substitute is sanctioned, the High Judicial and Prosecutorial Council of ~~the Federation~~ Bosnia and Herzegovina shall be informed about the sanction.

- (2) The judge or the presiding judge may fine the prosecutor or his substitute an amount up to 5,000 KM if the prosecutor or his substitute was duly summoned to the main trial by the court but failed to appear and did not justify his absence.

#### Article 261

##### Failure of the Accused to Appear at the Main Trial

- (1) If the accused was duly summoned but fails to appear and does not justify his absence, the judge or the presiding judge shall postpone the main trial and order that the accused be brought in at the next session. If the accused justifies his absence before apprehension, the judge or the presiding judge shall revoke the order of apprehension.
- (2) If the accused was duly summoned but obviously avoids appearing at the main trial, and if apprehension was not successful, the judge or the presiding judge may order that the accused be placed in custody.
- (3) The appeal is allowed against the decision on custody but such appeal shall not stay its execution.
- (4) If the order regarding custody is not overruled, it shall last until the pronouncement of the verdict, and at a maximum of 30 days.

#### Article 262

##### Prohibition of In Absentia Trials

The accused shall never be tried *in absentia*.

#### Article 263

##### Failure of the Defense Attorney to Appear at the Main Trial

- (1) If the defense attorney was duly summoned but fails to appear in the main trial **or leaves the main trial without prior approval**, the main trial shall be postponed. The judge or the presiding judge shall request that the defense attorney explain his reasons for failing to appear **or leaving the main trial**. The judge or the presiding judge shall decide, based on defense attorney's explanation, whether the defense attorney should be sanctioned. The Bar Association with which the defense attorney is affiliated shall be informed whenever the defense attorney is sanctioned under these circumstances.
- (2) The judge or the presiding judge may fine the defense attorney an amount up to 5,000 KM if the defense attorney failed to appear at the main trial despite being duly summoned by the court and failed to justify his absence **or leaving of the main trial**.
- (3) If a new defense attorney is appointed for the accused **or a new one is retained**, the main trial shall be postponed. The judge or the presiding judge shall grant an adequate time period to a new defense attorney for the preparation of the defense of the

accused, and that time period shall be not less than 15 days for criminal offenses for which a sentence of ten (10) years of imprisonment or more is prescribed, unless the accused waives this right and the judge or the presiding judge is assured that a shorter period for the preparation of the defense shall not interfere with the right of the accused to a fair trial.

#### **Article 264**

##### **Failure of the Witness or the Expert to Appear at the Main Trial**

- (1) If a witness or an expert was duly summoned but fails to appear and does not justify his absence, the judge or the presiding judge may order the witness or the expert to be brought to court.
- (2) The judge or the presiding judge may fine the witness or the expert, who was duly summoned but failed to justify his absence, an amount up to 5,000 KM.
- (3) In the case referred to in Paragraph 1 of this Article, the judge or the presiding judge shall decide whether the main trial should be postponed.

#### **Section 4 – ADJOURNMENT AND RECESS OF THE MAIN TRIAL**

#### **Article 265**

##### **Reasons for Adjournment of the Main Trial**

- (1) On the motion of the parties or the defense attorney, the main trial may be adjourned by the decision of the judge or the presiding judge if new evidence needs to be obtained or if the accused became has become incapacitated to stand trial the main trial after the commission of the criminal offense and or if there are other impediments that prevent the main trial from successful conduct.
- (2) The decision to adjourn the main trial shall be entered in the record and, when possible, the day and hour of the resumption of the main trial shall be designated. The judge or the presiding judge shall also order the securing of evidence that could be lost or destroyed as a result of the adjournment of the main trial.
- (3) An appeal is not allowed against the decision referred to in Paragraph 2 of this Article.

#### **Article 266**

##### **Resumption of the Adjourned Main Trial**

- ~~(1) If the main trial resumes after it has been adjourned before the same judge or the Panel, the judge or the presiding judge shall briefly summarize the previous course of the proceedings. The judge or the presiding judge may order that the main trial recommence from the beginning.~~
- ~~(2) The main trial that has been adjourned shall recommence from the beginning if the composition of the Panel has changed, but upon the hearing of the parties, the Panel~~



~~may decide that in such case the witnesses and experts shall not be examined again and that the new crime scene investigation shall not be conducted but the record of the crime scene investigation and testimony of the witnesses and experts given at the prior main trial shall be read only.~~

- (3) ~~If the adjournment lasted longer than 30 days or if the main trial is being held before another judge or presiding judge, the main trial shall commence from the beginning and all evidence shall be presented again.~~

**(1) If the main trial resumes after it has been adjourned before the same judge or the Panel, the judge or the presiding judge shall briefly summarize the previous course of the proceedings. The judge or the presiding judge may order that the main trial recommence from the beginning.**

**(2) The main trial that has been adjourned must recommence from the beginning if the composition of the Panel has changed or if the adjournment lasted longer than 30 days but with consent of the parties and the defence attorney, the Panel may decide that in such a case the witnesses and experts shall not be examined again and that the new crime scene investigation shall not be conducted but the minutes of the crime scene investigation and testimony of the witnesses and experts given at the prior main trial shall be used.**

**(3) If the main trial is held before another judge or presiding judge, the main trial must commence from the beginning and all evidence must be again presented. In exceptional cases, if the main trial is held before another presiding judge, with consent of the parties and the defense attorney, the Panel may decide that the earlier presented evidence shall not be presented again.**

**(4) In cases from Paragraphs (2) and (3) of this Article, the judge or the Panel, without consent of the parties and the defense attorney, but after hearing parties and the defense attorney, may decide to use the testimony of the witnesses and experts given at the prior main trial as evidence if witnesses or experts died, became mentally incapacitated or unavailable or their appearance before the Court is impossible or difficult due to other reasons.**

## Article 267

### Recess of the Main Trial

- (1) Aside from the cases stipulated in this Code, the judge or the presiding judge may declare a recess of the main trial due to leave or due to the fact that the workday has ended or he may declare the recess in order to obtain certain evidence quickly or for the purpose of preparing the prosecution or defense.
- (2) A recessed main trial shall always resume before the same judge or the same Panel.
- (3) If the main trial may not be resumed before the same judge or the same Panel or if the recess of the main trial lasted longer than eight (8) days, the procedure provided for in the provisions of Article 266 of this Code shall be followed.

## **Section 5 – RECORD OF PROCEEDINGS**

### **Article 268**

#### **Manner of Taking Down the Record of Proceedings**

- (1) ~~A verbatim record of the entire course of the main trial must be taken down in the record of proceedings.~~ **A record of the entire course of the main trial must be kept. If the course of the main trial was recorded in accordance with Article 169 of this Code, the transcript of the undertaken action shall, upon justified request of the parties and the defense attorney, be submitted to the parties and the defense attorney no later than three days from the day of the undertaken action in the main trial. The justifiability of the request shall be decided upon by the judge or the presiding of the Panel.**
- (2) The judge or the presiding judge may order that a certain part of the record be read or copied, and it shall be always read or copied at the request of the parties, of the defense attorney or of a person whose statement was entered in the record.

### **Article 269**

#### **Entering the Pronouncement of Verdict in the Record of Proceedings**

- (1) A complete pronouncement of the verdict must be entered in the record of proceedings, indicating whether the verdict was announced publicly. The pronouncement of the verdict entered in the record of proceedings represents the original document.
- (2) If the decision on custody has been rendered, it must also be entered in the record of proceedings.

### **Article 270**

#### **Preservation of Physical Evidence**

- (1) Physical evidence gathered during criminal proceedings shall be stored and preserved in the separate room of the court. The judge or the presiding judge may, at any time, issue an order concerning the control and disposition of the physical evidence.
- (2) The Federal Minister of Justice shall issue regulations in which the manner and conditions for preserving the physical evidence referred to in Paragraph 1 of this Article shall be determined.

## **Section 6 – COMMENCEMENT OF THE MAIN TRIAL**

### **Article 271**

#### **Entrance of the Judge or the Presiding Judge into the Courtroom**

- (1) When the judge or the Panel enters or exits the courtroom, all present shall stand up upon the call from the authorized person.
- (2) Parties and other participants of the proceedings are obliged to stand up when addressing the court unless there are justified reasons for not doing so.

### **Article 272**

#### **Requirements for Holding the Main Trial**

When the judge or the presiding judge ascertains that all persons summoned have appeared at the main trial, or when the judge or the presiding judge decides that the main trial shall be held in the absence of certain persons summoned, or a decision on these matters has been postponed, the judge or the presiding judge shall call the accused and obtain personal data from him in order to verify his identity.

### **Article 273**

#### **Verifying the Identity of the Accused and Giving Instructions**

- (1) The judge or the presiding judge shall obtain personal data from the accused (Article 92) in order to verify his identity.
- (2) After verification of the identity of the accused, the judge or the presiding judge shall ask the parties and defense attorney whether they have any motions regarding the composition of the panel or jurisdiction of the court.
- (3) Once the identity of the accused has been verified, the judge or the presiding judge shall direct the witnesses and experts to the premise assigned to them outside the courtroom where they shall wait until called for questioning. The judge or the presiding judge shall warn the witnesses not to discuss their testimony with each other while waiting. Upon motion of the prosecutor, the accused or the defense attorney, the judge or the presiding judge shall allow requested experts to attend the main trial.
- (4) If the injured party is present, but still has not filed the property claim, the judge or the presiding judge shall inform the person in question that such a claim may be filed by the closing of the main trial.
- (5) The judge or the presiding judge may undertake necessary actions to prevent witnesses, experts and parties from communicating with each other.

## Article 274

### Instructions to the Accused

- (1) The judge or the presiding judge shall warn the accused to carefully follow the course of the main trial and shall instruct him that he may present facts and propose evidence in his favor, that he may question codefendants, witnesses and experts and that he may offer explanations regarding their testimony.
- (2) **The judge or the presiding judge shall instruct the accused that he may give a statement in the capacity of a witness during the evidentiary proceedings and if he decides to give such statement he shall be subject to direct and cross-examination as provided for in Article 277 of this Code, i.e. instructed as provided for in Article 100 of this Code. In that case, the accused as witness shall not take an oath or affirmation. The Court shall give the opportunity to the accused to consult about this right with his defense attorney beforehand, and if he does not have the defense attorney the Court shall carefully assess whether the legal assistance of a defense attorney is necessary.**

## Article 275

### Reading of the Indictment and ~~Evidence of the Prosecution and the Defense~~ Opening Statements

- (1) The main trial shall commence by a reading of the indictment. The indictment shall be read by the prosecutor.
- (2) ~~The prosecutor shall then briefly state the evidence by which the prosecutor expects to sustain the case of prosecution. After the indictment has been read, the judge or the presiding judge shall ask the accused whether he has understood the charges. If the judge or the presiding judge finds that the accused did not understand the charges, the judge or the presiding judge shall summarize the content of the indictment in a manner understandable to the accused.~~ **After the indictment has been read, the judge or the presiding judge shall ask the accused whether he has understood the charges. If the judge or the presiding judge finds that the accused has not understood the charges, the judge or the presiding judge shall summarize the content of the indictment in a manner understandable to the accused. The Prosecutor shall then briefly state the evidence by which the Prosecutor expects to build his case.**
- (3) ~~The accused or his defense attorney may then state the defense and briefly state the evidence that shall be presented for the defense.~~ **The accused or his defense attorney may then present the summary of the defense plan.**

## Section 7 – EVIDENTIARY PROCEDURE

### Article 276

#### Presentation of Evidence

- (1) Parties and the defense attorney are entitled to call witnesses and to present evidence.
- (2) Unless the judge or the ~~Panel~~ **president of the Panel**, in the interest of the justice, decides otherwise, the evidence at the main trial shall be presented in the following order:
  - a) evidence of the prosecution;
  - b) evidence of the defense;
  - c) rebuttal evidence of the prosecution;
  - d) evidence in reply to the prosecutor's rebuttal evidence;
  - e) evidence whose presentation was ordered by the judge or the panel;
  - f) ~~all relevant information that may help the judge or the Panel in determining appropriate criminal sanction, if the accused is found guilty on one or more counts in the indictment~~ **all evidence relevant for the pronouncement of the criminal sanction.**
- (3) During the presentation of the evidence, direct examination, cross-examination and redirect examination shall be allowed. The party who called a witness shall directly examine the witness in question, but the judge or the presiding judge may at any stage of the examination ask the witness appropriate questions.

### Article 277

#### Direct Examination, Cross-examination and Additional Examination of Witnesses

- (1) Direct examination, cross-examination and redirect examination shall always be permitted. The party who called a witness shall directly examine the witness in question, but the judge or the presiding judge and members of the panel may at any stage of the examination ask the witness appropriate questions. Questions on cross-examination shall be limited and shall relate to the questions asked during direct examination and questions in support of statements made by the party which is cross-examining that witness. Questions on redirect examination shall be limited and shall relate to questions asked during cross-examination. After examination of the witness, the judge or the presiding judge and members of the panel may question the witness.
- (2) Leading questions shall not be used during the direct examination except if there is a need to clarify the witness's testimony. As a general rule, leading questions shall be allowed only during the cross-examination. When a party calls the witnesses of the adversarial party or when a witness is hostile or uncooperative, the judge or the presiding judge may at his own discretion allow the use of leading questions.
- (3) The judge or the presiding judge shall exercise an appropriate control over the manner and order of the examination of witnesses and the presentation of evidence so that the

examination of and presentation of evidence is effective to ascertain the truth, to avoid loss of time and to protect the witnesses from harassment and confusion.

- (4) During the presentation of evidence referred to in Item e. Paragraph 2 of Article 276 of this Code, the court shall question the witness and then allow the parties and the defense attorney to ask the witness questions.

#### Article 278

##### The Right of Court to Disallow A Question or Evidence

- (1) The judge or the presiding judge shall forbid the inadmissible questions or the repetition of irrelevant questions as well as answers to such questions.
- (2) If the judge or the presiding judge finds that the circumstances that a party tries to prove are irrelevant to the case or that the presented evidence is unnecessary **or that during the questioning, a witness was failed to be questioned regarding circumstances for which his/her questioning was again proposed**, the judge or the presiding judge shall reject the presentation of such evidence.

#### Article 279

##### Special Evidentiary Rules When Dealing With Cases of Sex Crimes

- 1) ~~The evidence concerning past sexual behavior and the sexual orientation of the injured party is not admissible~~ **It shall not be allowed to ask an injured party about any sexual experiences prior to the commission of the criminal offence in question. Any evidence offered to show, or tend to show the injured party's involvement in any previous sexual experience, behaviour, or sexual orientation, shall not be admissible.**
- 2) Notwithstanding Paragraph 1 of this Article, evidence offered to prove that semen, medical documents on injuries or any other physical evidence may come from a person other than the accused, is admissible.
- 3) In the case of the criminal offense against humanity and the international law, the consent of the victim shall not be used in a favor of the defendant.
- 4) Before admitting evidence pursuant to this Article, the court shall conduct an appropriate hearing *in camera*.
- 5) The motion, supporting documents and the record of the hearing must be sealed in a separate envelope, unless the court orders otherwise.

#### Article 280

##### The Consequences of the Confession of the Accused

If a confession of the accused during the main trial is complete and in accordance with previously presented evidence, then, in the evidentiary proceeding, only evidence related to the decision on criminal sanction shall be presented.

## **Article 281**

### **Taking an Oath or Affirmation**

- (1) All witnesses shall take an oath or affirmation replacing an oath before testifying.
- (2) ~~The text of the oath or the affirmation is as follows: "I swear or affirm on my honor and conscience that I shall speak the whole truth on everything the court asks me and shall not conceal, add or alter anything known to me on this subject."~~ **The text of the oath or the affirmation is as follows: "I swear or affirm that I shall speak the whole truth regarding everything that I shall be asked before the Court and shall not fail to reveal anything known to me."**
- (3) Mute witnesses who are able to read and write shall take an oath by signing the text of the oath or affirmation, and deaf witnesses shall read the text of the oath or affirmation. If mute or deaf witnesses are not able to read or write, the oath or affirmation shall be given through a person using the sign language.

## **Article 282**

### **Protection of Witnesses from Insults, Threats and Attacks**

- (1) The judge or the presiding judge shall protect the witness from insults, threats and attacks.
- (2) The judge or the presiding judge shall warn or fine a participant in the proceedings or any other person who insults, threatens or jeopardizes the safety of the witness before the court. In the case of a fine, provisions of Article 257, Paragraph 1 of this Code shall be applied.
- (3) In the case of a serious threat to a witness, the judge or the presiding judge shall inform the prosecutor for the purpose of undertaking criminal prosecution.
- (4) At the motion of the parties or the defense attorney, the judge or the presiding judge shall order the police to undertake actions necessary to protect the witness.

## **Article 283**

### **Sanctions for Refusing to Testify**

- ~~(1) If the witness refuses to testify without providing a justified reason and after being warned of the consequences, the witness may be fined an amount up to 30,000 KM.~~
- ~~(2) An appeal is allowed against the decision referred to in Paragraph 1 of this Article but it shall not stay the execution of the decision.~~
- (1) If the witness refuses to testify without providing a justified reason and after being warned of the consequences, the witness may be fined an amount up to 30.000 KM.**
- (2) If the witness still refuses to testify, the witness may be imprisoned. Imprisonment shall last until the witness agrees to testify, or until his testimony becomes irrelevant or until the finalization of the criminal proceedings but not**

**longer than 30 days.**

**(3) The Panel (Article 25 Paragraph 6 of this Code) shall decide on appeal filed against the decision on fine or imprisonment. An appeal against the decision on fine and imprisonment shall not stay the execution of the decision.**

#### **Article 284**

##### **Engagement of the Expert**

- (1) The parties, the defense attorney and the court may engage an expert.
- (2) Expenses of the expert referred to in Paragraph 1 of this Article shall be paid by the one who engaged the expert.

#### **Article 285**

##### **Examination of the Experts**

- (1) Before an examination of an expert, the judge or the presiding judge shall remind the expert of his duty to present his findings and opinion to the best of his knowledge and in accordance with the ethics of his profession and shall warn him that the presentation of false findings and false opinions is a criminal offense.
- (2) The expert shall take an oath or affirmation prior to presenting his testimony.
- (3) The oath or affirmation shall be taken orally.
- (4) The text of the oath or affirmation is as follows: “ I swear/affirm on my honor that I shall testify truthfully and shall present my findings and opinion accurately and completely.”
- ~~(5) The expert shall present his findings and opinion orally in the main trial. In that case, the expert shall be directly examined, cross examined or redirectly examined by both parties, the defense attorney and the court.~~
- ~~(6)~~**(5)** The written findings and opinion of the expert shall only be admitted as evidence if the expert in question testified at the main trial.

#### **Article 286**

##### **Discharging Witnesses and Experts**

- (1) Witnesses and experts who have been examined by both parties and the defense attorney, **or the Court** shall remain outside of the courtroom until the judge or presiding judge discharges them.
- (2) The judge or the presiding judge may order *ex officio* or on the motion of the parties or the defense attorney that examined witnesses and experts leave the courtroom and be subsequently recalled and re-examined in the presence or in the absence of other witnesses and experts.



## Article 287

### Examination out of the Court

- (1) If it is learned during the proceedings that a witness or expert is not able to appear before the court or that his appearance would be of disproportionate hardship, the judge or the presiding judge may, if he deems the testimony of witness and expert important, order that he be examined out of the court. The judge or the presiding judge, the parties and the defense attorney shall be present at the examination, and the examination shall be conducted in accordance with Article 277 of this Code.
- (2) If the judge or the presiding judge finds it necessary, the examination of the witness may be carried out during a reconstruction of the criminal offense out of the court. The judge or the presiding judge, the parties and the defense attorney shall be present at the reconstruction, and the examination shall be carried out in accordance with Article 277 of this Code.
- (3) ~~The parties, defense attorney and injured party shall always be notified about the time and place of the examination of witnesses or the reconstruction, with an instruction that the parties, defense attorney and witnesses must attend these proceedings. Examination shall be carried out as if it was carried out at the main trial in accordance with Article 277 of this Code.~~ **The parties, defence attorney and injured party shall always be invited to attend the examination of witnesses or the reconstruction. Examination shall be carried out as it is at the main trial in accordance with Article 277 of this Code.**
- (4) If the judge or the presiding judge finds it necessary, the examination of minors as witnesses shall be carried out in accordance with Article 100, Paragraph 6, and Article 104 of this Code.

## Article 288

### Exceptions from the Direct Presentation of Evidence

- (1) ~~Prior statements given during the investigative phase are admissible as evidence in the main trial and may be used in cross examination or in rebuttal or in rejoinder. In this case, the person may be given the opportunity to explain or deny a prior statement.~~ **Prior statements given during the investigative phase are admissible as evidence in the main trial and may be used in direct or cross-examination or in rebuttal or in rejoinder, and subsequently presented as evidence or for rejoinder. The person may be given the opportunity to explain or deny a prior statement.**
- (2) Notwithstanding Paragraph 1 of this Article, records on testimony given during the investigative phase, and if judge or the Panel so decides, shall be read or used as evidence at the main trial only if the persons who gave the statements are dead, affected by mental illness, cannot be found or their presence in court is impossible or

very difficult due to important reasons **or if without legal reasons they refuse to give statement at the main trial.**

- (3) If the accused during the main trial exercises his right not to present his defence or not to answer questions he is asked, records of testimonies given during the investigation may, upon decision of the judge or the presiding judge, be read and used as evidence in the main trial, only if the accused was, during his questioning at investigation, instructed as provided for in Article 92 Paragraph (2) Item (c) of this Code.**

#### **Article 289 Records on Evidence**

- (1) Records concerning the crime scene investigation, the search of dwellings and persons, the forfeiture of things, books, records and other evidence, shall be introduced at the main trial in order to establish their content, and at the discretion of the judge or presiding judge, their content may be entered in the record of proceedings in summarized version.
- (2) To prove the content of writing, recording or photograph, the original writing, recording or photograph is required, unless otherwise stipulated by this Code.
- (3) Notwithstanding Paragraph 2 of this Article, a certified copy of the original may be used as evidence or the copy verified as unchanged with respect to the original.
- (4) Evidence referred to in Paragraph 1 of this Article shall be read unless the parties and the defense attorney do not agree otherwise.

#### **Article 290 Amendment of the Indictment**

If the prosecutor evaluates that the presented evidence indicates a change of the facts presented in the indictment, the prosecutor may amend the indictment ~~during the main trial~~ **by completion of the evidentiary proceedings**. The main trial may be postponed in order to give adequate time for preparation of the defense. In this case, the indictment shall not be confirmed.

#### **Article 291 Supplementary Evidence**

- (1) After the presentation of evidence, the judge or the presiding judge shall ask the parties and defense attorney if they have additional evidentiary motions.
- (2) If the parties or the defense attorney have no evidentiary motions or motions have been rejected, the judge or the presiding judge shall declare the evidentiary proceedings completed.

## **Article 292**

### **Closing Arguments**

- (1) Upon the completion of the evidentiary proceedings, the judge or the presiding judge shall call the prosecutor, injured party, defense attorney and the accused to present their closing arguments. The last statement shall be always given by the accused.
- (2) If the prosecution is represented by more than one prosecutor and if the accused is represented by more than one defense attorney, all prosecutors and defense attorneys may give their closing arguments, but their closing arguments shall not be repetitive ~~and they may be time limited.~~

## **Article 293**

### **Closing the Main Trial**

Once all closing arguments are completed, the judge or the presiding judge shall declare the main trial closed and the court shall retire for deliberation and voting for the purpose of reaching a verdict.

## **CHAPTER XXII**

### **THE VERDICT**

#### **Section 1 – PRONOUNCEMENT OF THE VERDICT**

### **Article 294**

#### **Pronouncement and Announcement of the Verdict**

The verdict shall be pronounced and announced in the name of the Federation of Bosnia and Herzegovina.

### **Article 295**

#### **Correspondence between the Verdict and Charges**

- (1) The verdict shall refer only to the accused person and only to the criminal offense specified in the indictment that has been confirmed or amended at the main trial.
- (2) The court is not bound to accept the proposals of the prosecutor regarding the legal classification of the act.

### **Article 296**

#### **Evidence on Which the Verdict is Grounded**

- (1) The court shall reach a verdict solely based on the facts and evidence presented at the main trial.

- (2) The court is obliged to conscientiously evaluate every piece of evidence and its correspondence with the rest of the evidence and, based on such evaluation, to conclude whether the fact(s) have been proved.

## **Section 2 – TYPES OF VERDICTS**

### **Article 297**

#### **Meritorious and Procedural Verdicts**

- (1) The verdict shall dismiss the charge, acquit the accused or declare him guilty.  
(2) If the charge encompasses several criminal offenses, the verdict shall declare for each of them whether the charge is dismissed, or the accused is acquitted of the charge or is declared guilty.

### **Article 298**

#### **Verdict Dismissing the Charges**

The court shall pronounce the verdict dismissing the charges in following cases:

- a) if the court has not subject matter jurisdiction over the case;  
~~b) if the proceedings were conducted without the prosecutor requesting so;~~  
e) **b)** if the prosecutor dropped the charges between the beginning and the end of the main trial;  
~~d) c)~~ if there was no necessary approval or if the competent state body revoked the approval;  
e) **d)** if the accused has already been convicted by a finally binding decision of the same criminal offense or has been acquitted of the charges or if proceedings against him have been dismissed by a finally binding decision, provided that the decision in question is not the decision on dismissing the procedure referred to in Article 342 of this Code;  
~~f) e)~~ if by an act of amnesty or pardon, the accused has been exempted from criminal prosecution or if criminal prosecution may not be undertaken due to the statute of limitations or if there are other circumstances which preclude criminal prosecution.

### **Article 299**

#### **Verdict Acquitting the Accused**

The court shall pronounce the verdict acquitting the accused of the charges in the following cases:

- a) if the act with which he is charged does not constitute a criminal offense under the law;  
b) if there are circumstances which exclude criminal responsibility;  
c) if it is not proved that the accused committed the criminal offense with which he is charged.

### **Article 300**

#### **Guilty Verdict**

- (1) In a guilty verdict, the court shall pronounce the following:
  - a) the criminal offense for which the accused is found guilty along with a citation of the facts and circumstances that constitute the elements of the criminal offense and those on which the application of a particular provision of the Criminal Code depends;
  - b) the legal name of the criminal offense and the provisions of the Criminal Code that was applied;
  - c) the punishment pronounced against the accused or released from punishment under the provisions of the Criminal Code;
  - d) a decision on suspended sentence;
  - e) a decision on security measures, forfeiture of the proceeds of crime and a decision on return of items (Article 88) if such items have not been returned to their owner or the possessor;
  - f) a decision crediting the period of pretrial custody or time already served;
  - g) a decision on costs of criminal proceedings and on a property claim, and the decision that the finally binding verdict shall be announced in the media;
- (2) If the accused has been fined, the verdict shall indicate the deadline for payment, or way to substitute the fine in case that the accused ~~is not able to pay~~ **does not pay**.

### **Section 3 – ANNOUNCEMENT OF THE VERDICT**

#### **Article 301**

##### **Date and Place of the Announcement of Verdict**

- (1) After the pronouncement of the verdict, the court shall announce the verdict immediately. If the court is unable to announce the verdict the same day the main trial was completed, the judge may postpone the announcement of the verdict for a maximum of three (3) days and shall set the date and place when the verdict shall be announced.
- (2) The court shall read the pronouncement of the verdict in the presence of the parties, ~~and~~ the defense attorney, ~~their~~ legal representatives and their attorneys-in-fact and briefly explain it.
- (3) The verdict shall be announced even if the parties, the defense attorney, legal representative or attorney-in-fact are not present. The court may decide that the judge or the presiding judge shall orally present the verdict to the accused absent during the announcement or that the verdict only be served on the accused.
- (4) If the public has been excluded from the main trial, the verdict must be read in a public session. The Panel shall decide whether and to what extent the public shall be excluded when announcing the reasons for the verdict.

(5) All present shall stand to hear the reading of the verdict.

### **Article 302**

#### **Custody After Pronouncement of the Verdict**

Provisions of Article 152 of this Code shall apply when ordering, extending or terminating the custody after the announcement of the verdict<sup>31</sup>.

### **Article 303**

#### **Instructions on the Right to Appeal and Other Instructions**

- (1) Upon the announcement of the verdict, the judge or the presiding judge shall instruct the accused and the injured party on their right to appeal, and on the right to answer to the appeal.
- (2) If the accused has received a suspended sentence, the judge or presiding judge shall caution him as to the significance of a suspended sentence and conditions to which he must adhere.
- (3) The judge or the presiding judge shall warn the accused that he must notify the court regarding every change of the address until the finally binding verdict is rendered.

## **Section 4 – WRITTEN PRODUCTION AND THE DELIVERY OF THE VERDICT**

### **Article 304**

#### **Written Production of the Verdict**

- (1) An announced verdict must be prepared in writing within 15 days from its announcement, and in complicated matters and as an exception, within 30 days. If the verdict has not been prepared by these deadlines, the judge or the presiding judge shall inform the President of the court as to why this has not been done. The President of the court shall, if necessary, undertake the necessary steps to have the verdict written as soon as possible.
- (2) The judge or the presiding judge and the record taker shall sign the verdict.
- (3) A certified copy of the verdict shall be delivered to the prosecutor and to the injured party, and it shall be delivered to the accused and the defense attorney pursuant to Article 185 of this Code. If the accused is in custody, certified copies of the verdict shall be sent within the time periods stipulated in Paragraph 1 of this Article.
- (4) The instructions on the right to appeal shall be also delivered to the accused and the injured party.

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<sup>31</sup> OG FBiH (27/07) 53/07

- (5) The court shall deliver a certified copy of the verdict, with instructions as to the right to appeal, to a person who owns the property forfeited under the verdict in question and to a legal person against whom forfeiture of the proceeds of crime was ordered. The finally binding verdict shall be delivered to the injured party.

### **Article 305** **The Contents of the Verdict**

- (1) A written verdict shall fully correspond to the announced verdict. The verdict shall have an introductory part, the pronouncement and the opinion.
- (2) The introductory part of the verdict shall contain the following: a statement that the verdict is pronounced in the name of the Federation, the name of the court, the first and last names of the presiding judge and judges in the Panel and the record taker, the first and last name of the accused, the criminal offense with which the accused is charged and whether the accused was present at the main trial, the date of the main trial and whether the main trial was public, first and last name of the prosecutor, defense attorney, legal representative and attorney-in-fact who were present at the main trial and the date when the pronounced verdict was announced.
- (3) The pronouncement of the verdict shall contain the personal data of the accused and the decision declaring the accused guilty of the criminal offense with which he is charged or the decision acquitting him of the charge in question or the decision rejecting the charge.
- (4) If the accused is found guilty, the pronouncement of the verdict shall include the necessary data referred to in Article 300 of this Code, and if the accused is acquitted of the charge or the charge is rejected, the pronouncement of the verdict shall include a description of the criminal offense with which the accused is charged and a decision on the costs of the criminal proceedings and a property claim if such was made.
- (5) In the case of joinder of criminal offenses, the court shall incorporate in the pronouncement of the verdict the penalties determined for each individual criminal offense and then a total sentence pronounced for all the criminal offenses.
- (6) In the opinion of the verdict, the court shall present the reasons for each count of the verdict.
- (7) The court shall specifically and completely state which facts and on what grounds the court finds to be proven or unproven, furnishing specifically an assessment of the credibility of contradictory evidence, the reasons why the court did not sustain the various motions of the parties, the reasons why the court decided not to directly examine the witness or expert whose testimony was read, and the reasons guiding the court in ruling on points of law and especially in establishing whether the criminal offense was committed and whether the accused was criminally responsible and in applying specific provisions of the Criminal Code to the accused and to his act.
- (8) If the accused has received a sentence, the opinion shall state the circumstances the court considered in determining the level of punishment. The court shall specifically present the reasons which guided the court when it decided on a more severe

punishment than one prescribed, or when it decided that the punishment should be more lenient or the accused should be released from the punishment or when the court has pronounced a suspended sentence or has pronounced a security measures or forfeiture of the proceeds of crime.

- (9) If the accused is acquitted of the charge, the opinion shall specifically state on what grounds referred to in Article 299 of this Code the acquittal is based.
- (10) In the opinion of a verdict rejecting the charge, the court shall not decide the merits, but shall restrict itself solely to the grounds for rejecting the charge.

#### **Article 306**

##### **Corrections in the Verdict**

- (1) Errors in names and numbers and other obvious errors in writing and calculation, formal defects and disagreements between the written copy of the verdict and the original verdict shall be corrected through a special decision by the judge or the presiding judge, on the motion of the parties and defense attorney or *ex officio*.
- (2) If there is a discrepancy between the written copy of the verdict and the original of the verdict with respect to data referred to in Article 300, Paragraph 1, Items a) through e) and Item g) of this Code, the decision on the correction shall be delivered to the persons referred to in Article 303 of this Code. In that case, the period allowed for appeal shall commence on the date of delivery of the decision against which no interlocutory appeal is allowed.

### **CHAPTER XXIII**

#### **REGULAR LEGAL REMEDIES**

##### **Section 1 – APPEAL AGAINST THE FIRST INSTANCE VERDICT**

#### **Article 307**

##### **Right to Appeal and the Deadline for Appeal**

- (1) An appeal may be filed against the verdict rendered by the court first instance within 15 days from the date when the copy of the verdict was delivered.
- (2) In complex matters, the court may, on the motion of the parties or the defense attorney, extend the deadline for filing an appeal for a maximum of 15 days.
- (3) Until the court renders a decision on a motion referred to in Paragraph 2 of this Article, the deadline for filing an appeal shall not run.
- (4) An appeal filed on time shall stay the execution of the verdict.

#### **Article 308**

##### **Subjects of the Appeal**

- (1) The parties, the defense attorney and the injured party may file an appeal.

Unofficially consolidated by Halisa Skopljak

(In case of any issue regarding authenticity of text or translation, the local language version shall prevail)



- (2) An appeal on behalf of the accused may also be filed by his legal representative, spouse or cohabitee, parent or child and adoptive parent or adopted child<sup>32</sup>. In this case, the period allowed for the appeal shall run from the day when the accused or his defense attorney was delivered a copy of the verdict.
- (3) The prosecutor may file an appeal in favour or against the accused.
- (4) The injured party may contest the verdict only with respect to decision of the court on costs of the criminal proceedings and with respect to decision on a property claim.
- (5) An appeal may also be filed by a person whose item was forfeited or from whom the proceeds of crime obtained by a criminal offense was forfeited.
- (6) The defense attorney and persons referred to in Paragraph 2 of this Article may file an appeal even without a special authorization of the accused, but not against the will of the accused, unless a sentence of long term imprisonment was pronounced against the accused.

#### **Article 309**

##### **Waiving and Abandoning an Appeal**

- (1) The accused may waive the right to appeal only after the verdict has been delivered to him. The accused may waive the right to appeal even before that date if the prosecutor has waived the right to appeal, unless under the verdict the accused must serve a prison sentence. The accused may abandon an appeal pending with the Panel of the Appellate Court.
- (2) The prosecutor may waive the right to appeal from the moment when the verdict is announced to the end of the period allowed for filing an appeal, and the prosecutor may abandon an appeal pending with the Panel of the Appellate court.
- (3) The waiving and abandonment of an appeal may not be recalled.

#### **Article 310**

##### **Contents of Appeal and Removing the Shortcomings of the Appeal**

- (1) An appeal should include:
  - a) an indication of the verdict being appealed, including the name of the court, the number and the date of the verdict;
  - b) the grounds for contesting the verdict;
  - c) the reasoning behind the appeal;
  - d) a proposal for the contested verdict to be fully or partially reversed, or revised;
  - e) at the end, the signature of the appellant.

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<sup>32</sup> OG FBiH (78/04) 28/05: In Article 308 (*Subjects of the Appeal*), paragraph 2, the words “direct blood relative, adoptive parent, adopted child, brother, sister and foster parent” shall be replaced by the words “parent or child and adoptive parent or adopted child”.

- (2) If an appeal has been filed by the accused or another person referred to in Article 308, Paragraph 2 of this Code, and the accused does not have defense attorney, or if the appeal has been filed by an injured party who has no attorney in fact, and the appeal has not been drawn up in conformity with the provisions of Paragraph 1 of this Article, the court shall call upon the appellant to supplement the appeal in writing or orally with the court by a certain date. If the appellant fails to respond, the court shall reject the appeal if it does not contain the data referred to in Item b), c), and e) of Paragraph 1 of this Article; if the appeal does not contain the data referred to in Item a) of Paragraph 1 of this Article, it shall be rejected if it cannot be ascertained to what verdict it pertains. If the appeal has been filed in favor of the defendant, it shall be delivered to the appellate division if it can be established to what verdict it pertains; otherwise, the appeal shall be rejected.
- (3) If an appeal was filed by the injured party who is represented by a attorney in fact or filed by the prosecutor, and an appeal does not contain the data referred to in Items b), c), and e) of Paragraph 1 of this Article or data referred to in Item a) of Paragraph 1 of this Article, and it cannot be ascertained to what verdict the appeal pertains, the appeal shall be rejected. An appeal that lacks the aforesaid data filed in the favor of the accused who is represented by the defense attorney, shall be delivered to the Panel of Appellate court if it can be ascertained to what verdict the appeal pertains, and if it can not be ascertained, then it shall be rejected.
- (4) New facts and new evidence, which despite due attention and cautiousness were not presented at the main trial, may be presented in the appeal. The appellant must cite the reasons why he did not present them previously. In referring to new facts, the appellant must cite the evidence that would allegedly prove these facts; in referring to new evidence, he must cite the facts that he wants to prove with that evidence.

### **Article 311**

#### **Grounds for Appeal**

A verdict may be contested on the grounds of:

- a) an essential violation of the provisions of criminal procedure;
- b) a violation of the Criminal Code;
- c) the state of the facts being erroneously or incompletely established;
- d) the decision as to the sanctions, the forfeiture of the proceeds of crime, costs of criminal proceedings, property claims and announcement of the verdict through the media.

### **Article 312**

#### **Essential Violations of the Criminal Procedure Provisions**

- (1) The following constitute an essential violation of the provisions of criminal procedure:

- a) if the court was improperly composed or if a judge participated in pronouncing the verdict who did not participate in the main trial or who was disqualified from trying the case by a finally binding decision;
  - b) if a judge who should have been disqualified participated in the main trial;
  - c) if the main trial was held in the absence of a person whose presence at the main trial was required by law, or if the accused, defense attorney or the injured party, in spite of his motion was denied the use of his own language at the main trial and the opportunity to follow the course of the main trial in his language;
  - d) if the right to defense was violated;
  - e) if the public was unlawfully excluded from the main trial;
  - f) if the court violated the rules of criminal procedure that require an approval of the competent authority;
  - g) if the court reached a verdict but did not have a subject matter jurisdiction, or if the court rejected the charges improperly due to a lack of subject matter jurisdiction;
  - h) if, in its verdict, the court did not entirely resolve the contents of the charge;
  - i) if the verdict is based on evidence that may not be used as the basis of a verdict under the provisions of this Code;
  - j) if the charge has been exceeded;
  - k) if the wording of the verdict was incomprehensible, internally contradictory or contradicted the grounds of the verdict or if the verdict had no grounds at all or if it did not cite reasons concerning the decisive facts.
- (2) There is also a substantial violation of the principles of criminal procedure if the court has not applied or has improperly applied some provisions of this Code ~~to the preparation of the main trial or~~ during the main trial or in rendering the verdict, and this affected or could have affected the rendering of a lawful and proper verdict.

### **Article 313**

#### **Violations of the Criminal Code**

The following points shall constitute a violation of the Criminal Code:

- a) as to whether the act for which the accused is being prosecuted constitutes a criminal offense;
- b) as to whether the circumstances exist that preclude criminal responsibility;
- c) as to whether the circumstances exist that preclude criminal prosecution, and especially as to whether the statute of limitations on criminal prosecution applies, or as to whether prosecution is precluded because of amnesty or pardon, or as to whether the matter has already been decided by a finally binding verdict;
- d) if a law that could not be applied has been applied to the criminal offense that is the subject matter of the charge;
- e) if the decision pronouncing the sentence, suspended sentence or decision pronouncing a security measure or forfeiture of the proceeds of crime has exceeded the authority that the court has under the law;

- f) if provisions have been violated concerning the crediting of period of pretrial custody and time served.

#### **Article 314** **Erroneously or Incompletely Established Facts**

- (1) A verdict may be contested because the state of the facts has been erroneously or incompletely established when the court has erroneously established some decisive fact or has failed to establish it.
- (2) It shall be taken that the state of facts has been incompletely established when new facts or new evidence so indicates.

#### **Article 315** **Decision on the Sentence, the Costs of the Proceeding, the Property Claim and the Announcement of the Verdict**

- (1) A verdict or decision on admonition of the defendant may be contested because of the decision on the level of sentence, suspended sentence or admonition when the court did not exceed its jurisdiction in the decision, but the court did not correctly determine the punishment in view of the circumstances that had a bearing on greater or lesser punishment, and also because the court applied or failed to apply the rule of lenity, provisions respecting release from punishment, suspended sentence or admonition of the defendant although legal requirements existed.
- (2) A decision on a security measure or forfeiture of the proceeds of crime may be contested if there is no violation of law under Article 313, Item e) of this Code, but the court incorrectly rendered that decision or did not pronounce a security measure or order for forfeiture of the proceeds of crime although legal requirements were met. These same reasons may be the ground for contesting a decision on the costs of the criminal proceedings.
- (3) A decision on a property claim and a decision on announcing the verdict through the media may be contested when the court has rendered the decision on these matters contrary to the provisions of law.

#### **Article 316** **Filing an Appeal**

- (1) The appeal shall be filed with the court in a sufficient number of copies for the court, for the adverse party and defense attorney to prepare a response.
- (2) The judge or the presiding judge shall issue a decision rejecting an appeal that is late (Article 326) or inadmissible (Article 327).

### **Article 317**

#### **An Answer to Appeal**

A copy of an appeal shall be submitted to an adverse party and to a defense attorney (Article 185) who, within eight (8) days of the date of receipt of the appeal, may file their response to the appeal with the court. Along with the entire record **and the transcript of the records from the main trial**, the appeal and the response to the appeal, shall be submitted to the Appellate Division.

### **Article 318**

#### **Reporting Judge**

- (1) When the documents pertaining to the appeal reach the appellate division, the presiding judge of the appellate division shall refer the documents to the presiding judge of the appellate panel who shall appoint a reporting judge.
- (2) The reporting judge may, if necessary, obtain the report on violations of the provisions of criminal procedure from the judge or the presiding judge of the panel who rendered a contested verdict, and the reporting judge may inspect the contents of the appeal with respect to new evidence and new facts and obtain necessary reports or documents.
- (3) When a reporting judge prepares the documents, the presiding judge shall schedule a session of the panel.

### **Article 319**

#### **Session of the Panel**

- ~~(1) The prosecutor, the accused and his defense attorney shall be informed about the session of the panel.~~
- ~~(2) If the accused is in custody or serving the sentence, his presence shall be ensured.~~
- ~~(3) The session shall open with the presentation of the appellant, and then the other party shall present the answer to the appeal. The panel may request for any necessary explanation regarding the appeal and the answer to appeal from the parties and the defense attorney present at the session. The parties and the defense attorney may propose that certain documents be read and may, upon the permission from the presiding judge, present any necessary explanation for their points in the appeal or the answer to the appeal without being repetitive.~~
- ~~(4) Failure of the parties and the defense attorney to appear at the session despite being duly summoned shall not preclude the session from being held.~~
- ~~(5) The public may be excluded from the session of the Panel at which the parties and the defense attorney are present, only under the conditions stipulated in this Code (from Article 250 through Article 252).~~
- ~~(6) The record of the Panel session shall be added to the case file.~~

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(In case of any issue regarding authenticity of text or translation, the local language version shall prevail)

(7) ~~The decision referred to in Article 326 and Article 327 of this Code may be rendered even without informing the parties and the defense attorney about the session of the Panel.~~

(1) The prosecutor, the accused, his defense attorney, the injured party, the person from whom the object was seized and the person from whom the proceeds of the crime were seized who requested to be notified on the session of the panel in their appeal or their response to an appeal shall be informed about the session of the panel.

(2) If the accused who requested to be notified on the session of the panel is in custody or serving a sentence, his presence shall be ensured and in that case the prosecutor and the defense attorney shall be notified on the session of the panel.

(3) Failure of the parties and the defense attorney to appear at the session despite being duly summoned shall not preclude the session from being held.

(4) The public may be excluded from the session of the panel only under the conditions stipulated in this Code (Articles 250 through to 252).

(5) The session shall open with the presentation of the appellant, and then the respondent party shall present the respond to the appeal. The panel may request for any necessary clarification regarding the appeal and the respond to appeal from the parties and the defense attorney present at the session. The parties and the defense attorney may propose that certain documents be read and may, upon the permission from the presiding judge, present any necessary explanation for their points in the appeal or the respond to the appeal without repeating clarifications.

(6) The record of the panel session shall be added to the case file.

(7) The decision referred to in Article 326 and Article 327 of this Code may be rendered even without informing the parties and the defense attorney about the session of the panel.

(8) When the persons to whom the appeal referred to in paragraph 1 of this Article pertains to do not request to be notified on the session of the panel, the session will be held in their absence.

#### Article 320

##### Decision Rendered in a Session or on the Basis of a Hearing

(1) The ~~panel of appellate division~~ *second instance court* shall render a decision in a session of the Panel or on the basis of a hearing.

(2) ~~The deadlines from Article 304 Paragraph 1 of this Code shall apply to preparation of the written decision rendered in a session of the Panel. The deadlines from Article 304 Paragraph 1 of this Code shall apply to preparation of the written decision rendered in a session of the Panel or in a main trial.~~

## **Article 321**

### **Limits in Reviewing the Verdict**

The ~~panel of appellate division~~ **second instance court** shall review the verdict insofar as it is contested by the appeal, **and shall review *ex officio* whether the Criminal Code was violated to the detriment of the accused.**

## **Article 322**

### **Rule against *Reformatio in Peius***

If an appeal has been filed only in favor of the accused, the verdict may not be modified to the detriment of the accused.

## **Article 323**

### **Extended Effect of the Appeal**

An appeal filed in favor of the accused due to the state of the facts being erroneously or incompletely established or due to the violation of the Criminal Code shall also contain an appeal of the decision concerning the sentence and forfeiture of the proceeds of crime (Article 315).

## **Article 324**

### ***Beneficium cohaesionis***

If in ruling on an appeal, regardless of who filed the appeal, the ~~panel of appellate division~~ **second instance court** finds that the grounds on which the decision was rendered in favor of the accused is also of benefit to any of the codefendants who did not file an appeal or did not file an appeal along the same lines, it shall *ex officio* proceed as though such appeal had been filed.

## **Article 325**

### **Decisions on the Appeal**

- ~~(1) The panel of appellate division may reject the appeal as being late or inadmissible or may refuse the appeal as unfounded and confirm or revise the verdict of the first instance or reverse the verdict and hold the main trial.~~
- ~~(2) The panel of appellate division shall decide in a single decision on all appeals against the same verdict.~~
- (1) In the session of the Panel, the second instance court may reject the appeal as being late or inadmissible, or may refuse the appeal as unfounded and confirm the first instance verdict, or allow the appeal and reverse the first instance verdict, or allow the appeal, revoke the first instance verdict and return the case to the first instance**

**court for retrial, or allow the appeal, revoke the first instance verdict and order main trial before the second instance court.**

- (2) The main trial must be held before the second instance court if the verdict in a criminal case was once revoked.**
- (3) The second instance court shall decide in a single decision on all appeals against the same verdict.**

### **Article 326**

#### **Rejecting the Appeal for Being Late**

A decision shall be rendered to reject the appeal for being late if it is found that to have been filed after the lawful date.

### **Article 327**

#### **Rejecting the Appeal as Inadmissible**

A decision shall be rendered to reject the appeal as inadmissible if it is found to have been filed by a person not eligible or authorized to file an appeal or a person who waived the right to appeal, or if it is found to have been abandoned or if after the abandonment the appeal was filed again or the appeal is not allowed under the law.

### **Article 328**

#### **Refusing the Appeal**

The ~~panel of appellate division~~ **second instance court** shall issue a verdict refusing the appeal as unfounded and confirm the verdict of the first instance when it finds that the grounds on which the verdict is contested by the appeal do not exist.

### **Article 329**

#### **Revising the First Instance Verdict**

- ~~(1) Allowing an appeal, the panel of appellate division shall render a verdict revising the verdict of the first instance if it deems that the decisive facts have been correctly ascertained in the verdict of the first instance and that in view of the state of the facts established, a different verdict must be rendered when the law is properly applied, according to the state of the facts and in the case of violations as per Article 312, Paragraph 1, Item f), g) and j) of this Code.~~
- ~~(2) If due to the revision of the first instance verdict, conditions to order or to terminate the custody pursuant to Article 152, Paragraph 1 and 2 of this Code have been fulfilled, the panel of appellate division shall issue a separate decision on the matter against which an appeal is not allowed.~~

**(1) Allowing an appeal or acting ex officio, the second instance court shall render a verdict reversing the verdict of the first instance if it deems that the decisive facts**



have been correctly ascertained in the verdict of the first instance and that in view of the state of the facts established, by the proper application of the law, a different verdict must be rendered, and in accordance to the state of the facts also in the case of violations as per Article 312, Paragraph 1, Items f), g) and j) of this Code. In such case, if the second instance court finds necessary to issue court reprimand, it shall issue decision reversing the first instance verdict and pronouncing the court reprimand.

- (2) If due to the revision of the first instance verdict, conditions to order or to terminate the custody pursuant to Article 152, Paragraphs 1 and 2 of this Code have been fulfilled, the second instance court shall issue a separate decision on the matter. An appeal against this decision shall be allowed to the third instance Panel of the Supreme Court of FBiH. The appeal does not stay the enforcement of the decision.

#### Article 330

##### Revoking the First Instance Verdict

- ~~(1) Allowing an appeal, the panel of appellate division shall revoke the first instance verdict and order for a trial if it finds that:~~
- ~~a) major violations of the provisions of the criminal procedure exist, except cases referred to in Article 329, Paragraph 1 of this Code;~~
  - ~~b) it is necessary to present new evidence or repeat the examination of evidence presented in the first instance proceedings that caused the state of facts to be erroneously and incompletely established.~~
- ~~(2) The panel of appellate division may also partially revoke the first instance verdict if certain parts of the verdict can be severed out without causing a detriment to rightful adjudication, and it may hold a trial concerning the certain parts in question.~~
- ~~(3) If the accused is in custody, the panel of appellate division shall review whether the grounds for custody still exist and it shall issue a decision on extension or termination of the custody. No appeal is allowed against this decision.~~
- ~~(4) If the accused is in custody, the panel of appellate division is obliged to issue a decision not later than three (3) months, and in complex cases not later than 6 months from the day of the receipt of documents.~~
- (1) Allowing the appeal, the second instance court shall issue decision revoking the first instance verdict and return the case to the first instance court for retrial, or order a main trial before the second instance court in case of justified reasons for not returning the case to the first instance court for retrial, if it finds that:
- a) essential violations of the provisions of the criminal procedure exist, except in cases referred to in Article 329, Paragraph 1 of this Code;
  - b) it is necessary to present new evidence or repeat the examination of evidence presented in the first instance proceedings that caused the state of facts to be erroneously and incompletely established.

- (2) The second instance court may also partially revoke the first instance verdict if certain parts of the verdict can be severed out without causing a detriment to rightful adjudication.
- (3) The second instance court may order that a new main trial before the first instance court is held before a new judge or new Panel of judges.
- (4) If the first instance verdict was revoked following allowance of the appeal and the second instance court establishes its subject matter jurisdiction in the first instance, it shall send the case to a Panel of the second instance court and inform the first instance court thereof.
- (5) If the accused is in custody, the second instance court shall review whether the grounds for custody still exist and it shall issue a decision on extension or termination of the custody. An appeal against this decision shall be allowed to the third instance Panel of the Supreme Court of FBiH. The appeal does not stay the enforcement of the decision.

#### Article 331

##### Reasoning of the Decision on Revoking the First Instance Verdict

~~In the opinion of the verdict, in the part by which the first instance verdict is revoked or in the decision on revoking the first instance verdict, only brief reasons for revoking the verdict shall be cited.~~

- (1) In the reasoning of the decision revoking the first instance verdict, the second instance court shall assess the appeal and cite violations of the law considered ex officio.
- (2) When first instance verdict is revoked due to essential violation of criminal procedure, the reasoning will cite which provisions have been violated and the nature of violations (Article 312.).
- (3) When the first instance verdict is revoked due to erroneously and incompletely established facts, it shall be stated what constitutes the gaps in establishing the facts and/or why new evidence and facts are important and have impact on rendering accurate decision.

#### Article 331a.

##### Delivery of the Second Instance Decision and Actions of the First Instance Court

- (1) The second instance court shall return all casefile documents to the first instance court in sufficient number of verified copies of the second instance court decision for delivery to the parties, defense attorney and other interested parties.
- (2) The first instance court which received the case for trial shall use initial indictment as basis. If the verdict of the first instance court has been partially revoked, the first instance court shall use only parts of the indictment that refer to the revoked part of the verdict.

- (3) *The parties and the defense attorney may present new facts and evidence at the new main trial.*
- (4) *The first instance court shall take all procedural steps and deliberate on all outstanding issues indicated at by the second instance court in its decision. The statement of witnesses and expert witnesses and written evidence and opinions shall be admitted as evidence and may be read or reproduced if such witnesses and expert witnesses were cross examined by the opposite party or defense attorney, or if they were not cross examined by the opposite party or defense attorney although this was made possible to them, as well as when it is otherwise provided by this Code, and in cases of evidence referred to in Article 276 Paragraph 2 Item e) of this Code.*
- (5) *The provision of Paragraph 4 of this Article shall not apply to persons referred to in Article 97 of this Code, which may refuse to testify.*
- (6) *When rendering new verdict, the first instance court is bound by the prohibition referred to in Article 322 of this Code.*

#### Article 332

#### ~~Hearing Before the Panel of Appellate Division~~ Hearing before the Second Instance Court

- (1) Provisions that apply to the main trial before the court of first instance shall be accordingly applied to a hearing before the ~~panel of appellate division~~ second instance court.
- (2) ~~If the panel of appellate division finds that it is necessary to repeat the examination of evidence presented in the first instance proceeding, testimony of examined witnesses and experts and written findings and opinions of experts shall be admitted as evidence if those witnesses and experts were cross examined by the opposing party or the defense attorney or they were not cross examined by the opposing party or the defense attorney although it was made possible, or if it is about the evidence referred to in Item e, Paragraph 2 of Article 276 of this Code. In that case, their testimony may be read at the hearing.~~ If the Panel of the Appellate Division second instance court finds that it is necessary to repeat the evidence presented in the first instance proceedings, testimony of examined witnesses and experts and written findings and opinions of experts shall be admitted as evidence and may be read or reproduced if those witnesses and experts were cross-examined by the opposing party or the defence attorney or they were not cross-examined by the opposing party or the defence attorney although this was made possible as well as in cases otherwise provided by this Code, or if it is about the evidence referred to in Item e, Paragraph 2 of Article 276 of this Code.
- (3) The provision referred to in Paragraph 2 of this Article shall not relate to privileged witnesses referred to in Article 97 of this Code.
- (4) *When rendering new verdict, the second instance court is bound by the prohibition referred to in Article 322 of this Code.*

## **Section 2 – An Appeal Against the SECOND INSTANCE VERDICT**

### **Article 333**

#### **~~Requirements for Filing an Appeal and Deciding the Appeal~~**

- (1) ~~An appeal is permitted against the verdict of the second instance court if the second instance court altered the first instance verdict in which the accused has been released from the charge and pronounced the guilty verdict.~~
- (2) ~~The Supreme Court of the Federation shall decide the appeal against the second instance verdict referred to in Paragraph 1 of this Article in the session of the Panel pursuant to provisions of the proceedings before the second instance court.~~

#### **General Provision**

- (1) An appeal is admitted against the verdict of the Appellate Division in the following cases:**
- a) if the Appellate Panel modified a verdict of acquittal of the court in the first instance and pronounced a verdict finding the accused guilty,**
- b) if on the basis of the appeal to the acquittal verdict the Appellate Panel in a hearing pronounced a verdict finding the accused guilty.**
- (2) ~~An appeal against an Appellate Division verdict shall be ruled on by the Panel in the third instance composed of three judges. An appeal against a second instance court verdict shall be ruled on by the Supreme Court of FBiH in a Panel of three judges. No hearing may be held before this Panel.~~**
- (3) The provisions of Article 324 of this Code shall also apply to the co-accused who did not file an appeal against a verdict in the second instance.**

## **Section 3 – APPEAL AGAINST THE DECISION**

### **Article 334**

#### **Appeals Permitted against the Decision**

- (1) The parties, the defense attorney and persons whose rights have been violated may always file an appeal against the decision of the court rendered in the first instance unless explicitly provided that an appeal is not allowed under this Code.
- (2) An appeal is not allowed against a decision of the Panel rendered during the investigation, unless otherwise provided by this Code.
- (3) A decision rendered in order to prepare the main trial and the verdict may be contested only in an appeal against the verdict.

### **Article 335**

#### **General Deadline for Filing the Appeal**

- (1) An appeal shall be filed with the court that has issued the decision.
- (2) Unless otherwise provided by this Code, an appeal against the decision shall be filed within three (3) days from the day the decision was delivered.

### **Article 336**

#### **Execution Suspended by an Appeal**

Unless otherwise provided by this Code, filing an appeal against the decision shall stay the execution of the decision in question.

### **Article 337**

#### **Deciding the Appeal against the First Instance Decision**

- (1) Unless otherwise provided by this Code, the panel of the appellate division of higher court shall decide an appeal against the decision rendered in the first instance. An appeal against a decision rendered by the Supreme Court as trial court shall be reviewed by the panel of the Appellate Division of the Supreme Court.
- (2) Unless otherwise prescribed by this Code, the panel referred to in Article 25, Paragraph 6 shall decide an appeal against the decision rendered by the preliminary hearing judge.
- (3) When deciding an appeal, the court may, in its decision, reject the appeal as late or inadmissible, may refuse an appeal as unfounded or may allow an appeal and revise a decision or reverse a decision and, if necessary, refer the case for retrial.

### **Article 338**

#### **Applying Provisions Appropriately on Appeal against the First Instance Verdict**

Provisions of Article 308, 310 and Paragraph 2 of Article 316, Paragraph 1 of Article 318, **Article 321**, Article 322 and Article 324 of this Code shall be appropriately applied when deciding an appeal against the decision.

### **Article 339**

#### **Applying Provisions of This Code Appropriately on Other Decisions**

Unless otherwise stipulated under this Code, provisions of Article 334 and Article 338 of this Code shall be appropriately applied to all other decisions rendered in accordance with this Code.

## **CHAPTER XXIV EXTRAORDINARY LEGAL REMEDY REOPENING THE CRIMINAL PROCEEDINGS**

### **Article 340 General Provision**

A criminal proceedings that were completed by a legally binding decision or verdict may be reopened on the motion of an authorized person only in cases and under the conditions provided by this Code.

#### **Article 340a**

##### **Reopening of Criminal Proceedings**

**(1) The verdict may be modified without reopening of the criminal proceedings if two or more verdicts against the same convict rendered several valid penalties and provisions on pronouncing a single new sentence for merger of crimes were not applied.**

**(2) In the case referred to in Paragraph 1 of this Article the court shall, with this new verdict, modify the previous verdict with respect to the decision on sentencing and pronounce a single penalty. The court in the first instance which tried the case in which the strictest type of penalty was pronounced has competent jurisdiction to issue the new verdict, and if the penalties were of the same kind, that court has competent jurisdiction which pronounced the highest penalty; and if the penalties are equal in that respect, that court has competent jurisdiction which was the last to pronounce a penalty.**

**(3) The new verdict shall be rendered by the court in a session of the panel on petition of the competent prosecutor or the convicted or the defence attorney, but after hearing the adverse party.**

**(4) If in the case referred to in Paragraph 1 of this Article the verdicts of other courts are also taken into account when the penalty is pronounced, a certified copy of the new final verdict shall also be delivered to those courts.**

### **Article 341 Resumption of the Criminal Proceedings**

If a criminal proceedings were dismissed by a legally binding decision or the charges were rejected by a legally binding verdict due to a lack of permission otherwise required by this Code, the proceedings shall resume at the motion of the prosecutor upon termination of the reasons for rendering the aforesaid decision.

## **Article 342**

### **Reopening a Proceeding Completed by a Legally Binding Decision**

- (1) Except for the cases referred to in Article 341 of this Code, if a criminal proceedings were dismissed by a legally binding decision prior to the main trial, the criminal proceedings may be reopened on a motion of the prosecutor if new evidence is introduced enabling the court to ascertain that the conditions to reopen the criminal proceeding have been fulfilled.
- (2) Criminal proceedings that were dismissed by a legally binding decision prior to the commencement of the main trial may be reopened if the prosecutor dropped the charges and it is proven that the prosecutor dropped the charges in connection with the criminal abuse of his official post as prosecutor. The provision of Article 343, Paragraph 2 of this Code shall be applied when proving the criminal offense committed by the prosecutor.

## **Article 343**

### **Reopening the Proceedings for the Benefit of the Accused**

- (1) Criminal proceedings that were completed by a legally binding verdict may be reopened in favor of the accused:
  - a) if it is proven that the verdict was based on a false document or on the false testimony of a witness, expert or interpreter;
  - b) if it is proven that the verdict came about because of a criminal offense committed by the judge or person who performed the investigation;
  - c) if new facts are presented or new evidence submitted, which despite the due attention and cautiousness were not presented at the main trial, and which in themselves or in relation to the previous evidence would tend to bring about the acquittal of the person who has been convicted or his conviction under more lenient criminal law;
  - d) if an individual has been tried more than once for the same offense or if more than one person has been convicted of an offense which could have been performed by only one person or by some of them;
  - e) if, in the case of a conviction for a continuous criminal offense or for another criminal offense that on the basis of the law covers several actions of the same kind or several actions of different kind, new facts are presented or new evidence is submitted that shows that the accused did not commit an action included in the criminal offense covered by the conviction, and the existence of those facts would have essentially affected the fashioning of punishment;
  - f) if the Constitutional Court of Bosnia and Herzegovina, ~~the Human Rights Chamber of Bosnia and Herzegovina~~ or the European Court for Human Rights establish that human rights and basic freedoms were violated during the proceedings and that the verdict was based on these violations;

- g) if a decision of the Constitutional Court of the Federation or the Constitutional Court of Bosnia and Herzegovina has repealed the law or other piece of legislation pursuant to which the finally binding guilty verdict was rendered.
- (2) In the cases referred to in Items a) and b) of Paragraph 1 of this Article, it must be proven by a legally binding verdict that these persons in question were found guilty of the criminal offenses in question. If the proceedings against these persons could not be conducted because they have died or because circumstances exist which preclude criminal prosecution, the facts referred to in Items a) and b) of the Paragraph 1 of this Article may be established with other evidence as well.

#### **Article 344**

##### **Reopening the Proceeding to the Detriment of the Accused**

- (1) Criminal proceedings may be reopened to the detriment of the accused if the verdict refusing the indictment was rendered due to the withdrawal of the prosecutor from the indictment, and it is proven that this withdrawal was brought about by the criminal offense of corruption or criminal offense of abuse of the official post or other responsible duty by the prosecutor.
- (2) In the case referred to in Paragraph 1 of this Article, the provision of Article 343, Paragraph 2 of this Code shall be applied.

#### **Article 345**

##### **Persons Authorized to File a Motion**

- (1) A motion to reopen the criminal proceedings may be filed by the parties and the defense attorney, and following the death of the accused the motion may be filed in his favor by the prosecutor and by the persons referred to in Article 308, Paragraph 2, of this Code.
- (2) A motion to reopen criminal proceedings in favor of a convicted person may be filed even after the convicted person has served his sentence and regardless of the statute of limitations, amnesty or pardon.
- (3) If the court learns that a reason for reopening criminal proceedings exists, the court shall so inform the convicted person or the person authorized to file the motion on his behalf.

#### **Article 346**

##### **Proceedings With Respect to the Motion**

- (1) The Panel (Article 25, Paragraph 6 **4) of the court which tried in the first instance** shall decide on a motion to reopen criminal proceedings.
- (2) The motion must cite the legal basis on which reopening of the proceedings is sought and the evidence to support the facts on which the motion is based. If the motion does



not contain such data, the court shall call upon the applicant to supplement the motion by a certain date.

- (3) When deciding on a motion, a judge who participated in rendering the verdict in the previous proceeding shall be excluded from the Panel.

#### **Article 347** **Deciding the Motion**

- (1) The court shall reject the motion in a decision if, on the basis of the motion itself and the record of the prior proceedings, it finds that the motion was filed by an unauthorized person or that there are no legal conditions for reopening the proceedings, or because the facts and evidence on which the motion is based have already been presented in a previous motion for reopening the proceedings that was refused by finally binding decision of the court, or if the facts and evidence obviously are not adequate to provide a basis for reopening the proceedings, or if the applicant did not conform with Article 346, Paragraph 2 of this Code.
- (2) If the court does not reject the motion, it shall serve a copy of the motion on the adverse party who has the right to answer the motion within eight (8) days. When the court receives an answer or when the deadline for giving the answer is overdue, the presiding judge of the Panel shall order a review of the facts and collection of the evidence called for in the motion and in the answer to the motion.
- (3) After the review has been conducted, the court shall issue a decision in which it rules on the motion for reopening the proceedings **as set in Article 348 Paragraph (2) of this Code.**

#### **Article 348** **Permission to Reopen the Proceeding**

- (1) If the court does not order an extended review, ~~after the prosecutor returns the documents,~~ the court shall grant the motion and allow the criminal proceeding to be reopened or the court shall reject the motion if it finds that the new evidence is not enough to reopen the criminal proceeding.
- (2) If the court finds that there are grounds for allowing the proceeding to be reopened on behalf of the accused and also on behalf of a co-accused who did not file a motion to reopen the proceedings, the court shall *ex officio* proceed as though such motion had been filed for the co-accused.
- (3) In the decision on reopening the criminal proceedings, the court shall order that a new main trial be scheduled immediately ~~or that the case be returned to the investigative phase.~~
- (4) If the motion to reopen a criminal proceedings has been filed on behalf of a convicted person, and the court deems in view of the evidence submitted that in the reopened proceedings the convicted person may receive such a punishment that would call for his release, once time already served had been credited, or that he might be acquitted

of the charge, or that the charge might be rejected, it shall order that execution of the verdict be postponed or terminated.

- (5) When a decision allowing the reopening of criminal proceedings becomes legally binding, execution of the penalty shall be stayed, but on the recommendation of the prosecutor the court shall order custody if the conditions exist as referred to in Article 146 of this Code.

### **Article 349**

#### **The Rules of the Reopened Proceedings**

- (1) The provision applicable to the previous proceedings shall also apply to the new reopened criminal proceedings that are being carried out on the basis of the decision to reopen the criminal proceedings. During the new proceedings, the court shall not be bound by the decisions rendered in the previous proceeding.
- (2) If the new proceedings should be suspended before the main trial commences, the court shall reverse the prior verdict by a decision on suspending the proceedings.
- (3) When the court renders a verdict in the new proceedings, the court shall pronounce that the prior verdict is being partially or in whole set aside, or shall pronounce that the prior verdict remains effective. When the court pronounces a new verdict, the court shall give the accused credit for time served, and if reopening of the proceeding was ordered only to try some of the criminal offenses of which the accused has been convicted, the court shall pronounce a new total sentence.
- (4) In the new proceedings, the court shall be bound by the prohibition set forth in Article 322 of this Code.

## **PART THREE-SPECIAL PROCEDURES**

### **CHAPTER XXV**

#### **PROCEDURE FOR ISSUING THE WARRANT FOR PRONOUNCEMENT OF SENTENCE**

### **Article 350**

#### **General Provision**

- (1) For criminal offenses for which the law prescribes a prison sentence up to five (5) years or a fine as the main sentence, for which the prosecutor has gathered enough evidence to provide grounds for the prosecutor's allegation that the suspect has committed the criminal offense, the prosecutor may request, in the indictment, from the court to issue a warrant for pronouncement of the sentence in which a certain sentence or measure shall be pronounced against the accused without holding the main hearing.
- (2) ~~The prosecutor may request one or more of the following criminal sanctions or measures to be pronounced: fine, suspended sentence, forfeiture of material gain~~

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~~acquired by the criminal offense or forfeiture of property~~ **The Prosecutor may request one or more of the following criminal sanctions or measures to be pronounced: fine, suspended sentence or security measures: ban on carrying out a certain activity or duty, forfeiture of the item as well as forfeiture of material gain acquired by the criminal offence.**

- (3) A fine may be requested in an amount that shall not exceed 50,000 KM.

#### Article 351

##### Rejection of the Request to Issue a Warrant for Pronouncement of the Sentence

- (1) The judge shall reject the request for issuing of a warrant for pronouncement of the sentence if he determines that grounds exist for joinder of the proceedings referred to in Article 32 of this Code, if the criminal offense in question is such that this request may not be filed or if the prosecutor has requested a pronouncement of sentence or measure that is not allowed according to law.
- (2) The Panel under Article 25, Paragraph 6 shall decide the prosecutor's appeal against the decision on rejection within 48 hours.
- (3) If the judge considers that the information contained in the indictment does not provide sufficient grounds for issuing a warrant for pronouncement of the sentence, or that according to this information another sanction or measure may be expected other than the one requested by the prosecutor, the judge shall treat the indictment as if it has been submitted for confirmation and ~~forward it for further procedure in accordance with this Code~~ **and shall act in accordance with Article 243 of this Code.**

#### Article 352

##### Granting the Request to Issue the Warrant for the Pronouncement of the Sentence

- (1) If the judge agrees with the request to issue the warrant for pronouncement of the sentence, the judge shall confirm the indictment and set a hearing **without delay, and at the latest within 8 days of confirmation of the indictment.**
- (2) The presence of the parties and defence attorney shall be necessary at the hearing. In case of their absence provisions of Articles 260, 261 and 263 of this Code shall apply.**
- ~~(2)~~ **(3)** At the hearing the judge shall:
- ensure whether the right of the accused to be represented by the defense attorney is honored;
  - ensure whether the accused understands the indictment and the prosecutor's request for a certain sentence or certain measures to be pronounced;
  - ~~present the accused with the evidence~~ **invite the Prosecutor to present the accused with the contents of the evidence** gathered by the prosecutor, and call upon the accused to make a statement regarding the evidence presented;
  - call upon the accused upon to enter a plea of guilty or not guilty;

- e) call upon the accused to make a statement upon the requested sentence or measure.

#### **Article 353**

##### **Issuance of the Warrant for Pronouncement of the Sentence**

- (1) ~~If the accused pleads not guilty or raises any objections to the indictment, the judge shall schedule the main trial within 30 days, and forward the indictment for further procedure in accordance with this Code~~ **If the accused pleads not guilty or raises any objections to the indictment, the judge shall forward the indictment for the purpose of scheduling the main trial, in accordance with this Code. The main trial shall be scheduled within 30 days.**
- (2) If the accused pleads guilty, and accepts the sentence or measure proposed in the indictment, the judge shall first establish the guilt of the accused and then shall issue a warrant for pronouncing the sentence in accordance with the indictment.

#### **Article 354**

##### **Contents of the Verdict on Issuing the Warrant for Pronouncement of the Sentence and Right to Appeal**

- (1) The verdict by which the warrant for pronouncement of the sentence is issued shall contain the data referred to in Article 300 of this Code.
- (2) The opinion of the verdict referred to in Paragraph 1 of this Article shall briefly state the reasons that justify the pronouncement of the verdict by which the warrant for pronouncing the sentence is issued.
- (3) An appeal is allowed against the verdict referred to in Paragraph 1 of this Article and the appeal may be filed within eight (8) days from the day of the delivery of the verdict.

#### **Article 355**

##### **Delivery of the Verdict Issuing a Warrant for Pronouncement of the Sentence**

- (1) The verdict by which the warrant for pronouncement of the sentence is issued shall be delivered to the accused, his defense attorney and to the prosecutor.
- (2) Payment of the fine before the expiration of the deadline for appeal is not considered to be a waiver of the right to appeal.

### **CHAPTER XXVI**

#### **SPECIAL PROVISIONS ON PRONOUNCEMENT OF THE COURT'S ADMONITION**

## **Article 356**

### **Pronouncement of the Court's Admonition**

- (1) Court's admonition shall be pronounced by the decision.
- (2) Unless otherwise provided by this Chapter, the provisions of this Code pertaining to the verdict by which the accused is found guilty shall be equally applied to the decision on court's admonition.

## **Article 357**

### **Announcement and Contents of the Decision on Court's Admonition**

- (1) Decision on court's admonition shall be announced immediately after the main trial citing the important reasons for it. During the announcement, the presiding judge shall warn the accused that the punishment for a criminal offense he committed shall not be pronounced against him, because the court believes that the court's admonition shall have enough influence on him not to commit another offense. If the decision on court's admonition is announced in the absence of the accused, the court shall enter such warning in the decision's opinion.
- (2) In the text of the decision on court's admonition, along with personal data of the accused, it shall be only written that the court's admonition has been pronounced against the accused for the offense which is subject matter of the charge and the legal name of the criminal offense. The text of the decision on the court's admonition shall include the necessary data referred to in Item e) and g) of Paragraph 1 of Article 300 of this Code.
- (3) The court shall cite the reasons that led it to pronounce the court's admonition in the opinion of the decision.

## **Article 358**

### **Contesting the Decision on Court's Admonition**

- (1) The decision on court's admonition may be contested based on the grounds referred to in Item a) throughout c) of Article 311 of this Code and may be contested if the circumstances that justify the pronouncement of the court's admonition did not exist.
- (2) If the decision on court's admonition contains decision on security measures, forfeiture of assets, costs of criminal proceedings or property claim, this decision may be contested for the reasons that the court did not properly apply security measure or forfeiture of assets, or if the court rendered a decision on costs of criminal proceedings or on property claim contrary to the law provisions.

### **Article 359**

#### **Violation of the Criminal Code**

Violation of the Criminal Code in case of pronouncement of the court's admonition exists, along with issues referred to in Item a) throughout d) of Article 313 of this Code, when the court exceeded its legal authorities by its decision on court's admonition, security measure or forfeiture of assets.

### **Article 360**

#### **Deciding the Appeal**

- (1) If the prosecutor has filed an appeal against the decision on judicial admonition to the detriment of the accused, the appellate court may render a guilty verdict and pass a sentence or a suspended sentence, if it finds that the trial court ascertained decisive facts correctly and that, with the proper application of law, a sentence or a suspended sentence can be passed.
- (2) Deciding any appeal against the decision on judicial admonition, the appellate court may render a decision on dismissing the indictment or on acquitting the accused, if it finds that the trial court ascertained decisive facts correctly and that, with the proper application of law, one of the decision can be passed.

## **CHAPTER XXVII**

### **JUVENILE PROCEDURE**

#### **Section 1 – GENERAL PROVISIONS**

### **Article 361**

#### **Application of Other Provisions of This Code to Juvenile Procedure**

- (1) The provisions of this Chapter shall apply in proceedings conducted against persons who were minors at the time when they committed a criminal offense and who had not reached the age of twenty-one (21) at the time proceedings were instituted or when those persons were tried. The other provisions of this Code shall apply to the extent that they do not conflict with the provisions of this Chapter.
- (2) The provisions of Articles 363 through 365, Article 368 through 371, Article 376, Article 378, Article 380 and Article 387 of this Code shall apply in proceedings

conducted against a young adult if, before the main trial commences, it is found that a correctional measure should properly be pronounced against that person in accordance with the Criminal Code, and by that date the person has not reached the age of twenty-one (21).

### **Article 362**

#### **Application of the Provisions to Children**

When it is established in the course of the proceeding that at the time when the minor committed the criminal offense he had not reached the age of fourteen (14), the criminal proceeding shall be dismissed, and the social welfare authorities shall be so informed.

### **Article 363**

#### **Circumspect Treatment**

- ~~(1) A minor may not be tried in absentia.~~
- (2) **(1)** When actions are undertaken that are attended by the minor, and especially when he is examined, ~~the bodies~~ **everyone** participating in the proceeding must be circumspect, mindful of the mental development, sensitivity and personal characteristics of the minor, so that the conduct of the criminal proceeding will not have an adverse effect on the minor's development.
- (3) **(2)** The bodies participating in the proceeding shall take appropriate actions to prevent any undisciplined behavior of the minor.

### **Article 364**

#### **Mandatory Defense**

- (1) A minor must have defense attorney from the outset of the preparatory proceeding.
- (2) If the minor does not understand the language in which the criminal proceeding is being conducted, the court shall appoint an interpreter for him.
- (3) If in the cases referred to in Paragraph 1 of this Article the minor himself, his legal representative or relatives do not retain a defense attorney, the judge for juveniles shall appoint him *ex officio*.

### **Article 365**

#### **Relieved from the Duty to Testify**

Parents of the minor, his foster parents, adoptive parents, social worker, religious official and defense attorney are relieved from the duty to testify concerning the circumstances necessary for evaluation of the mental development of a minor and for gaining familiarity with his personality and the conditions in which he lived (Article 375).

### **Article 366**

#### **Joined and Separate Proceedings**

- (1) When a minor has participated in committing a criminal offense with an adult, a separate proceeding shall be conducted against him, and its conduct shall conform to the provisions of this Chapter.
- (2) The proceeding against a minor may be joined with the proceeding against an adult and conducted under the general provisions of this Code only if the joinder is necessary to a full clarification of the case. The decision on this matter shall be made by the judge for juveniles upon the justified motion of the prosecutor. An appeal is not allowed against this decision.
- (3) When a joint proceeding is conducted against minor and adult perpetrators, the provisions of Article 363 through 365, Article 368 through 371, Articles 376 and 378, Article 380 and Article 386 of this Code shall always be applied with respect to the minor when matters pertaining to the minor are being clarified in the main trial, and Articles 386 and 392 of this Code, and other provisions of this Chapter shall be applied to the extent that it does not conflict the conduct of a joint proceedings.

### **Article 367**

#### **Joint Proceedings**

When a person has committed some criminal offense as a minor and some other criminal offense as an adult, a joint proceedings shall be conducted pursuant to Article 32 of this Code before the Panel that tries adults.

### **Article 368**

#### **The Role of the Juvenile Welfare Authority**

- (1) In a proceedings against minors, beside the authority exclusively provided by the provisions of this Chapter, the juvenile welfare authority shall have the right to be kept informed of the course of the proceeding, to make recommendations in the course of the proceeding and to point up the facts and evidence that are important to a rendering of a correct decision.
- (2) The prosecutor shall notify the competent juvenile welfare authority of each proceeding instituted against a minor.

### **Article 369**

#### **Summon and Delivery of Process**

- (1) A minor shall be summoned through his parents or legal representatives.
- (2) Decisions and other process shall be served on a minor in accordance with the provisions of Article 185 of this Code, provided that process shall be not served on

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the minor through a bulletin board of the court, and the provision of the Article 181, Paragraph 2 shall not be applied.

#### **Article 370**

##### **Announcement of the Course of the Criminal Proceeding**

- (1) Neither the course of a criminal proceeding against a minor, or the decision rendered in that proceeding may be made public, ~~nor may the course of the proceeding be visually or audio recorded.~~
- (2) A legally binding decision of the court may be published, but without stating the personal data of the minor that might serve as the basis for identifying the minor.

#### **Article 371**

##### **Duty of Urgent Action**

Authorities participating in the proceedings against a minor and other agencies and institutions from whom information, reports or opinions are sought must proceed with the greatest urgency so that the proceedings are completed as soon as possible.

#### **Article 372**

##### **Composition of the Court**

- (1) The judge for juveniles, who directs preparatory proceeding and other actions when proceeding against juveniles, shall direct the first instance proceedings in accordance with this Code.
- (2) The panel for juveniles, composed of three (3) judges, shall rule on appeals against the decision of the judge for juveniles in the cases provided by this Code.

### **Section 2 – INSTITUTING THE PROCEEDINGS**

#### **Article 373**

##### **Application of the Principle of Opportunity**

- (1) For criminal offenses carrying punishment of imprisonment up to three (3) years or a fine, the prosecutor may decide not to file the indictment even though there is evidence that the minor committed the criminal offense if the prosecutor feels that it would not be purposeful to conduct a criminal proceeding against the minor in view of the nature of the criminal offense and the circumstances under which it was committed, the minor's previous life and his personal characteristics. In order to determine these circumstances, the prosecutor may seek information from parents or guardians of the minor and from other persons and institutions and when necessary, he may summon those persons and the minor to the prosecutor's office to obtain

information in person. He may seek the opinion of the juvenile welfare authority concerning the purposefulness of conduct a criminal proceedings against the minor.

- (2) If there is a need to study the personal characteristics of the minor in order to make the decision referred to in Paragraph 1 of this Article, the prosecutor may in agreement with the juvenile welfare authority send the minor to a juvenile home or institution for testing or educational institution, but not to exceed 30 days.
- (3) When a punishment or correctional measure is being executed, the prosecutor may decide not to bring a charge for another criminal offense of the minor if in view of the severity of that criminal offense and the punishment or correctional measure being executed, there would be no point to conduct a criminal proceeding and pronounce punishment for that criminal offense.
- (4) If, in the cases referred to in Paragraphs 1 and 3 of this Article, the prosecutor finds that it is not purposeful to conduct a criminal proceeding against a minor, he shall so inform the juvenile welfare authority and the injured party, stating the grounds of his decision.

#### **Article 374** **Correctional Recommendations**

The prosecutor is obliged to consider whether the pronouncement of the correctional recommendations are possible and justified, in accordance with the Criminal Code, before he decides whether to file the motion for instituting the criminal proceedings ~~against the minor~~ **towards the minor** for the criminal offense referred to in Article 373, Paragraph 1 of this Code.

### **Section 3 – PREPARATORY PROCEEDING**

#### **Article 375** **Correctional Recommendations and Motion for Instituting the Preparatory Proceeding**

- (1) The prosecutor shall file the motion for instituting the preparatory proceedings with the judge for juveniles. The judge for juveniles is obliged to consider whether pronouncement of the correctional recommendations is possible and justified, in accordance with the Criminal Code, before he decides whether he should grant the motion referred to in Article 374 of this Code. If the judge decides to pronounce a correctional recommendation, the judge for juveniles shall decide not to institute the proceedings ~~against the minor~~ **towards the minor**. An appeal is not allowed against the decision of the judge for juveniles.
- (2) Notwithstanding cases referred to in Paragraph 1 of this Article, if the judge for juveniles does not agree with the request for instituting the preparatory proceedings, the judge for juveniles shall request the panel for juveniles to decide the matter.

- (3) The judge for juveniles may order the police to search a dwelling **and persons** or to seize an object in accordance with this Code.

#### **Article 376** **Obtaining Data on Minor's Personality**

- (1) In the preparatory proceedings against a minor, along with the facts pertaining to the criminal offense, a specific determination shall be made of the minor's age and of the circumstances necessary to evaluate his mental development, and a study shall be made of the environment in which and conditions under which the minor lives and of other circumstances that have a bearing on his personality.
- (2) In order to determine the circumstances referred to in Paragraph 1 of this Article, the judge for juveniles shall obtain reports and hear the persons who can provide the necessary information, except for persons referred to in Article 365 of this Code.
- (3) The judge for juveniles shall obtain information on the minor's personality. The judge for juveniles may request that information be gathered by a professional, including social worker, special education teacher or psychologist, but he may commission the social welfare authority to obtain such information.
- (4) When it is necessary for the minor to be examined by experts in order to establish his state of health, mental development, mental characteristic or predisposition, physicians, psychologists or pedagogues shall be appointed for that examination. These examinations of the minor may be done in a medical or other institution.

#### **Article 377** **Persons Present at the Preparatory Proceedings**

- (1) The judge for juveniles himself shall decide the manner of conduct of certain actions in accordance with the provisions of this Code to a degree that ensures the right of the minor to defense, the right of the injured party and obtaining evidence necessary for the decision.
- (2) The prosecutor and the defense attorney may be present during the actions in the preparatory proceedings. When necessary, the examination of the minor shall be carried out by the pedagogue or another professional. The judge for juveniles may approve that the representative of the juvenile welfare authority, parent or the guardian of the minor be present in the preparatory proceedings. If the aforesaid persons are present during these actions, they may present proposals and ask questions to person who is being examined.

#### **Article 378** **Placement of the Minor**

- (1) The judge for juveniles may order that the minor during the preparatory proceedings be placed in a juvenile home, educational or similar institution, be placed under care

of the social welfare authority or put under care of another family if this is necessary to separate the minor from the environment in which he has been living or to provide the minor with aid, protection or a place to live.

- (2) The costs of the minor's accommodation shall be paid in advance from the Budget and shall be included in the costs of the criminal proceedings.

#### **Article 379** **Ordering the Custody**

- (1) Exceptionally, the judge for juveniles may order that the minor be placed in custody when the reasons for the custody referred to in Article 146, Paragraph 1<sup>33</sup>, Item a) throughout c) of this Code exist.
- (2) Based on the decision on custody issued by the judge for juveniles, the custody may not exceed 30 days. The panel for juveniles is obliged to review the necessity of the custody every ~~ten (10)~~ **15** days.
- (3) The panel for juveniles may extend the custody for two (2) more months if there are legal reasons for the extension. An appeal against the Panel's decision is allowed but it shall not stay the execution of the decision.
- (4) After completion of the preparatory proceedings, the custody may last for six (6) more months at a maximum. **The review of justification of the custody shall be carried out by the Panel for Juveniles upon the expiration of one month period following the date of issuance of the most recent decision on custody. The appeal against this decision shall not stay its execution.**

#### **Article 380** **Treatment of the Minor when in Custody**

- (1) Minors shall be separated from adults in custody.
- (2) The judge for juveniles has the same authority regarding minors in custody as the judge for the preliminary proceedings or the preliminary hearing judge, pursuant to this Code, has regarding adults in custody.

#### **Article 381** **Reasoned Proposal**

- (1) After examining all circumstances related to the commission of the criminal offense and related to the minor's personality, the judge for juveniles shall refer the documents to the prosecutor, who is obliged to request, within eight (8) days, that the

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<sup>33</sup> OG FBiH 56/03: In Article 379, paragraph 1, line three, number "2" replace with number "1".

preparatory proceedings be supplemented or **to announce that he is dismissing the case and file a motion for dismissal of case or** to file a reasoned proposal with the judge for juveniles for the pronouncement of punishment or the correctional measures.

- (2) It shall be considered that the prosecutor dismissed the charges if the prosecutor fails to request that the preparatory proceedings be supplemented or to file a reasoned proposal with the judge for juveniles for correctional measures or punishment of juvenile imprisonment within two (2) months from the day when the judge for juveniles referred the documents to the prosecutor.
- (3) The prosecutor's proposal shall contain the following: the minor's first and last name, his age, a description of the criminal offense, the evidence indicating that the minor committed the criminal offense, an argument that must contain an assessment of the minor's mental development, and the recommendation that the minor be punished or that a correctional measure be pronounced against him.

#### **Article 382** **Dismissal of the Proceedings**

- (1) If during the preparatory proceedings, the prosecutor finds that there are no grounds to conduct the proceedings against the minor or that the reasons referred to in Article 373, Paragraph 3 of this Code exist, the prosecutor shall file a motion to the judge for juveniles to dismiss the proceedings. The prosecutor shall inform the juvenile welfare authority about the motion to dismiss the proceedings.
- (2) If the judge for juveniles does not agree with the motion of the prosecutor, the judge for juveniles shall request the panel for juveniles to decide the matter.
- (3) The Panel may dismiss the case involving a juvenile and decide that the proceedings be continued before a judge for juveniles.**

#### **Article 383** **Control of the Proceedings**

The judge for juveniles shall inform the President of the court every 15 days about which juvenile cases are not closed and shall inform him about the reasons why certain cases are still ongoing. The President of the court shall, if necessary, undertake actions to speed up the proceedings.

### **Section 4 – MAIN TRIAL IN JUVENILE CRIMINAL PROCEEDINGS**

#### **Article 384** **Scheduling a Hearing or the Main Trial**

- (1) Upon receiving the motion from the prosecutor, the judge for juveniles shall schedule a hearing or the main trial.

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- (2) The punishment of the juvenile imprisonment and institutional measures shall be pronounced only upon the completion of the main trial.
- (3) The juvenile judge shall inform the minor about a correctional measure pronounced against him.

### **Article 385** **Decision Making at the Main Trial**

- (1) When rendering a decision based on the main trial, the provisions of this Code related to ~~the preparations for the main trial~~, the direction of the main trial, adjournment and recess of the main trial, the record and course of the main trial, shall be appropriately applied, but the judge for juveniles may depart from these rules if he considers that their application would not be purposeful in the specific case.
- (2) The parents or guardian of the minor and the social welfare authority shall be summoned for the main trial beside the persons whose presence is mandatory. Failure of the parents, guardian or representative of the juvenile welfare authority to appear at the main trial shall not preclude the court from holding the main trial.
- (3) Apart from the minor, the prosecutor who filed a motion referred to in Article 381 of this Code and the defense attorney must be present at the main trial.
- (4) The provisions of this Code concerning amendment ~~and supplement~~ of the indictment shall also apply in the proceedings against a minor, except that the judge for juveniles is authorized to render a decision without a recommendation of the prosecutor on the basis of an alteration in the state of facts in the main trial.
- (5) The Prosecutor, juvenile, defence attorney, parent or guardian of the juvenile shall be invited to the hearing, and a representative of the social welfare centre shall be notified of the hearing and may be present at the hearing. The Prosecutor and defence attorney of the juvenile are obliged to be present at the hearing. If the Prosecutor or the defence attorney fails to appear at the hearing without a justification, the judge for juveniles shall notify the Prosecutor's Office and the Bar Association thereof.**

### **Article 386** **Exclusion of the Public**

- (1) The public shall always be excluded when a minor is being tried.
- (2) The judge for juveniles may allow the main trial to be attended by persons professionally concerned with the welfare and development of minors or with combating juvenile delinquency, as well as scientists.
- (3) During the main trial, the judge for juveniles may order that all or certain persons be removed from the session except the prosecutor, defense attorney and the representative of the juvenile welfare authority.
- (4) The judge for juveniles may order that the minor be removed from the session during the presentation of certain evidence or the oral presentation of the parties.

### **Article 387**

#### **Temporary Placement of the Minor**

During the proceedings before the court, the juvenile judge may render a decision concerning temporary placement of the minor in an institution (Article 378), and he may also revoke a previous order to that effect.

### **Article 388**

#### **Scheduling the Main Trial or Holding a Hearing and Rendering the Decision**

- (1) The judge for juveniles shall set the main trial or hold a hearing for the pronouncement of the correctional measure within eight (8) days from the date of receipt of the prosecutor's proposal or from the date when, at the hearing, the main trial is scheduled. For any extension of the deadline, the juvenile judge must have the approval of the President of the court.
- (2) The main trial shall be adjourned or recessed only in exceptional cases. The judge for juveniles shall notify the President of the court of every adjournment or recess of the main trial and shall present the reasons for the adjournment or recess.
- (3) The judge for juveniles must prepare the verdict or decision in writing within eight (8) days from the date of its announcement, and in exceptionally complex matters, within 15 days.

### **Article 389**

#### **The Decisions of the Judge for Juveniles**

- (1) The judge for juveniles is not bound by the recommendation of the prosecutor in rendering his decision as to whether he shall pronounce a punishment or a correctional measure against the minor, but if the prosecutor withdrew his recommendation, the judge for juveniles may not pronounce the punishment against the minor but only a correctional measure.
- (2) The judge for juveniles shall issue a decision dismissing proceedings in cases when on the basis of Article 298, Item d) through f) of this Code the court issues a verdict rejecting the charges or acquitting the accused of the charges (Article 299) and when the judge for juveniles finds that it is not purposeful to pronounce either a punishment or a correctional measure against the minor.
- (3) The judge for juveniles shall also issue a decision when he pronounces a correctional measure on the minor. The pronouncement of that decision shall state only which measure is being pronounced, but the minor shall not be declared guilty of the criminal offense with which the minor has been charged. The opinion of the decision shall contain a description of the criminal offense and the circumstances that justify pronouncement of the correctional measure.

- (4) A verdict pronouncing punishment of the juvenile imprisonment against the minor shall be rendered in the form provided by Article 300 of this Code.

#### **Article 390** **Costs of the Proceeding and Property Claim**

- (1) The judge for juveniles may sentence the minor to pay the costs of criminal proceedings and the amount awarded on property claims (restitution of property) only if the judge for juveniles has passed a punishment of the juvenile imprisonment against the minor.
- (2) If a correctional measure has been pronounced against the minor, the costs of proceedings shall be paid from the budget, and the injured party shall be advised to institute a civil action to satisfy his property claim.

### **Section 5 – LEGAL REMEDIES**

#### **Article 391** **An Appeal against the Verdict and Against the Decision**

- (1) All persons who are eligible to appeal against the verdict (Article 308) may file an appeal against a verdict in which a penalty of the juvenile imprisonment was pronounced against a minor, against a decision in which a correctional measure was pronounced on a minor, and against a decision dismissing proceedings (Article 389, Paragraph 2). This appeal may be filed within eight (8) days from the date of receipt of the verdict or decision.
- (2) The defense attorney, the prosecutor, the spouse or cohabitee, blood relative in the direct line, adoptive parent, guardian, brother, sister and foster parent may file an appeal on a minor's behalf without the minor's consent.
- (3) An appeal against a decision pronouncing a correctional measure, which is to be served in an institution, shall stay the execution of the decision unless the judge for juveniles decides otherwise in agreement with the parents of the minor, and after questioning the minor.
- (4) A minor and his defense attorney shall always be summoned for the session of the panel for juveniles (Article 319). Failure of the minor and his defense attorney to appear despite being duly summoned shall not preclude the second instance court from holding its session.

#### **Article 392** **Decisions of the Panel for Juveniles and *Ban Reformatio in Peius***

- (1) The panel for juveniles may alter the first instance verdict by pronouncing more severe measures against the minor only if it is proposed in the prosecutor's appeal.



- (2) If the punishment of the juvenile imprisonment or institutional measure is not pronounced in the first instance decision, the panel for juveniles may pronounce that measure or punishment only if the panel holds a hearing. Long-term juvenile imprisonment or a more severe institutional measure from the one pronounced in the first instance decision, may be pronounced also at the session of the second instance panel.

### **Article 393** **Reopening of the Criminal Proceedings**

The provisions concerning reopening of criminal proceedings, which were completed with a legally binding verdict, shall be appropriately applied to the reopening of the proceedings which were completed with a legally binding decision pronouncing a correctional measure or dismissing proceedings against a minor.

## **Section 6 – SUPERVISION OF THE COURT OVER THE EXECUTION OF MEASURES**

### **Article 394** **A Report on Minor's Behavior**

- (1) The administration of an institution in which a correctional measure is being executed against a minor must deliver to the court that pronounced a correctional measure a report on the minor's behavior every two (2) months. The judge for juveniles may himself visit the minors who have been placed in that institution.
- (2) The judge for juveniles may obtain information through the juvenile welfare authority concerning the enforcement of other correctional measures, and he may order a particular professional, including social worker or special education teacher to do so.

## **Section 7 – SUSPENSION OF EXECUTION AND AMENDMENT OF THE DECISION ON CORRECTIONAL MEASURES**

### **Article 395** **Amending the Decision and Suspending the Execution**

- (1) When the conditions provided by law have been met for amendment of a decision concerning a correctional measure that has been pronounced, a decision to this effect shall be rendered by the judge for juveniles who rendered the decision on the correctional measure if he finds that there is a need for it, or on the recommendation of the prosecutor, the warden of the institution or juvenile welfare authority under whose care the minor has been placed.
- (2) Before rendering the decision, the judge for juveniles shall hear the prosecutor, the minor, the parents or guardian of the minor, and any other persons the judge considers

necessary, and he shall also obtain the necessary reports from the institution in which the minor has been serving an institutional measure and from juvenile welfare authorities or other agencies and institutions, as appropriate.

- (3) A decision to suspend the execution of a correctional measure shall be rendered in accordance with the provisions of Paragraphs 1 and 2 of this Article.
- (4) A decision to suspend or alter the correctional measures shall be rendered by judge for juveniles.

## **CHAPTER XXVIII PROCEEDINGS AGAINST A LEGAL PERSON**

### **Article 396 Joinder of Proceedings**

- (1) Joint proceedings, as a general rule, shall be instituted and conducted against a legal person and the perpetrator for the same criminal offense.
- (2) Proceedings against only a legal person may be instituted or conducted when it is not possible to institute or conduct the proceedings against the perpetrator because of the reasons provided by law or when the proceedings against the perpetrator has already been conducted.
- (3) In the joint proceedings against the indicted legal person and the indicted perpetrator, one indictment shall be brought and one verdict shall be pronounced.

### **Article 397 Purposefulness of Instituting the Proceedings**

The prosecutor may decide not to request institution of a criminal proceedings against the legal person when the circumstances indicate that it would not be purposeful, because the contribution of the legal person to the commission of the criminal offense was insignificant or the legal person has no property or has so little that it would not be enough to cover the costs of the proceedings or if a bankruptcy proceedings has been instituted against the legal person or if the perpetrator is the only owner of the legal person against whom the proceedings should be instituted.

### **Article 398 Representative of the Legal Person in the Criminal Proceeding**

- (1) Every legal person shall have a representative in the criminal proceedings and the representative is authorized to undertake all actions for which, under this Code, the suspect or the accused and the convicted person are also authorized.
- (2) A legal person may have only one representative in the criminal proceedings.
- (3) The court shall each time verify the identity of the representative and his authority to represent the legal person.

### **Article 399**

#### **Appointing the Representative**

- (1) A representative of the legal person in the criminal proceeding is a person who is authorized to represent the legal person under the law, under an official act of the state body, under the corporate charter, articles of association or articles of incorporation or another act of the legal person.
- (2) A representative may authorize someone else to represent the legal person. Authorization shall be given in writing or orally in the court record.
- (3) If the legal person ceased to exist before the legally binding completion of the criminal proceedings, the court shall appoint a representative for the legal person.

### **Article 400**

#### **Disqualification of the Representative**

- (1) A person who has been called to testify in the criminal proceedings may not be a representative of the legal person.
- (2) A person against whom the proceedings are ongoing for the same criminal offense may not be a representative of the legal person in the criminal proceedings unless he is the only member of the legal person.
- (3) In cases referred to in Paragraph 1 and 2 of this Article, the court shall request from the competent body of that legal person to appoint another representative within a certain period and to notify the court of the appointment in writing. Otherwise, the court shall appoint the representative.

### **Article 401**

#### **Delivery of the Process**

Process addressed to the business enterprise shall be delivered to the legal person and to the representative.

### **Article 402**

#### **Costs of the Representative**

Costs of the representative of the legal person in the criminal proceedings fall under the costs of the criminal proceedings. Costs of the representative appointed in accordance with Article 399 and Article 400 of this Code shall be paid in advance from the finances of the body that carries out criminal proceedings only when the legal person has no assets.

### **Article 403**

#### **Defense Attorney of the Legal Person in the Criminal Proceedings**

- (1) A legal person may have a defense attorney in addition to a representative.
- (2) A legal person and a physical person, as well as a suspect or an accused may not have the same defense attorney.

### **Article 404**

#### **Contents of the Indictment**

The indictment against a legal person in criminal proceedings, besides the content as stipulated by this Code, shall also include the name under which the legal person acts in legal dealings pursuant to the regulations, its location, a description of the criminal offense and the basis for the liability of that legal person.

### **Article 405**

#### **Trial and the Closing Argument**

- (1) At the main trial, the accused shall be examined first and then the representative of the legal person.
- (2) Upon the completion of the evidentiary proceedings and the closing argument of the prosecutor and the injured party, the judge or the presiding judge of the Panel shall give the floor to the defense attorney, then to the representative of the legal person, then to the defense attorney of the accused and finally to the accused.

### **Article 406**

#### **Verdict against the Legal Person**

Beside the contents stipulated in the Article 300 of this Code, a written verdict shall contain the following:

- a) In the introductory part of the verdict, there shall be a name under which the legal person acts in legal dealings pursuant to regulations and its location, as well as the first and the last name of its representative who was present at the main trial.
- b) In the pronouncement of the verdict, there shall be a name under which the legal person acts in legal dealings pursuant to the regulations and its location, as well as the provisions of the law under which the legal person is indicted, released from charges or the provisions under which the charges have been dismissed.

## **Article 407**

### **Interlocutory Orders**

- (1) In order to ensure enforcement of a punishment, forfeiture of property or forfeiture of the proceeds of crime, the court may issue an interlocutory order against a legal person, at the proposal of the prosecutor. In this case, the provisions of Article 216 of this Code shall apply.
- (2) If there is a legitimate fear that an offense will be repeated within an indicted legal person and that the legal person will be responsible and if there is a threat that an offense will be committed, the court may in the same proceedings, beside the orders from Paragraph 1 of this Article, impose a time restriction on the legal person to carry out one or more lines of work.
- (3) When the criminal proceedings are instituted against the legal person, the court may, at the proposal of the prosecutor, or *ex officio*, forbid status-related changes, the consequence of which would be deletion of the legal person from the court registry. The decision on this ban is registered in the court registry.

## **Article 408**

### **Application of Other Provisions of This Code**

Unless otherwise stipulated, the appropriate provisions of this Code shall be applied accordingly against the legal person even if the proceedings are conducted only against the legal person.

## **CHAPTER XXIX**

### **PROCEDURE FOR APPLICATION OF SECURITY MEASURES, FORFEITURE OF PROPERTY GAIN AND REVOCATION OF SUSPENDED SENTENCE**

## **Article 409**

### **Adjournment of the Proceedings in Case of a Mental Illness**

- (1) If the accused becomes affected by such a mental illness after the commission of the criminal offense that he or she is unable to stand trial, the court shall, upon psychiatric forensic examination, adjourn the proceedings and send the accused to the body responsible for issues of social welfare.
- (2) When the health condition of the accused has improved to the extent to which he or she is ~~able~~ **capable** to stand trial, the proceedings shall continue.
- (3) In case criminal prosecution becomes time barred during the adjournment, ~~the court shall act in accordance with Article 298, Item f) of this Code~~ **the Panel referred to in Article 25 Paragraph (6) of this Code shall issue a Decision on adjournment of proceedings.**

## Article 410

### Procedure in Case of Mental Incapacity

- ~~(1) If the suspect committed a criminal offense in the state of mental incapacity, the prosecutor shall propose in the indictment that the court should find that the accused committed a criminal offense in the state of mental incapacity and that the case be referred to the body responsible for social welfare, for the purpose of commencing the appropriate procedure.~~
- ~~(2) If the evidence presented during the main trial indicates that the accused committed a criminal offense in the state of mental capacity, diminished capacity or incapacity, the prosecutor shall abandon the proposal he filed. In case of diminished capacity or significantly reduced mental competence, the prosecutor shall propose a security measure of mandatory psychiatric treatment, pronounced along with another criminal sanction.~~
- ~~(3) In the case referred to in Paragraph 1 of this Article, the suspect or the accused in detention or in a psychiatric institution, shall not be released. Instead, the court shall, at the proposal of the prosecutor, issue a decision on a temporary custody of up to thirty (30) days from the issuance of the decision. The decision may not be appealed.~~
- ~~(4) After the proposal referred to in Paragraph 1 of this Article has been filed, the suspect or accused must have his defense attorney.~~
- (1) If the suspect has committed a criminal offence in the state of mental incompetence and if legally prescribed conditions for ordering mandatory placement in a health institution for seriously mentally incapacitated persons exist, the Prosecutor shall propose in the indictment that the Court establishes that the suspect committed an unlawful act in a state of mental incompetence, and that he shall be issued a temporary order on mandatory placement in a health institution, with the health institution being informed about it.**
- (2) Upon the reasoned proposal of the prosecutor, the detention of the suspect or accused under Paragraph 1 above may be ordered for reasons under Article 146 of this Law. When detention of the suspect is ordered or extended, he shall be confined in a health institution for a period that may last as long as the reasons under Article 132 exist, but not longer than time lines under Articles 149 and 151, paragraphs 2 and 3 of this Code, or until the temporary order on mandatory placement in a health institution has become final and binding.**
- (3) If, after the main trial is conducted, the Court establishes that the accused committed an unlawful act in a state of mental incompetence, it shall pass a judgment stating that the accused committed the offence in a state of mental incompetence and shall issue a special decision ordering temporary and mandatory placement in a health institution for the duration of up to six (6) months. The judgment and the decision may be appealed, and such an appeal must be filed no later than 15 days of delivery of the decision.**

- (4) Once the decision referred to in Paragraph 3 of this Article has become final and binding, the Prosecutor shall, in accordance with a special legislation regulating the protection of these persons, notify the competent court, for the purpose of initiating proceedings for mandatory placement of seriously mentally ill persons in a health institution. The medical documentation and final and binding decision on temporary mandatory placement in a health institution shall be submitted with this notification.**
- (5) If, during the main trial, the evidence presented indicates that the accused committed the unlawful offence in a state of full mental competence, reduced, or significantly reduced mental competence, the Prosecutor shall abandon the proposal from Paragraph 1 of this Article, continue with the proceedings and change the indictment. In case of reduced or significantly reduced mental capacity, the Prosecutor may propose a security measure of mandatory psychiatric treatment, pronounced along with another criminal sanction.**
- (6) Should the Court find that the accused was not in a state of mental incapacity at the time of committing the offence, and the Prosecutor has not abandoned the proposal referred to in Paragraph 1 of this Article, the Court shall issue a judgement dismissing the charges.**
- (7) After the proposal referred to in Paragraph 1 of this Article has been filed, the suspect or accused must have his defence attorney.**

#### **Article 411**

##### **Procedure in Case of Obligatory Medical Treatment**

- (1) The court shall decide on the application of a security measure of obligatory treatment for addiction after it obtains findings and an opinion from an expert witness. The expert shall also give an opinion on the possibilities for the treatment of the accused.
- (2) If in pronouncing a suspended sentence, the perpetrator is ordered to receive treatment as an out-patient and he fails to undertake treatment or abandons it voluntarily, the court may, *ex officio*, or at the proposal of the institution in which the perpetrator was treated or should have been treated, after the hearing of the prosecutor and the perpetrator, revoke suspended sentence or forceful enforcement of the pronounced measure of obligatory treatment from addiction. Before it issues a decision, the court shall also obtain a medical opinion, when needed.

#### **Article 412**

##### **Forfeiture of Items**

- (1) The items that need to be forfeited under the Criminal Code of Bosnia and Herzegovina shall be forfeited also when the criminal procedure is not completed by a verdict, which declares the ~~convicted person~~ **accused** guilty, if this is required by the interests of general security **and moral**. A separate ruling shall be issued on this.

- (2) The decision referred to in Paragraph 1 of this Article shall be issued by the ~~court~~ **judge or Panel** at the moment when the proceedings are completed or dismissed.
- (3) The decision on forfeiture of items referred to in Paragraph 1 of this Article shall be issued by the ~~court~~ **judge or Panel** when the guilty verdict fails to issue such a decision.
- (4) A certified copy of the decision on forfeiture of items shall be delivered to the owner of the items concerned if the owner is known.
- (5) The owner of the items may appeal the decision referred to in Paragraphs 1 through 3 of this Article on the ground of the lack of a legal basis for forfeiture of items.

#### **Article 413**

##### **Forfeiture of Proceeds of Crime (*Criminal Forfeiture*)**

- (1) The existence of proceeds of a criminal offense shall be established in criminal proceedings *ex officio*.
- (2) The prosecutor shall be obliged to collect evidence during the proceedings and examine the circumstances that are important for the establishment of the existence of proceeds of a criminal offense.
- (3) If the injured party submitted a property claim for repossession of items obtained through a criminal offense, or the amount that is equivalent to the value of such items, the existence of proceeds of crime shall be established only in the part that is not included in the property claim.

#### **Article 414**

##### **Criminal Forfeiture Procedure**

- (1) When the forfeiture of the proceeds of crime is a possibility, the person to whom the proceeds of crime are transferred and the representative of the legal person shall be summoned to the main trial for hearing. They shall be warned in the subpoena that the proceedings shall be conducted without their presence.
- (2) A representative of the legal person shall be heard at the main trial after the accused. The same procedure shall apply to the person to whom the proceeds of crime were transferred if that person is not summoned as a witness.
- (3) The person to whom the proceeds of crime are transferred as well as the representative of legal person shall be authorized to propose evidence in relation to the establishment of the proceeds of crime and to question the accused, witnesses and expert witnesses upon approval by the judge or the presiding judge.
- (4) The exclusion of the public at the main trial shall not refer to the person to whom the proceeds of crime are transferred and the representative of the legal person.
- (5) If during the main trial the court establishes that the forfeiture of the proceeds of crime is a possibility, the court shall adjourn the main trial and shall summon the person to whom the proceeds of crime were transferred, and a representative of the legal person.



#### **Article 415**

##### **Assessment/Appraisal/Determination of proceeds of crime**

The court shall assess the value of the proceeds of crime by a free estimate if the assessment would be linked to disproportional difficulties or a significant delay of the proceedings.

#### **Article 416**

##### **Interlocutory Order**

When the forfeiture of the proceeds of crime is a possibility, the court shall *ex officio* and under the provisions applicable to the enforcement procedure order temporary security measures. In that case, the provisions of Article 216 of this Code shall apply.

#### **Article 417**

##### **The Contents of the Decision Pronouncing a Measure of Forfeiture of Property Gain**

- (1) The forfeiture of the proceeds of crime may be pronounced by court in a guilty verdict, in a decision on application of a correctional measure and in proceedings referred to in Article 410 of this Code.
- (2) In the pronouncement of the verdict or decision, the court shall indicate what item or amount of money is to be forfeited.
- (3) A certified copy of the verdict or the decision shall also be delivered to the person to whom the proceeds of crime is transferred and to the representative of the legal person, if the court pronounced the forfeiture of the proceeds of crime from that person.

#### **Article 418**

##### **Request for Reopening of the Proceedings With Respect to a Measure of Forfeiture of Property Gain**

The person referred to in Article 414 of this Code may file a request for a reopening of the criminal proceedings related to the decision on forfeiture of the proceeds of crime.

#### **Article 419**

##### **The Appropriate Application of the Provisions Regarding an Appeal**

The provisions of Articles 309, Paragraphs 2 and 3 and Articles 317 and 332 of this Code shall be applied appropriately in reference to the appeal against the decision on forfeiture of the proceeds of crime.

## **Article 420**

### **The Appropriate Application of Other Provisions of the Law**

Unless otherwise prescribed by this Chapter with respect to a procedure for application of security measures or forfeiture of the proceeds of crime, other relevant provisions of this Code shall be applied appropriately.

## **Article 421**

### **Procedure to Revoke Suspended Sentence**

- (1) When a suspended conviction provides that a sentence will be executed if a convicted persons fails to return the proceeds of crime obtained by commission of criminal offense, to compensate a damage or to meet other obligations, and the convicted person has failed to do so in the set deadline, the court shall conduct proceedings to revoke the suspended sentence at the proposal of the prosecutor or *ex officio*.
- (2) The court shall be obligated to schedule a hearing in order to establish facts, to which it shall summon the prosecutor, convicted person and injured party.
- (3) If the court establishes that the convicted person failed to meet obligations ordered in the verdict, it shall issue a verdict revoking the suspended sentence and order execution of the sentence, or ~~set a new deadline for compliance with the obligations or lift that requirement~~ **extend the deadline for compliance with the obligation or replace the obligation with another corresponding obligation or relieve the convicted person of complying with the pronounced obligation**. If the court finds that there are no grounds to take any of the said decisions, it shall issue a decision dismissing the proceedings to revoke the suspended sentence.

## **CHAPTER XXX**

### **PROCEDURE FOR RENDERING DECISION DELETING A CONVICTION OR TERMINATING SECURITY MEASURES AND LEGAL CONSEQUENCES OF A CONVICTION**

## **Article 422**

### **Decision on Expungement of Record**

- (1) When the law provides that convictions shall be expunged from records after a specific period of time and under the condition that the convicted person has not committed any criminal offense during such period, the authority in charge of keeping criminal records shall issue *ex officio* a decision on expungement of record.
- (2) It shall be necessary to conduct certain inquiries before the issuance of such decision on expungement of record, in particular to gather information as to any criminal proceedings against the convicted person for a new criminal offense committed prior to the expiry of deadline foreseen for expungement of record.

#### **Article 423**

##### **Motion of the Convicted Person for Expungement of Record**

- (1) If the responsible authority has failed to issue a decision on expungement of record, the convicted person may request that it be established as to whether the expungement of record came into force by operation of law.
- (2) If the responsible authority fails to meet the request of the convicted person within 30 days of the day of its receipt, the convicted person may request the court to issue a decision on expungement of record.

#### **Article 424**

##### **Expungement of a Suspended Sentence by the Court**

If a suspended sentence has not been revoked as long as one (1) year after the day when the inquiry was terminated, the court shall issue a decision ordering expungement of the suspended sentence. Such decision shall be delivered to the convicted person, prosecutor and authority in charge of keeping criminal records.

#### **Article 425**

##### **Procedure of Expungement of Record on the Basis of a Court Decision**

- (1) The procedure of expungement of record in accordance with the provisions of the Criminal Code shall be instituted at the motion of the convicted.
- (2) Such motion shall be submitted to the court.
- (3) A judge assigned for such purpose shall schedule and conduct a hearing of the prosecutor and convicted person.
- (4) The judge may request the police authorities to provide him with a report on the conduct of the convicted person, or he can request such report from the administration of the facility where the convicted person has served his sentence.
- (5) The applicant and prosecutor may file an appeal against a decision that the court has taken on the motion for expungement of record.
- (6) If the court rejects the motion on the grounds that the convicted person has not deserved it by his conduct, the convicted person may resubmit his motion upon the expiry of one (1) year of the day when decision rejecting the motion became legally binding.

#### **Article 426**

##### **Certificate on Criminal Records**

A certificate on criminal record that is issued to citizens on the basis of criminal records must not refer to a conviction that was deleted or legal consequences that were expunged.

#### **Article 427**

##### **Motion and Procedure to Terminate a Security Measure**

- (1) A motion for termination of the security measures prescribed in the Criminal Code and other measures prescribed by the law shall be submitted to the court.
- (2) A judge assigned for such purpose shall conduct a preliminary inquiry as to whether the required period of time provided for by the law has expired, and shall then schedule and conduct hearings in order to establish facts to which the applicant referred. The judge shall summon the prosecutor and applicant.
- (3) The judge referred to in Paragraph 2 of this Article may also request from the police authority or facility where the convicted person served his sentence a report as to the conduct of the convicted person.
- (4) If the motion has been rejected, no new motion may be submitted before the expiry of one (1) year as of the day when the decision rejecting the previous motion became legally binding.

#### **CHAPTER XXXI**

##### **PROCEDURE TO RENDER INTERNATIONAL LEGAL ASSISTANCE AND TO ENFORCE INTERNATIONAL AGREEMENTS IN CRIMINAL MATTERS**

#### **Article 428**

##### **General Provisions**

International assistance in criminal matters shall be rendered under the provisions of this Code, unless otherwise prescribed by the legislation of Bosnia and Herzegovina or an international agreement.

#### **Article 429**

##### **Communication of a Request for Legal Assistance**

Requests of the court or the prosecutor for legal assistance in criminal matters shall be communicated to foreign authorities by diplomatic channels, in that the court or the prosecutor shall deliver such requests to the Federal Ministry of Justice to forward them to the competent Ministry of Bosnia and Herzegovina.

#### **Article 430**

##### **Actions Following the Request of Foreign Authorities**

- (1) When the Federal Ministry of Justice receives a request of a foreign authority for legal assistance through the competent Ministry of Bosnia and Herzegovina, it shall be obligated to communicate such request to the competent prosecutor.

- (2) The prosecutor and the court shall decide as to the permissibility of and manner to carry out actions requested by the foreign authority in accordance with their competencies and under the legislation of Bosnia and Herzegovina.

#### **Article 431**

##### **Execution of the Verdict Rendered by Foreign Court**

- (1) The court shall not act on the request of a foreign body in which the foreign body seeks the execution of a verdict rendered by a foreign court.
- (2) Notwithstanding Paragraph 1 of this Article, the court shall execute foreign legally binding verdicts with respect to a sanction pronounced by the foreign court if it is so envisaged by international agreement, and if the sanction is also pronounced by the court in accordance with the criminal legislation of the Federation.
- (3) The panel referred to in Paragraph 6 of Article 25 of this Code shall render a verdict. The prosecutor, convicted person and defense attorney shall be notified on session of the Panel.
- (4) In the pronouncement of the verdict referred to in Paragraph 3 of this Article, the court shall incorporate the complete pronouncement of the foreign court's verdict and the name of the foreign court and shall pronounce a sanction. In the opinion of the verdict, the court shall present its reasons when pronouncing the sanction.
- (5) The prosecutor and convicted person or his defense attorney may file an appeal in accordance with this Code against the verdict referred to in Paragraph 4 of this Article.
- (6) If an alien, convicted by the domestic court, or the person authorized by the agreement file a motion with the court that the convicted person be allowed to serve a sentence in his home country, the court shall act in accordance with the international agreement.

#### **Article 432**

##### **Centralization of Data**

The court shall be obligated to communicate, without delay, through the Federal Ministry of Justice, to the competent Ministry of Bosnia and Herzegovina information on any criminal offense and perpetrator as well as any finally binding verdict concerning criminal offenses of production and circulation of false money, unauthorized production, processing and trade of drugs and poison, human trafficking, dissemination of pornography as well as concerning other criminal offenses for which international agreements foresee centralization of data. As regards to criminal offenses of money laundering or cases involving a criminal offense pertaining to money laundering, information must also be delivered without delay, through the Federal Ministry of Justice, to the Bosnia and Herzegovina authority responsible for prevention of money laundering.

### **Article 433**

#### **Relinquishing Criminal Prosecution to a Foreign State**

- (1) If a criminal offense was committed in the territory of the Federation by an alien who has his permanent place of residence in a foreign state, it is possible to cede all criminal files for the purpose of criminal prosecution and trial to such country beyond any requirements provided for in the Criminal Code of Bosnia and Herzegovina, if such state is not opposed thereto.
- (2) Relinquishment of criminal prosecution and trial shall not be allowed if in that case the alien might be subjected to unfair trial, inhuman and humiliating treatment or punishment.
- (3) The prosecutor shall take a decision on relinquishment before the indictment has been issued. After the issuance of the indictment until the case is referred to the judge or to the panel for the purpose of the scheduling the main trial, such decision shall be taken by the preliminary hearing judge at the proposal of the prosecutor.
- ~~(4) Relinquishment may be authorized with respect to criminal offenses that carry the sentence of imprisonment of up to ten (10) years and criminal offenses of jeopardizing public traffic.~~
- ~~(5)~~ (4) If the injured party in question is a citizen of Bosnia and Herzegovina, such relinquishment shall not be allowed if the said citizen is opposed thereto, unless security was deposited for the injured party's property claim.

### **Article 434**

#### **Taking Charge of the Criminal Prosecution by a Foreign State**

- (1) The Federal Ministry of Justice shall communicate to the competent prosecutor the files and the request of a foreign state to institute prosecution of a citizen of Bosnia and Herzegovina or any person whose place of permanent residence is in the territory of Bosnia and Herzegovina for criminal offenses that fall in the jurisdiction of the Federation and which was committed abroad.
- (2) If a property claim has been submitted to the competent authority of a foreign state, the same procedure shall apply as if the claim had been submitted to the court.
- (3) The foreign state that submitted the request shall be informed of any decision refusing to undertake criminal prosecution as well as of any legally binding decision rendered in criminal proceedings.

**CHAPTER XXXII**  
**PROCEDURE FOR COMPENSATION FOR DAMAGES, REHABILITATION**  
**OF REPUTATION AND OTHER RIGHTS OF PERSONS SUBJECT TO**  
**MISCARRIAGE OF JUSTICE**

**Article 435**

**Compensation of Damages Caused by Unjust Conviction**

- (1) A person against whom an effective criminal sanction was pronounced or who was found guilty and freed from sanction, and later, based on extraordinary remedy, reopened proceedings were effectively dismissed or effective verdict was pronounced acquitting the person of charges, or the charges were rejected, shall be entitled to compensation for damage on grounds of unjust convicted, except in the following cases:
  - a) if the dismissal of proceedings or the verdict rejecting the charges resulted from the prosecutor dismissing the prosecution in the reopened proceedings, and the dismissal took place based on an agreement with the suspect or the accused;
  - b) if in the reopened proceedings a verdict was pronounced rejecting the charges due to lack of jurisdiction of the court, and the authorized prosecutor instituted prosecution before a competent court.
- (2) A convicted person shall not be entitled to compensation for damage if he intentionally brought about his own conviction by false admission or in some other way, unless he was forced to that.
- (3) In case of conviction for joinder of crimes, the right to compensation for damage may also refer to individual criminal offenses when the conditions for recognition of damages are met.

**Article 436**

**Statute of Limitations of Claims for Compensation of Damages**

- (1) The statute of limitations of claims for damages shall be applicable three (3) years from the day of effectiveness of the verdict acquitting the accused or dismissing the charges, or the effectiveness of the decision of the prosecutor or the court dismissing the proceedings, and if, in case of a request for extraordinary remedy, an appeal was filed to the panel of the appellate division, from the day of receipt of that panel's decision.
- (2) Before submitting a claim for damages to the court, the injured party shall be obligated to file his claim with the Federal Ministry of Justice for the purpose of agreeing on existence of damages and the kind and amount of compensation.
- (3) In the case referred to in Article 437 Paragraph 1 of this Code, a claim may be decided upon only if the authorized prosecutor did not institute prosecution before a

competent court within three (3) months from the day of receipt of the legally binding verdict.

#### **Article 437**

##### **Filing Claims for Damages to a Competent Court**

- (1) If the claim for damages is not granted or the Federal Ministry of Justice of Bosnia and Herzegovina fails to make its decision within three (3) months from the day the claim is filed, the injured party may file the claim for damages with the competent court.
- (2) If an agreement is reached on a part of the compensation claim only, the injured party may file a suit with regard to the rest of the claim.
- (3) Claims for damages shall be filed against the Federation. In the event that the Federation pays compensation for damage on grounds of unlawful detention and miscarriage of justice, the Federation shall be entitled to be refunded by the canton which established the court that rendered the finally binding verdict or decision.

#### **Article 438**

##### **Right of Heirs to Compensation of Damage**

- (1) The heirs of the injured party shall inherit only the right of the injured party to compensation for damaged property. If a claim has already been filed by the injured party, the heirs may continue the proceedings only within the limits of the already filed claim for damages.
- (2) The heirs of the injured party, after his death, may continue compensation proceedings, or institute such proceedings in case the injured party died before the statute of limitations ran out and did not renounce the compensation claim.

#### **Article 439**

##### **Other Persons Entitled to Compensation of Damages**

- (1) The following persons shall be entitled to compensation for damage:
  - a) a person who was in detention, but criminal proceedings were not instituted or proceedings were dismissed or a finally binding verdict was pronounced acquitting the person of charges or charges were rejected;
  - b) a person who served a sentence of imprisonment, and was pronounced a shorter imprisonment sentence in reopened criminal proceedings than the sentence he had served, or was pronounced a criminal sanction other than imprisonment or he was pronounced guilty but exonerated from sanction;
  - c) a person who was subjected to unlawful detention or retained in detention or prison due to a mistake;
  - d) a person who was kept in detention longer than the prison term to which he was sentenced is.



- (2) A person who was imprisoned without a legal ground is entitled to damages if no pre-trial detention was ordered against him or the time for which he was imprisoned was not included in the sentence pronounced for a criminal offense or minor offense.
- (3) A person who caused imprisonment by his own unlawful acts shall not be entitled to compensation for damage. In cases referred to in Item a) of Paragraph 1 of this Article, right to compensation for damage shall not apply in case of circumstances referred to in Article 435 Paragraph 1, or if proceedings were dismissed pursuant to Article 219 of this Code.
- (4) In the action for damages, in the cases referred to in Paragraphs 1 and 2 of this Article, the provisions of this Chapter shall apply accordingly.

#### **Article 440** **Compensation of Damages Inflicted by Media**

If a case involving miscarriage of justice or unlawful detention of a person was covered by media, inflicting damage upon the reputation of that person, the court shall, at the person's request, publish in newspapers or other media a statement on its decision confirming that the previous conviction was miscarriage of justice and the detention was unlawful. If the case was not covered by media, such a statement shall, at the request of that person, be provided to the authority, or another legal person in which the person works, and to a political party or civil association, if that is required for the person's rehabilitation of reputation in a political party or citizen's association.

#### **Article 441** **Persons Entitled to File Damage Claims**

- (1) After a convicted person dies, his spouse or cohabitee, children, parents, brothers and sisters shall be entitled to file such a claim.
- (2) The claim referred to in Paragraph 1 of this Article may be filed even if no claim for the compensation for damage was filed.
- (3) Notwithstanding the conditions foreseen in Article 435 of this Code, the claim referred to in Paragraph 1 of this Article may be filed in case the legal qualification of the act was changed through use of an extraordinary remedy, and the reputation of the convicted person was more severely damaged by the legal qualification in the earlier verdict.
- (4) The claim referred to in Paragraphs 1 through 3 of this Article shall be filed with the court within six (6) months. The claim shall be decided upon by the panel (Article 25 Paragraph 6). In deciding the claim, provisions of Article 435, Paragraphs 2 and 3, and Article 439 Paragraph 3 of this Code shall apply accordingly.

## **Article 442**

### **Rehabilitation**

The court shall, *ex officio*, issue a decision annulling the registration of an unjust conviction in the criminal records. The decision shall be submitted to an authority in charge of keeping the criminal records. No data on annulled records may be given to anybody.

## **Article 443**

### **Ban on Use of Data**

Any person who in any way gains access to data pertaining to unjust conviction or unlawful detention may not use such data in a way that would be damaging to the rehabilitation of a person against whom the criminal proceedings were conducted.

## **Article 444**

### **Right to Compensation for Damage With Respect to Employment**

- (1) Years of service or years of insurance coverage of a person whose employment was terminated or who lost the status of social insurance holder due to unjust conviction or unlawful detention shall be recognized for the period of time in which the years of service or years of insurance coverage were not recognized due to unjust conviction or unlawful detention. The period of time of unemployment effected due to unjust conviction or unlawful detention, which was not the fault of the person in question, shall also be counted as years of service or years of insurance coverage.
- (2) When deciding on any right that is affected by the years of service or years of insurance coverage, the responsible body or legal person shall also take into account the years of service or years of insurance coverage recognized in the provisions of Paragraph 1 of this Article.
- (3) If the responsible body or legal person referred to in Paragraph 2 of this Article fails to take into account the years of service or recognized in the provision of Paragraph 1 of this Article, the damaged party may request that the court determine whether the recognition of this period of time was due in accordance with law. The lawsuit shall be filed against the body or legal person that is disputing the recognized years of service or insurance coverage, and against the Federation.
- (4) At the request of the body or legal person at which the right under Paragraph 2 of this Article is exercised, statutory contributions for the years of service recognized under the provision of Paragraph 1 of this Article shall be paid from the budget of the Federation.
- (5) The years of insurance coverage recognized by the provision in Paragraph 1 of this Article shall be added in full to the pensionable years of service.

## **CHAPTER XXXIII**

### **PROCEDURE FOR ISSUANCE OF WARRANTS AND NOTIFICATIONS**

#### **Article 445**

##### **Searching for Address**

If the permanent or temporary residence of the suspect or the accused is not known, the prosecutor or the court shall, if necessary under the provisions of this Code, request that the police authorities search for the suspect or the accused and inform the prosecutor or the court of his address.

#### **Article 446**

##### **Requirements for Issuance of Warrants**

- (1) Issuance of a warrant may be ordered if the suspect or the accused against whom criminal proceedings have been instituted due to a criminal offense for which it is possible to pronounce a prison sentence of three (3) years or more is on the run, and an order for his apprehension or a decision specifying his detention has been issued.
- (2) Issuance of a warrant shall be ordered by the court.
- (3) Issuance of a warrant shall also be ordered in case a convicted person escapes from the institution in which he is serving a sentence regardless of its length, or in case of his escape from an institution in which he is serving an institutional measure related to apprehension. In such a case, the warden of the institution shall issue the order.
- (4) Order of the court or warden for issuance of a warrant shall be submitted to the police authorities for the purpose of its execution.

#### **Article 447**

##### **Issuance of Notification**

- (1) If data and information about instruments related to the criminal offense are necessary, or if these instruments need to be identified, particularly if this is necessary for the purpose of verification of identity of an unidentified corpse, the issuance of notification requesting that the data or information be submitted to the body conducting the proceeding shall be ordered.
- (2) Police authorities may publish photographs of corpses and missing persons if there are grounds for suspecting that the deaths or disappearances of these persons was caused by a criminal offense.

#### **Article 448**

##### **Withdrawal of Warrant or Notification**

The body that ordered the issuance of a warrant or notification is obligated to immediately withdraw it if the wanted person or item is found or if the statute of limitations for criminal prosecution or for serving the sentence applies, or for other reasons that make the warrant or notification no longer necessary.

#### **Article 449**

##### **Who Issues a Warrant or Notification**

- (1) Warrants and notifications are issued by the competent police body designated by the court in each individual case, or the institution from which the person has escaped where the person in question was serving a sentence or institutionalized.
- (2) If it is likely that the person, after whom the warrant has been issued, is abroad, the competent Ministry of Bosnia and Herzegovina may issue an international warrant.

### **CHAPTER XXXIV**

#### **TRANSITIONAL AND FINAL PROVISIONS**

#### **Article 450**

##### **Insufficient Number of Judges**

- (1) If there is insufficient number of judges in the first instance court to form the panel referred to in Paragraph 6 5 of Article 25 of this Code, duties falling under the competence of that panel shall be performed by the panel of the immediate higher instance court, unless otherwise prescribed by Paragraph 2 and 3 of this Article.
- (2) After submission of the indictment, the presiding judge or the judge shall order or revoke the custody upon hearing the prosecutor, and at the main trial, the panel shall order or revoke the custody.
- (3) The judge of the first instance court shall decide the motion for reopening the proceedings. (Article 346, Paragraph 1).

#### **Article 451**

##### **Counting Deadlines**

- (1) If on the effective date of this Code, a deadline has been running, the deadline shall be counted anew pursuant to the provisions of this Code unless the previously set time limit is longer or otherwise provided in the provisions of this Article.
- (2) The provisions of Article 151, Paragraphs 1 and 3 of this Code regarding time limits of detention shall be applied in criminal actions instituted after the effective date of this Code.

## **Article 452**

### **Adjudication of Earlier Filed Cases**

(1) The criminal proceedings that were instituted before the courts before the effective date of this Code shall continue in pursuance of this Code, unless this Article provides otherwise.

(2) The criminal cases referred to in Paragraph 1 of this Code under investigation shall be delivered to the prosecutor immediately or, if some investigative actions are ongoing, within 8 days after the effective date of this Code.

(3) The criminal proceedings in cases referred to in Paragraph 1 of this Code in which the indictment has been confirmed shall continue in pursuance of previous Code, unless this Chapter provides otherwise.

(4) The criminal cases falling under jurisdiction of the Court of Bosnia and Herzegovina, which were filed with the courts in Federation before the effective date of this Code and in which the indictment has been confirmed, shall be completed by those courts in pursuance of previous Code. The criminal cases falling under jurisdiction of the Court of Bosnia and Herzegovina, which were filed with the courts or prosecutors in the Federation, and in which the indictment has not been confirmed, shall be completed by those courts in pursuance of this Code, unless, ex officio or at the reasoned motion of the parties or defense attorney, the Court of Bosnia and Herzegovina decides to take over such cases.

(5) The criminal proceedings in which only request for prosecution was filed shall be completed by the courts in pursuance of the previous Code, unless this Chapter provides otherwise.

(6) The criminal proceedings that were instituted with higher courts before the effective date of this Code, in which the qualification of criminal offences or a change of venue due to change of subject matter jurisdiction is to be projected, shall be completed by those higher courts.

## **Article 453**

### **Acceptance of Obtained Evidence**

If the Court of Bosnia and Herzegovina has transferred the case from their jurisdiction to the court in Federation, in whose area the criminal offense was committed or attempted, that court shall accept evidence obtained in accordance with law during the investigation.

#### **Article 454**

##### **The Right of Private Prosecutor and the Injured Party as Prosecutor**

- (1) The criminal proceedings that were instituted due to a private complaint under Article 291 of the Criminal Code of the Federation of Bosnia and Herzegovina (FBiH Official Gazette 43/98, 15/99, 29/00) or charges or request for prosecution filed by the injured party as prosecutor before the effective date of this Code shall continue in pursuance of the previous Code, unless Articles 451 through 458 provide otherwise.
- (2) The investigation of cases referred to in Paragraph 1 of this Article shall be suspended by the court's decision and the injured party as prosecutor shall be informed about it within 8 days. The injured party shall be entitled to file the request for prosecution to the prosecutor's office within 8 days after the receipt of the information. If the prosecutor does not institute a criminal proceeding within 15 days he shall so inform the court and the court shall dismiss the proceedings by decision.

#### **Article 455**

##### **Possibility of a Trial In Absentia**

- (1) If a decision on a trial in absentia was issued before the effective date of this Code, a decision on the adjournment of the trial shall be issued. When the reasons for the adjournment cease from existing the trial shall resume in pursuance of ~~this Code~~ **former legislation**.
- (2) If a verdict was rendered in a trial in absentia before the effective date of this Code, the proceeding shall conclude in pursuance of the previous Code unless this Chapter provides otherwise.

#### **Article 456**

##### **Deciding the Appeal Against Second Instance Decision and Motion for Protection of Legality**

- (1) The criminal proceedings, in which an appeal was filed against a decision of second instance court or a deadline for filing the appeal was running and the appeal was filed in compliance with it, shall continue and conclude in pursuance of the previous legislation.
- (2) The proceedings, in which a motion for protection of legality was filed or a deadline for filing a motion for protection of legality was running and the motion was filed in compliance with it, shall continue and conclude in pursuance of the previous legislation.

F BiH Criminal Procedure Code, F BiH OG 35/03 published on 28 July 2003; Correction and amendments included as published in FBiH OG: No. 37/03; FBiH OG No. 56/03; FBiH OG No. 78/04; FBiH OG No. 28/05; FBiH OG No. 55/06; FBiH OG No. 9/09; FBiH OG No. 12/10; FBiH OG No. 8/13; FBiH OG No. 59/14; FBiH OG No. 74/20

- (3) The Federal Prosecutor may file a motion for protection of legality within the same time limit set for the convicted and his defense attorney in the previous legislation.
- (4) If, after the effective date of this Code, a verdict is reversed in a review of an appeal or extraordinary remedy, the proceedings shall continue and conclude in pursuance of Articles 452, Paragraph 3 and 5.

#### **Article 457**

##### **Adoption of By-laws**

By-laws provided for in this Code shall be adopted within 90 days from the date of entry into force of this Code.

#### **Article 458**

##### **Cessation of Application of Previous Code**

On the effective date of this Code, the Criminal Procedure Code of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina 43/98 and 23/99) shall cease to apply, unless otherwise prescribed by Articles 451 through 457.

#### **Article 459**

##### **Entry into Force of the Law**

This Code shall enter into force on 01. July, 2003.

Chairperson of the House of Peoples  
of the Federation BiH Parliament  
Slavko Matić

Chairperson of the House of Representatives  
of the Federation BiH Parliament  
Muhamed Ibrahimović<sup>34</sup>

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<sup>34</sup> Official Gazette of the Federation of BiH No. 37/03