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## **Department for Legal Affairs**



# **LAW AMENDING THE CRIMINAL CODE OF THE FEDERATION OF BOSNIA AND HERZEGOVINA**

**“Official Gazette of the Federation of Bosnia and  
Herzegovina”, 42/10**

**NOTE: The Criminal Code of the Federation of the Bosnia and Herzegovina was published  
in the “Official Gazette of the Federation Bosnia and Herzegovina”, 36/03.**

Pursuant to Article IV.B.7. a)(IV) of the Constitution of the Federation of Bosnia and Herzegovina, hereby I enact the following

**DECREE**

**PROMULGATING THE LAW AMENDING THE CRIMINAL CODE OF THE  
FEDERATION OF BOSNIA AND HERZEGOVINA**

This is to promulgate the Law Amending the Criminal Code of the Federation of Bosnia and Herzegovina, as enacted by the Federation Parliament at the session of the House of Representatives on 30 June 2010 and the session of the House of Peoples on 8 July 2010.

No 01-02-390/10  
15 July 2010  
Sarajevo

President

**Borjana Krišto**, *manu propria*

**LAW**

**AMENDING THE CRIMINAL CODE OF THE  
FEDERATION OF BOSNIA AND HERZEGOVINA**

**Article 1**

In the Criminal Code of the Federation of Bosnia and Herzegovina (“Official Gazette of the Federation of Bosnia and Herzegovina”, nos. 36/03, 37/03, 21/04, 69/04 and 18/05) in Article 2, paragraph (4), shall be amended to read as follows:

“(4) A military person, for the purpose of this Code, means a member of professional military personnel, and a member of reserve personnel for the duration of their service in the Armed Forces of Bosnia and Herzegovina, in accordance with the Law on Service in the Armed Forces of Bosnia and Herzegovina.”

In paragraph (8), after the word “Federation”, the following words shall be added: “with or without remuneration.”

In paragraph (14), the words: “or more” shall be deleted.

In paragraph (15), the words: “or more” shall be deleted.

In paragraph (18), the words: “Criminal organization” shall be replaced with the words: “An organized crime group”, whereas after the words “imprisonment of” the word “over” shall be added.

Paragraph (30) shall be amended to read as follows:

“(30) A mean of transport is every vessel, vehicle or aircraft, as well as any other mean that may be used in land, water and air traffic regardless of type of propulsion.”

## **Article 2**

After Article 4, a new Article 4a shall be added to read as follows:

“Article 4a.

### **Principle of Guilt**

No one can be punished or subjected to other criminal sanctions if he is not guilty of the committed criminal offence.”

## **Article 3**

Article 7 shall be amended to read as follows:

### **“The Purpose of Legal Sanctions for Criminal Acts**

The purpose of legal sanctions for criminal acts is:

- a) Protection of the society from criminal acts through preventive influence on others to respect the legal system and do not commit criminal acts, as well as by preventing perpetrators to commit criminal acts and encouraging of their reformation;
- b) Protection and satisfaction of victims of criminal offences.

## **Article 4**

In Article 8, after the words: “in compliance with”, the following words shall be added: “the law and”.

## **Article 5**

In Article 18, paragraph (3), Article 71, sub-paragraph d), Article 77 in the title and in paragraphs (1) through (4), Article 291, paragraphs (2) and (3), Article 333, paragraph (1) the words: “motor vehicle” in the different grammatical cases shall be replaced with the words: “a means of transport” in the appropriate grammatical case.

## **Article 6**

Article 25 shall be amended to read as follows:

### **Article 25**

#### **“Insignificant act**

An act shall not be a criminal offence although it has elements of a criminal offence defined under the law if, due to its nature and gravity or the manner of its perpetration or the insignificance or non-existence of detrimental consequences and a low degree of culpability of the perpetrator, it constitutes an insignificant act.”

## **Article 7**

After Article 27, a new Article 27a shall be added to read as follows:

### **“Article 27a.**

#### **Force and threat**

(1) A criminal offence perpetrated under irresistible force shall not constitute a criminal offence.

(2) A perpetrator who has perpetrated a criminal offence under resistible force or threat may be sentenced to a more lenient punishment.

(3) In the case specified in paragraph (1) herein, the person who has applied irresistible force shall be considered a perpetrator of the criminal offence.”

## **Article 8**

The title of Article 31 shall be amended to read as follows: **“Co-perpetration”**.

## **Article 9**

In Article 32, after paragraph (2), a new paragraph (3) shall be added to read as follows:

“(3) Incitement to commit a criminal offence shall be construed to mean, in particular: pleading, persuading or prompting, portraying benefits of the perpetration of the criminal offence, giving or promising gifts, abusing the state of subordination or dependency,

making a person believe in and keeping a person under a mistake of fact or law, deceiving.”

#### **Article 10**

In the title of Article 34, the words: “Criminal Responsibility”, shall be replaced with the word “Culpability”.

In paragraph (1), the words: “criminally responsible” shall be replaced with the word “culpable”.

In paragraph (3), the words: “criminal responsibility” shall be replaced with the word “culpability”.

#### **Article 11**

After Article 34, the title of Chapter VI shall be amended to read as follows: “**CULPABILITY**”.

#### **Article 12**

Article 35 shall be amended to read as follows:

“Article 35

#### **Content of culpability**

(1) Culpability exists if at the time of the perpetration of the criminal offence the perpetrator was mentally accountable and acted with intent.

(2) Culpability for the criminal offence exists even if the perpetrator acted out of negligence only if the law explicitly prescribes to.”

#### **Article 13**

In Article 36, paragraph (3), the words: “criminally responsible” shall be replaced with the words: “culpable”, whereas the words: “criminal responsibility” shall be replaced with the word “culpability”, whereas after the word “negligence”, a full stop shall be placed and the remaining section of the text shall be deleted.

#### **Article 14**

Article 39 shall be amended to read as follows:

“Article 39

**Mistake of Fact**

(1) A person shall not be guilty if he perpetrates an offence while under an irreparable mistake of fact.

(2) The mistake of fact shall be considered irreparable if the perpetrator, at the time of the perpetration of the criminal offence, was not aware of a legally prescribed element of the criminal offence or wrongly believed that there existed circumstances which, if they truly existed, would have made his conduct permissible.

(3) If the perpetrator was under a mistake of fact due to negligence, that shall be considered a criminal offence perpetrated out of negligence only if the law prescribes punishment for that criminal offence committed out of negligence.”

**Article 15**

Article 41 shall be amended to read as follows:

“Article 41

**Types of Punishments**

Perpetrator of the criminal offence who has been found guilty may be sentenced to:

- a) imprisonment
- b) long-term imprisonment
- c) fine.”

**Article 16**

In Article 42, sub-paragraph b), after the words “offences” the following words shall be added: “and to encourage his reformation”.

**Article 17**

Article 43 shall be amended to read as follows:

“Article 43

**Imprisonment**

(1) Imprisonment may not be shorter than thirty (30) days or longer than twenty (20) years.

(2) The punishment of imprisonment shall be imposed in full years and months; however, the punishment of imprisonment for a term not exceeding six months may also be meted out in full days.

(3) Imprisonment referred to in paragraphs (1) and (2) of this Article cannot be imposed to the juveniles. Juvenile imprisonment may be imposed under the conditions prescribed by Chapter X of this Code (**RULES RELATING TO EDUCATIONAL RECOMMENDATIONS, EDUCATIONAL MEASURES AND PUNISHMENT OF JUVENILES**). By its purpose, nature, duration and manner of execution, juvenile imprisonment constitutes a special punishment of deprivation of liberty.”

### **Article 18**

After Article 43, new Articles 43a. and 43b. shall be added to read as follows::

“Article 43a.

#### **Substitution of Imprisonment**

(1) On request of the convicted person, imprisonment sentence up to one year can be substituted by a fine paid in a single installment within 30 days.

(2) Imprisonment shall be substituted with a fine in a way that every day of imprisonment equals one daily amount of fine or with KM 100 if the fine is to be determined in a certain amount.

(3) If the fine is not paid within the deadline from paragraph (1) of this Article, the Court shall make a decision on execution of imprisonment. If the fine is paid only partially, then the imprisonment will be proportional to the amount that was not paid.”

Article 43b.

#### **Long-Term Imprisonment**

(1) For the gravest forms of serious criminal offences perpetrated with intent, a long-term imprisonment for a term between twenty-one and forty-five years may be imposed.

(2) Long-term imprisonment may never be imposed as the sole principal punishment for a particular criminal offence.

(3) Long-term imprisonment cannot be imposed on a perpetrator who has not reached twenty-one years of age at the time of perpetrating the criminal offence.

(4) Long-term imprisonment shall be meted out in full years only.

(5) If long-term imprisonment has been imposed, amnesty or pardon may be granted only after three-fifths of the punishment has been served.”

### **Article 19**

In Article 44, paragraph (1), the words: “imprisonment for a term not exceeding six months” shall be replaced with the words: “imprisonment up to one year”.

In paragraph (3), the word “sixty” shall be replaced with the word “ninety.”

### **Article 20**

In Article 46, paragraph (1), the words “for a term of” shall be replaced with the words “for a term exceeding.”

### **Article 21**

In Article 47, paragraph (3), the numeral “150” shall be replaced with the numeral “500”, whereas the numeral “50.000” shall be replaced with the numeral “100.000”.

In paragraph (8) the words “two years” shall be replaced with the words “one year”.

### **Article 22**

In Article 48, paragraph (2), the words: “is not paid in full or in part” shall be replaced with the words “is not paid”.

In paragraph (3), the numeral "50" shall be replaced with the numeral "100", whereas the words: "whereby the imprisonment may not exceed one year", shall be replaced with the words: "whereby it may not exceed the prescribed punishment for that offence".

### **Article 23**

In Article 49, paragraph (1), the words: "criminal responsibility" shall be replaced with the word "culpability".

### **Article 24**

In Article 51, paragraph (1), sub-paragraph g), the numeral "150" shall be replaced with the numeral "500".

### **Article 25**

In Article 54, paragraph (1) shall be amended to read as follows:

“(1) If the perpetrator, by a single action or by several actions, has perpetrated several criminal offences, for which he is tried at the same time, the court shall first assess the punishment for each of the offences separately, and then proceed with imposing a

compound punishment of long-term imprisonment, a compound punishment of imprisonment or a compound fine for all the offences taken together.”

In paragraph (2), sub-paragraph a) shall be amended to read as follows::

“a) If the court has meted out a punishment of long-term imprisonment or long-term imprisonment and imprisonment for criminal offences in concurrence, the compound sentence of long-term imprisonment shall be higher than each individual punishment, but shall not exceed 45 years;”

After sub-paragraph b), a new sub-paragraph c) shall be added to read as follows::

“c) If for two or several concurrent criminal offences the court meted out punishments of imprisonment exceeding ten years, the court may pronounce a compound punishment of long-term imprisonment which shall not reach the sum of individual punishments of imprisonment;”

The current sub-paragraphs c) and d) shall now become sub-paragraphs d) and e).

#### **Article 26**

In Article 56, paragraph (3) shall be deleted.

#### **Article 27**

In Article 57, paragraph (3), the numeral "50" shall be replaced with the numeral "100".

#### **Article 28**

In Article 62, paragraph (2), the words: “criminal responsibility” shall be replaced with the word “culpability”.

Paragraph (4) shall be deleted.

The current paragraphs (5), (6) and (7) shall now become paragraphs (4), (5) and (6).

#### **Article 29**

In Article 74, paragraph (1), the words: “in a condition of significantly reduced or reduced mental capacity or diminished mental capacity” shall be replaced with the words: “in a state of considerably diminished or of diminished mental capacity”.

Paragraph (4) shall be deleted.

The current paragraphs (5) and (6) shall become paragraphs (4) and (5).

### **Article 30**

Article 76, paragraph (1) shall be amended to read as follows:

"(1) The security measure of ban on carrying out a certain occupation, activity or duty may be imposed to a perpetrator who perpetrates a criminal offense in connection with his occupation, activity or duty, if there is a danger that such role could induce the perpetrator to perpetrate new criminal offense in connection with his occupation, activity or duty."

### **Article 31**

In Article 78, paragraph (3) shall be amended to read as follows:

"(3) The Law can regulate mandatory forfeiture of objects."

### **Article 32**

In Article 99, the words: "criminally responsible" shall be deleted and the words: "the high degree of criminal responsibility" shall be replaced with the words: "the degree of culpability".

### **Article 33**

In Article 114, paragraph (3) shall be deleted.

### **Article 34**

After Article 114, a new Article 114a shall be added to read as follows:

“Article 114a.

#### **Expanded Confiscation of Material Gain Acquired Through Perpetration of a Criminal Offence**

In cases of criminal proceedings for criminal offences referred to in chapters XXII, XXIX and XXXI of this Law, the court can also decide, on basis of Article 114 paragraph (2), to order confiscation material gain for which the prosecutor provides sufficient evidence that there is reasonable suspicion that it was acquired through execution of these criminal offences, and the accused person did not provide evidence to prove that the material gain was acquired legally.”

### **Article 35**

In Article 118, paragraph (1), after sub-paragraph b), a new sub-paragraph c) shall be added to read as follows:

"c) Confiscation of permits or approvals issued by an authority or status recognized by the decision of the authority;"

The current sub-paragraph c) shall now become sub-paragraph d).

In paragraph (2), sub-paragraph c) shall be amended to read as follows:

"c) Prohibition of obtaining any permits or approvals issued by an authority or status recognized by the decision of the authority."

### **Article 36**

Article 125 shall be amended to read as follows:

“Article 125

#### **Deleting Conviction**

- (1) Provided that the perpetrator is not convicted again of a new criminal offence, there shall be a mandatory deletion of the sentence upon the expiry of the following deadlines:
  - a) A sentence by which a person who has perpetrated a criminal offence has been released from punishment shall be deleted from the criminal records, provided he does not perpetrate a new criminal offence within the period of one year from the date of entry into force of the verdict.
  - b) A suspended sentence shall be deleted from the criminal record after the period of one year from the expiration of the probation period has elapsed, unless the person convicted has perpetrated another criminal offence within that period.
  - c) A fine and imprisonment for a term not exceeding one year shall be deleted from the criminal records after the lapse of the period of three years from the day on which the punishment has been executed, pardoned or amnestied, or barred by the statute of limitations, provided that the convicted person does not perpetrate a new criminal offence within that period.
  - d) A sentence of imprisonment for a term between a year and three years shall be deleted from the criminal records after the lapse of the period of five years from the day on which the punishment has been executed, pardoned or amnestied, or barred by the statute of limitations, provided that the convicted person does not perpetrate a new criminal offence within that period.
  - e) A sentence of imprisonment for a term between three years and five years shall be deleted from the criminal records after the lapse of the period of ten years from the day on which the punishment has been executed, pardoned or amnestied, or

- barred by the statute of limitation, provided that the convicted person does not perpetrate a new criminal offence within that period.
- f) A sentence of imprisonment for a term between five years and ten years shall be deleted from the criminal records after the lapse of the period of fifteen years from the day on which the punishment has been executed, pardoned or amnestied, or barred by the statute of limitation, provided that the convicted person does not perpetrate a new criminal offence within that period.
- (2) Upon appeal by a convicted person, the court may decide to delete a sentence of imprisonment for a term exceeding ten years, if a period of twenty years has expired from the day on which the punishment has been served, pardoned or amnestied, or barred by the statute of limitations, provided that the convicted person has not perpetrated a new criminal offence within that period.
- (3) In deciding on deleting the sentence referred to in paragraph (2) of this Article, the court shall take into account the conduct of the convicted person after serving his sentence, the nature of the criminal offence, and other circumstances that might be relevant to the evaluation of the justifiability of the deletion.
- (4) A sentence of long-term imprisonment may not be deleted from the criminal records.
- (5) A sentence may not be deleted from the criminal records during criminal proceedings on a new criminal offence.
- (6) A sentence cannot be deleted from the criminal records neither during application of security measures nor before full completion of confiscation of material gain acquired through criminal activities.
- (7) Upon the deletion of the sentence from the criminal records under the conditions referred to in paragraphs (1) through (3), it shall be considered that the perpetrator of the criminal offence has no prior convictions.”

### **Article 37**

After Article 125, a new Article 125a shall be added to read as follows::

#### **“Article 125a. Criminal Records Data**

- (1) Data from the criminal records are not public data.
- (2) A citizen has the right to request and obtain data about him from the criminal records if these data are necessary for exercising his rights and interests.

(3) Replacement of the imposed fine with a community service or imprisonment, as well as replacement of imprisonment with the community service or fine shall be registered in the criminal records.

#### **Article 38**

In Article 129, paragraph (1), the words: "is not criminally liable" shall be replaced with the words: "is not guilty".

In paragraph (2), the words: "criminal responsibility" shall be replaced with the word "culpability".

#### **Article 39**

In Article 130, paragraph (1), after the words "be" the word "criminally" shall be deleted.

In paragraphs (2) and (3), before the words "liability was established" the word "criminal" shall be deleted.

#### **Article 40**

Article 132 shall be amended to read as follows:

#### **"Continued Criminal Offence and Liability of Legal Person**

Where the same grounds for liability of the legal person exist in regard to several same-type and time-related criminal offences perpetrated by several perpetrators, such legal person shall be liable as if a single criminal offence has been perpetrated."

#### **Article 41**

In Article 133, paragraph (2), the word "criminally" shall be deleted.

#### **Article 42**

In Article 136, after paragraph (2), a new paragraph (3) shall be added to read as follows:

"(3) If a fine is not paid within the deadline set forth in the verdict, the procedure for forcible collection shall be implemented immediately."

#### **Article 43**

In Article 141, sub-paragraph b), the word "economic" shall be deleted.

#### **Article 44**

In Article 142, paragraph (1), the words: "or to obtain certain benefits for economy", shall be replaced with the words: "or for protection or encouragement of social values".

#### **Article 45**

Article 143 shall be amended to read as follows:

##### **“Ban on Certain Activities**

(1) By ordering the security measures of a ban on a certain activity, the court may prohibit a legal person from manufacturing certain products or performing certain businesses, or prohibit a legal person from performing certain activities of trade in commodities or from performing other business i.e. activities.

(2) The security measure referred to in paragraph 1 of this Article may be imposed on a legal person if its further performing of a certain activity would present a threat to life and limb of people or be prejudicial to the economic and financial operation of other persons or detrimental to the economy, or if the legal person has already been sentenced for the same or a similar criminal offence over the past two years preceding the perpetration of the criminal offence.

(3) The security measure referred to in paragraph 1 of this Article may be imposed for a period of six months to five years, commencing on the day of the entering into force of the judgement.”

#### **Article 46**

In the title of Article 146 and in paragraph (1), the word "criminal" shall be deleted.

In paragraph (3), sub-paragraph b), the word "economic" shall be deleted.

#### **Article 47**

In Article 147, the word "criminally" shall be deleted.

#### **Article 48**

In Article 163, paragraph (1), the words: "for a term between one and five years" shall be replaced with the words: "for a term between three months and three years.”

Paragraph (3) shall be amended to read as follows:

“(3) Whoever perpetrates the criminal offence referred to in paragraph (1) by abuse of office or authority shall be punished by imprisonment for a term between one and ten years.”

#### **Article 49**

In Article 165, the words: "for a term between one and ten years" shall be replaced with the words: "for a term of no less than three years."

#### **Article 50**

In Article 192, the numeral "one" shall be replaced with the numeral "three".

#### **Article 51**

In Article 195, paragraph (1), the words: "or imprisonment for a term not exceeding three years" shall be replaced with the words: "and imprisonment for a term not exceeding three years."

#### **Article 52**

In Article 196, the words: "by a fine or imprisonment for a term not exceeding three years" shall be replaced with the words: "by imprisonment for a term between three months and five years."

#### **Article 53**

In Article 198, after the word "discloses" the words: "as final" shall be added.

#### **Article 54**

After Article 199, a new Article 199a. shall be added to read as follows:

##### **“Article 199a.**

##### **Giving False Statements during Nomination Procedure**

(1) Whoever, with an aim of deceiving or keeping in deception the competent nominating authority in the Federation as to his/her eligibility for nomination for the positions of Prime Minister or Minister of the Federation Government or for his approval to those positions, during the nomination and approval procedure for those positions conducted pursuant to the law gives a false statement, in written or oral form, regarding data or information necessary for a determination of his eligibility and which he is obliged to submit pursuant to the law and other regulation, thus concealing or altering facts relevant for a decision on nomination or approval, shall be punished by a fine or imprisonment for a term not exceeding three years.

(2) If the perpetrator voluntarily withdraws his false statement before the final decision has been made, he shall be punished by a fine or imprisonment for a term not exceeding six months, but may be released from punishment.”

### **Article 55**

In Article 273, paragraph (1), the words: "by a fine or imprisonment for a term not exceeding three years" shall be replaced with the words: "by imprisonment for a term between six months and five."

### **Article 56**

In Article 295, paragraph (2), the words: "criminal organization" shall be replaced with the words: "an organized crime group".

### **Article 57**

In Article 296, paragraph (2), the words: "criminal organization", shall be replaced with the words: "an organized crime group."

### **Article 58**

In Article 337, paragraph (1), the words: "motor vehicle or some other" shall be deleted.

### **Article 59**

In Article 340, paragraph (1), the words: "for which a punishment of imprisonment of three years or a more severe punishment may be imposed," and the comma shall be deleted, whereas the words: "between six months and five years" shall be replaced with the words: "between one and ten years."

In paragraph (2), the numeral "one" shall be replaced with the numeral "three".

### **Article 60**

The title of Article 342 shall be amended to read as follows: "**Organized Crime**".

In paragraphs (1), (2), (3) and (4) the words: "criminal organization" in the different grammatical cases shall be replaced with the words: "an organized crime group" in the appropriate grammatical cases.

In paragraph (2), the words: "three years" shall be replaced with the words: "five years".

Paragraph (5) shall be amended to read as follows:

"(5) A member of an organized crime group referred to in paragraph 1 through 4 of this Article, who exposes that group, may be released from punishment."

### **Article 61**

In Article 358, paragraph (2), the words: "three years" shall be replaced with the words: "five years".

In paragraph (3), the words: "between three months and five years" shall be replaced with the words: "between one and ten years".

### **Article 62**

In Article 380, paragraphs (1), (2) and (3) after the words "accepts a gift or any other benefit" and "accepts a promise of a gift or a benefit" the following words shall be added: "for himself or another person".

### **Article 63**

In Article 382, after paragraph (3), a new paragraph (4) shall be added to read as follows:

"(4) Any received reward or some other benefit shall be confiscated."

### **Article 64**

In Article 383, after paragraph (3) a new paragraph (4) shall be added to read as follows:

"(4) Any gained benefit shall be confiscated."

### **Article 65**

In Article 384, after paragraph (3), a new paragraph (4) shall be added to read as follows:

"(4) Money, securities or other mobile items as well as gained benefit shall be confiscated."

### **Article 66**

In Article 385, after paragraph (3), a new paragraph (4) shall be added to read as follows:

"(4) Gained benefit in property shall be confiscated."

### **Article 67**

In Article 387, paragraph (1), the words: "by a fine or imprisonment for a term not exceeding three years" shall be replaced with the words: "imprisonment for a term between three months and five years".

In paragraph (2), the words: "for a term between six months and five years" shall be replaced with the words: "for a term between one and ten years".

#### **Article 68**

In Article 391, the word "omogućava" (Note: the local verb *enable* here takes the durative aspect; therefore it does not affect the English translation) shall be replaced with the word "omogućí" (Note: the local verb *enable* here takes the perfect aspect; therefore it does not affect the English translation), whereas the words: "six months and five years" shall be replaced with the words: "one to ten years".

#### **Article 69**

The title of CHAPTER XXXIII "**CRIMINAL OFFENCES AGAINST THE ARMED FORCES OF THE FEDERATION**" and Articles 399 through 418 shall be deleted.

#### **Article 70**

This Law shall enter into force one day after its publication in the "Official Gazette of the Federation of Bosnia and Herzegovina".

Chairman of  
the House of Peoples  
of the BiH Federation Parliament  
**Stjepan Krešić**, *manu proprio*

Chairman of  
the House of Representatives  
of the BiH Federation Parliament  
**Safet Softić**, *manu proprio*