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LAW ON AMENDMENTS TO THE CRIMINAL CODE OF BOSNIA AND HERZEGOVINA

“Official Gazette of Bosnia and Herzegovina”, 40/15

[NOTE: The Criminal Code of Bosnia and Herzegovina was published in the “Official Gazette of Bosnia and Herzegovina”, 3/03.](#)

Pursuant to Article IV/4.a) of the Constitution of Bosnia and Herzegovina, at the 11th session of the House of Representatives, held on 13 May 2015, and the 4th session House of Peoples, held on 18 May 2015, the Parliamentary Assembly of Bosnia and Herzegovina adopted the following

LAW ON AMENDMENTS TO THE CRIMINAL CODE OF BOSNIA AND HERZEGOVINA

Article 1

In the Criminal Code of Bosnia and Herzegovina (“Official Gazette of BiH”, Nos. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10, 47/14 and 22/15), in Article 1, paragraph (7), the words: “serving in Bosnia and Herzegovina with or without remuneration” shall be deleted.

After paragraph (8), new paragraphs (9) and (10) shall be added to read:

“(9) A *lay judge* is a person who is a member of a collegiate body having a responsibility to decide on the culpability of an indicted person in the trial proceedings.

(10) An *arbitrator* is a person who is, on the basis of an arbitration agreement, called upon to make a legally binding decision in a dispute submitted to him by the parties to the agreement.”

After paragraph (23), new paragraphs (24) and (25) shall be added to read:

“(24) *Property gain* is any economic benefit that has directly or indirectly resulting from a criminal offense, and consists of any property.

(25) *Property* includes the property of every kind, no matter whether they comprise property or rights, either tangible or intangible, movable or immovable, and legal documents or instruments in any form proving the ownership or the right to ownership over such property.”

Current paragraphs (9) to (39) shall become paragraphs (11) to (43).

Article 2

In Article 15, paragraph (1), new sentence shall be added to read:

“The running of the period set by the statute of limitations for criminal prosecution shall commence in the moment of end of the unlawful state.”

Article 3

In Article 42a, paragraph (1), the word “can” shall be replaced with word “shall”.

Article 4

In Article 42b, paragraph (5), the words: “amnesty or pardon may be granted” shall be replaced with words “pardon may be granted”.

Article 5

Article 74 shall be amended to read:

“Forfeiture Article 74

- (1) Objects that were in any way, wholly or partially, used or destined for use in the perpetration of a criminal offence, or to those that resulted from the perpetration of a criminal offence, shall be forfeited if those objects are owned by the perpetrator.
- (2) Objects referred to in paragraph 1 of this Article may be forfeited even if not owned by the perpetrator, however, such forfeiture shall not affect the rights of third parties to obtain damage compensation from the perpetrators.”

Article 6

In Article 110, paragraph (1), after the word: “gain”, the comma punctuation mark and words: “income, profit or other benefit resulting from the material gain.” shall be added. In paragraph (2), the word “gain” shall be replaced with words: “Property gain, income, profit or other benefit resulting from the material gain”.

Article 7

In Article 110a), paragraph (1), after the words: “order the confiscation of the material gain”, a comma and the following wording shall be added: “income, profit or other benefit resulting from the material gain”, whereas after the words “material gain”, a comma and the following wording shall be added: “income, profit or other benefit resulting from the material gain”.

After paragraph (1), a new paragraph (2) shall be added to read as follows:

“(2) In the event that during the course of the criminal proceedings no requirements established by law have been met for confiscation of the material gain, income, profit or other benefit resulting from the material gain acquired through perpetration of a criminal offence, the request for confiscation of the material gain may be filed during the civil proceedings.”

Article 8

In Article 111, paragraph (1), the words: “may be confiscated” shall be replaced with words: “shall be confiscated”.

In paragraph (2), the word “may” shall be replaced with word “shall” [**Translator’s remark: N/A to English translation**].

In paragraph (3), the words “may be” shall be replaced with word “shall” [**Translator’s remark: N/A to English translation**].

Article 9

In Article 172, paragraph (1), subparagraph g), the words: “by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him,” shall be deleted.

Article 10

In Article 173, paragraph (1), subparagraph e), the words: “by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him,” shall be deleted.

Article 11

Article 186 shall be amended to read:

“International Human Trafficking Article 186

(1) Whoever, by use of force or threat of use of force or other forms of coercion, abduction, fraud or deception, abuse of power or influence or a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, recruits, transports, transfers, harbors or receives a person for the purpose of exploitation of that person in the state where that person has no permanent residence or is not the citizen of it, shall be punished by imprisonment for a term of not less than five years.

(2) Whoever recruits, solicits, transports, transfers, harbors or receives a person younger than 18 years of age with the purpose of exploitation by prostitution or other forms of sexual exploitation, forced labor or services, slavery or a similar status, servitude or the removal of the parts of human body or of some other type of exploitation in the state where that person has no permanent residence or is not the citizen of it, shall be punished by imprisonment for a term of not less than ten years.

(3) If the criminal offense referred to in paragraphs (1) and (2) of this Article is committed by an official person while executing official duty, the perpetrator shall be punished by imprisonment for a term of not less than ten years.

(4) Whoever counterfeits, procures or issues travel or identification documents, or uses, holds, seizes, alters, damages or destroys travel or identification documents of another person with the purpose of facilitating international human trafficking, shall be punished by imprisonment for a term between one and five years.

(5) Whoever uses the services of the victims of international human trafficking shall be punished by imprisonment for a term of between six months and five years.

(6) If the perpetration of the criminal offense referred to in paragraphs (1) and (2) caused serious health damage, grievous bodily harm or the death of the persons referred to in paragraphs (1) and (2), the perpetrator shall be punished by imprisonment for a term of not less than ten years or long-term imprisonment.

(7) Exploitation, for the purpose of paragraph (1) of this Article, implies: prostitution of other person or other forms of sexual exploitation, forced labor or services, slavery or a similar status, servitude or the removal of the parts of human body or of some other type of exploitation.

- (8) Items, conveyances and facilities used for perpetration of offences shall be seized.
- (9) Whether the person who is a victim of international human trafficking consented to the exploitation bears no relevance to the existence of the criminal offense of international human trafficking.
- (10) Criminal proceedings shall not be conducted against the victim of international human trafficking whom the perpetrator of the criminal offense had coerced to participate in perpetration of another criminal offense if such victim's action was direct consequence of his/her status of the victim of international human trafficking."

Article 12

After Article 186, new Article 186a shall be added to read:

"Organized International Human Trafficking Article 186a

- (1) Whoever organizes or directs the group or another association that by acting together perpetrates the criminal offense referred to in Article 186 (International Human Trafficking), shall be punished by imprisonment for a term of not less than ten years or long-term imprisonment.
- (2) Whoever perpetrates the criminal offense within the group or another association referred to in paragraph (1) of this Article or in other way helps the group or association, shall be punished by imprisonment for a term of not less than ten years.
- (3) The provisions set forth in Article 250 (Organized Crime), paragraphs (4) and (5) of this Code shall apply to members of the organized group or another association that have perpetrated the criminal offenses referred to in Paragraph (1) of this Article."

Article 13

Article 187 shall be amended to read:

"International Enticing to Prostitution Article 187

- (1) Whoever, for profit or other benefit, entices, encourages or lures another person to offer sexual services, or in another way makes possible for his/her transfer to another for the purpose of offering sexual services, or in any other way participates in organizing or directing the offering of sexual services in the state where that person has no permanent residence or is not the citizen of it, shall be punished by imprisonment for a term of between six months and five years.
- (2) The fact whether the person enticed, encouraged or lured into prostitution has already been engaged in prostitution is of no relevance for the existence of a criminal offense."

Article 14

The title of Article 189a shall be amended to read: "Organizing a Group or Association for the Purpose of Perpetrating the Criminal Offense of 'Smuggling of Persons'".

Paragraph (1) shall be amended to read:

“(1) Whoever organizes a group or another association for the purpose of perpetrating the criminal offense referred to in Article 189 (Smuggling of Persons) of this Code, shall be punished by imprisonment for a term of not less than three years.”

Article 15

Article 190 shall be amended to read:

“Torture and Other Forms of Cruel and Inhuman Treatment Article 190

(1) An official in the institutions of Bosnia and Herzegovina or any other person acting in the capacity of an official in the institutions of Bosnia and Herzegovina who, acting upon the order, instigation or with the explicit or implicit consent of a official person in the institutions of Bosnia and Herzegovina or any other person acting in the capacity of an official in the institutions of Bosnia and Herzegovina, inflicts on a person physical or mental pain or severe physical or mental suffering for such purposes as to obtain from him or a third person information or a confession, or to punish him for a criminal offence he or a third person has perpetrated or is suspected of having perpetrated or who intimidates or coerces him for any other reason based on discrimination of any kind,

shall be punished by imprisonment for a term of not less than six years.

(2) The punishment referred to in paragraph (1) of this Article shall also be pronounced against an official in the institutions of Bosnia and Herzegovina or any other person acting in the capacity of an official in the institutions of Bosnia and Herzegovina who ordered or instigated the perpetration of the criminal offense, or who gave his explicit consent or knew about and implicitly consented with the perpetration of the criminal offense referred to in paragraph (1) of this Article.”

Article 16

After Article 190, new Article 190a shall be added to read:

“Forced Disappearance Article 190a

(1) An official in the institutions of Bosnia and Herzegovina or any other person acting in the capacity of an official in the institutions of Bosnia and Herzegovina who, acting upon the order, instigation or with the explicit or implicit consent of a official person in the institutions of Bosnia and Herzegovina, incarcerates another person, keeps him/her incarcerated or deprives him/her of freedom of movement and in the process refuses to admit that he deprived him/her of freedom or withholds information on destiny or location of such person thus putting him/her outside the protection of the law,

shall be punished by imprisonment for a term of not less than eight years.

(2) The punishment referred to in paragraph (1) of this Article shall also be pronounced against an official in the institutions of Bosnia and Herzegovina who ordered or instigated the

perpetration of the criminal offense, or who gave his explicit consent or knew about and implicitly consented with the perpetration of the criminal offense referred to in paragraph (1) of this Article.

(3) Whoever, as a superior, knew about or consciously neglected an information that his subordinate perpetrator had perpetrated the criminal offense referred to in paragraph (1) of this Article or that he is about to perpetrate the criminal offense, and who was responsible and had the control over the actions related to perpetration of the criminal offense referred to in paragraph (1) of this Article, but did not take all required and reasonable measures within his power to prevent or disenable the perpetration of the criminal offense referred to in paragraph (1) of this Article, or to refer that issue to the state authorities for the investigation and criminal prosecution,

shall be punished by imprisonment for a term of not less than eight years.

(4) The fact that a person acted pursuant to an order of a Government or of a superior shall not relieve him of guilt, but may be considered in mitigation of punishment if the court determines that the interests of justice so require. Person who refuses to execute such order shall not be punished.”

Article 17

In Article 209, paragraph (1) shall be amended to read as follows:

“(1) Whoever accepts, exchanges, keeps, disposes of, uses in commercial or other business activity, the money or other property he/she knows was acquired through perpetration of a criminal offence, or performs its conversion or transfer or otherwise conceals or attempts to conceal its nature, origin, location, disposal, movement, ownership or other right, and such money and property gain were acquired through perpetration of a criminal offence:

- a) abroad or throughout the territory of Bosnia and Herzegovina or in the territory of the two Entities or in the territory of one Entity and the Brčko District of Bosnia and Herzegovina
- or
- b) which is prescribed by Criminal Code of Bosnia and Herzegovina or other legislation on the State level,

shall be punished by imprisonment for a term between one and eight years.”

In paragraph (2) the word: “property” shall be replaced with the wording: “material gain”.

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

“(5) The money, material gain, income, profit or other gain arising from the material gain acquired through perpetration of a criminal offence referred to in paragraph (1) through paragraph (4) of this Article shall be forfeited.”

After paragraph (5), a paragraph (6) shall be added to read as follows:

“(6) The knowledge, intention or purpose as elements of an act of the criminal offence referred to in paragraph (1) of this Article may be evaluated on the basis of objective factual circumstances.”

Article 18

In Article 217, paragraphs (1) and (2), after the word: “official”, the words: “or arbitrator or lay judge” shall be added, words: “his official powers” shall be replaced with words: “his official function”, and after the words: “which ought to be performed by him”, the words: “or who intercedes in such bribing of an official or responsible person” shall be added.

In paragraph (3), after the word: “official”, the words: “or arbitrator or lay judge” shall be added.

Article 19

In Article 218, paragraphs (1) and (2), after the word: “official”, the words: “or arbitrator or lay judge” shall be added, after the word: “benefit”, the words: “for himself or another person” shall be added, and words: “his official powers” shall be replaced with words: “his official function”.

In paragraph (3), after the word: “official”, the words: “or arbitrator or lay judge” shall be added.

In paragraph (4), the comma and words: “while in case referred to in paragraph 3 of this Article, they can be returned to the giver” shall be deleted.

Article 20

Article 219 shall be amended to read:

“Accepting Reward or Other Form of Benefit for Trading in Influence

Article 219

(1) Whoever directly or indirectly demands or receives or accepts a gift or any other benefit or promise of a reward or any other benefit for himself or another person in order to, that by using his actual or presumed official position or social position or position of influence or other status, intercede that an official or responsible person in the institutions of Bosnia and Herzegovina or a foreign official person or an international official or arbitrator or lay judge perform or not perform official or other action,

shall be punished by imprisonment for a term between six months and five years.

(2) Whoever intercedes, by using his official position or social position or position of influence or other status, that an official or responsible person in the institutions of Bosnia and Herzegovina or a foreign official person or an international official or arbitrator or lay judge perform or not perform official or other action, shall be punished by imprisonment for a term between one and eight years.

- (3) If the perpetrator had demanded or received or accepted a reward or any other benefit for himself or another person for perpetration of the criminal offense referred to in paragraph (2) of this Article, he/she shall be punished by imprisonment for a term between one and ten years.
- (4) Any received reward or some other benefit shall be confiscated.”

Article 21

After Article 219, new Article 219a shall be added to read:

“Giving Reward or Other Forms of Benefits for Trading in Influence Article 219a

- (1) Whoever directly or indirectly gives or offers or promises to a person with official position or social position or position of influence or other status a reward or any other benefit in order to intercede that an official or responsible person in the institutions of Bosnia and Herzegovina or a foreign official person or an international official or arbitrator or lay judge perform or not perform official or other action, shall be punished by imprisonment for a term between six months and five years.
- (2) Whoever directly or indirectly, at the request of a person with official position or social position or position of influence or other status, perpetrates the criminal offense referred to in paragraph (1) of this Article, but reported the deed before it being discovered or before knowing that the deed has been discovered, may be released from punishment.
- (3) Any received reward or some other benefit shall be confiscated, and in the case referred to in paragraph (2) of this Article, it may be returned to the person who had given the reward or any other benefit.”

Article 22

The Constitutional and Legal Affairs Committee of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina and the Constitutional and Legal Affairs Committee of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina are hereby tasked to determine the consolidated text of the Criminal Code of Bosnia and Herzegovina within 90 days of the date of publication of this Code in the “Official Gazette of Bosnia and Herzegovina”.

Article 23

This Code shall enter into force within eight days of the date of its publication in the “*Official Gazette of Bosnia and Herzegovina*”.

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Sarajevo

Speaker

Speaker

House of Representatives
Parliamentary Assembly of BiH
Šefik Džaferović

House of Peoples
Parliamentary Assembly of BiH
Bariša Čolak