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LAW ON AMENDMENTS TO THE CRIMINAL PROCEDURE CODE OF THE FEDERATION OF BOSNIA AND HERZEGOVINA

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LAW ON AMENDMENTS TO THE CRIMINAL PROCEDURE CODE OF THE FEDERATION OF BOSNIA AND HERZEGOVINA

Article 1

In the Criminal Procedure Code of the Federation of Bosnia and Herzegovina (“Official Gazette of the Federation of Bosnia and Herzegovina” nos. 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07, 9/09 and 12/10), in Article 152, paragraph 1 shall be amended to read:

“(1) When the Court pronounces a sentence of imprisonment against a defendant, the Court may order custody against the defendant, i.e. the custody shall be extended if that is necessary for unhindered conduct of the criminal proceedings, taking into consideration all circumstances pertaining to perpetration of the criminal offense, i.e. personality of the perpetrator. In such cases a special ruling shall be made, and the appeal against the ruling shall not stay its execution.”

In paragraph 2, after the word “guilty”, the words “or the court admonition was pronounced” shall be added.

Article 2

In Article 320, paragraph 1, the words: “panel of appellate division” shall be replaced with words: “second instance court”.

Paragraph 2 shall be amended to read:

“(2) The deadlines referred to in Article 304, paragraph 1 of this Code shall apply to preparation of the written decision rendered in a session of the Panel or on the basis of the hearing held.”

Article 3

In Article 321, the words: “panel of appellate division” shall be replaced with words: “second instance court”, and after the word: “appeal”, the full stop shall be replaced with comma and words: “and ex officio if the Criminal Code was violated to disadvantage of the defendant” shall be added.

Article 4

In Article 324, the words: “panel of appellate division” shall be replaced with words: “second instance court”.

Article 5

Article 325 shall be amended to read:

“Decisions on the Appeal

- (1) The second instance court may in the panel session reject the appeal as being late or inadmissible or may refuse the appeal as unfounded and confirm the first instance verdict or grant the appeal and modify the first instance verdict, or grant the appeal, revoke the first instance verdict and refer the case back to the first instance for retrial or grant the appeal, revoke the first instance verdict and order the holding of the main trial before the second instance court.
- (2) The main trial before the second instance court must be held if the verdict was already revoked in the same criminal proceedings.
- (3) The second instance court shall decide in a single decision on all appeals against the same verdict.”

Article 6

In Article 328, the words: “panel of appellate division” shall be replaced with words: “second instance court”.

Article 7

Article 329 shall be amended to read:

“Altering the First Instance Verdict

- (1) By granting an appeal or ex officio, the second instance court shall render a verdict altering 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. In this case, if the second instance court finds that it is necessary to pronounce the court admonishment, it shall pass the ruling altering the verdict of the first instance and shall pronounce the court admonishment.
- (2) If due to the alternation 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 second instance court shall issue a separate ruling. An appeal to the third instance panel of the Supreme Court of the Federation against such ruling shall be allowed. The appeal shall not stay the execution of the ruling.”

Article 8

Article 330 shall be amended to read:

“Revoking the First Instance Verdict

- (1) By granting the appeal, the second instance court shall revoke the first instance verdict by a ruling and refer the case back to the first instance for retrial, i.e. order for a trial before the second instance court when there are justified reasons to not refer the case back to the first instance for retrial, 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 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 the certain parts of the verdict can be separated without causing a detriment to a rightful verdict.
- (3) The second instance court may order that a new main trial before the first instance court be held before another judge, i.e. before totally changed panel.
- (4) If the verdict was revoked by granting the appeal, and the second instance court finds that it falls within its jurisdiction to try in the first instance, it shall refer the case to the panel of that court and notify the first instance court on that.
- (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 to the third instance panel of the Supreme Court of the Federation against such ruling shall be allowed. The appeal shall not stay the execution of the ruling.”

Article 9

Article 331 shall be amended to read:

“Opinion in the Decision on Revoking the First Instance Verdict

- (1) In the opinion in the decision on revoking the first instance verdict, the second instance court shall assess the allegations from the appeal and list the violations of the law it took into consideration ex officio.
- (2) When a first instance verdict is revoked for essential violations of the provisions of the criminal procedure, it shall be stated in the opinion which provisions have been violated and what the violations consist of (Article 312).
- (3) When a first instance verdict is revoked for erroneously or incompletely established, it shall be stated in what the deficiencies in establishing of the state of facts consist of, i.e. why the new evidence and facts are important and of influence for rendering the proper decision.”

Article 10

After Article 331, new Article 331a shall be added to read:

“Article 331a

Submitting Second Instance Decision and Acting of the First Instance Court

- (1) The second instance court shall return all documents to the first instance court with sufficient number of verified copies of its decision for serving them to the parties, defence counsel and other interested parties.
- (2) The first instance court to which the case was referred to for the trial shall take the earlier indictment as basis. If the verdict of the first instance court was only partially revoked, the first instance court shall take as basis only the part of the indictment that pertains to the revoked part of the indictment.

- (3) At the new main hearing, the parties and defence counsel may assert new facts and present new evidence.
- (4) The first instance court shall be bound to perform all procedural actions and deliberate all contentious matters to which the second instance court pointed to in its decision. Testimonies of the heard witnesses, court experts and written findings and opinion shall be accepted as evidence and they may be read or reproduced if such witnesses or court experts were cross-examined during testifying by other party or defence counsel or were not cross-examined by other party or defence counsel even though that was made possible for them, as well as in the case if otherwise is specified by this Code, and if it concerns the evidence referred to in Article 276, paragraph (2), subparagraph e) of this Code.
- (5) The provision of paragraph (4) of this Article shall not pertain to persons referred to in Article 97 of this Code, who may refuse to testify.
- (6) In pronouncing of the new verdict, the first instance court shall be bound by ban specified in Article 322 of this Code.”

Article 11

In Article 332, the title shall be amended to read: “Hearing before the Second Instance Court”.

In paragraph 1, the words: “panel of appellate division” shall be replaced with words: “second instance court”.

In paragraph 2, the words: “panel of appellate division” shall be replaced with words: “second instance court”.

After paragraph 3, new paragraph 4 shall be added to read:

“(4) In pronouncing of the new verdict, the first instance court shall be bound by ban specified in Article 322 of this Code.”

Article 12

In Article 333, paragraph 2 shall be amended to read:

“(2) The Supreme Court of the Federation, in panel composed of three judges, shall rule on the appeal against the second instance verdict. The hearing cannot be conducted before this panel.”

Article 13

This Law shall enter into force on the day after the day of its promulgation in the “Official Gazette of the Federation of Bosnia and Herzegovina”.