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## Department for Legal Affairs



# LAW ON AMENDMENTS TO THE LAW OF BOSNIA AND HERZEGOVINA ON THE EXECUTION OF CRIMINAL SANCTIONS, DETENTION AND OTHER MEASURES

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**NOTE:** The Law of Bosnia and Herzegovina on the Execution of Criminal Sanctions, Detention and Other Measures was published in the “Official Gazette of Bosnia and Herzegovina”, 13/05. The Consolidated Version of this Law was published in the “Official Gazette of Bosnia and Herzegovina”, 12/10.

# **LAW ON AMENDMENTS TO THE LAW OF BOSNIA AND HERZEGOVINA ON THE EXECUTION OF CRIMINAL SANCTIONS, DETENTION AND OTHER MEASURES**

## **Article 1**

In the Law of Bosnia and Herzegovina on the Execution of Criminal Sanctions, Detention and Other Measures – Consolidated text (“Official Gazette of Bosnia and Herzegovina”, No.: 12/10), after Article 10, new articles 10a and 10b shall be added to read as follows:

### “Article 10a

(Mutual Cooperation, Informing, Agreeing, Collecting Relevant Data and Other Forms of Cooperation)

(1) With the objective of mutual cooperation, informing, agreeing, collecting relevant data, as well as exercising the other forms of cooperation, an establishment or other institutions where the measure of detention is executed or criminal sanction is served, after the ruling of the Court or other body pursuant to law or international treaty, shall be bound to submit monthly and periodical reports, i.e. information to the Ministry of Justice, particularly on the numbers of detainees and prisoners, on exercise of guaranteed rights, use of privileges, disciplinary procedures, as well as on other data the establishment deems useful and relevant for the implementation of the law, i.e. for the system of execution of criminal sanctions.

(2) In exercising the tasks of monitoring the situation in implementation of laws and other regulations, taking measures they are authorized for or providing recommendations or taking special measures or change of situation in the area referred to in paragraph (1) of this Article, and when the Council of Ministers of Bosnia and Herzegovina (hereinafter: Council of Ministers) or Parliamentary Assembly of Bosnia and Herzegovina (hereinafter: Parliamentary Assembly) should be notified on such facts, the Ministry of Justice may also request submission of all other data it deems relevant in given circumstances.

### Article 10b

(Providing Mutual Assistance and Cooperation with Objective of Security of the System of Execution of Criminal Sanctions and Public Order)

(1) With the objective of maintaining the security and good functioning of the Establishment for Execution of Criminal Sanctions, Detention and Other Measures of Bosnia and Herzegovina, so that the implementation of treatments, reeducation or other measures from the area of for the system of execution of criminal sanctions could be conducted successfully without disturbance and obstruction, maintaining the balance between programs of security and social integration, efficient response to prevention of execution of criminal offenses, occurrence of major incidents, flight of detainees or prisoners, their implementation or ensuring outside the Establishment as well as assessment of security risks in use of privileges outside the Establishment, the establishments, police bodies, court police or other bodies and agencies from the area of security assigned by law,

shall be bound to mutually cooperate and provide needed assistance pursuant to legal authorization.

(2) Establishments must develop security plans for action in emergency and other justified circumstances, and in that direction exchange the data with the police bodies or agencies taking into account the regulations governing the protection of confidentiality of such data.”

## **Article 2**

After Article 36, new Article 36a shall be added to read as follows:

### **“Article 36a (Specialized Professional Training)**

With the objective of better understanding of problems and cultural origins of foreign prisoners and assistance that they more successfully solve their problems in an establishment, the Governor of the establishment should consider and assign certain number of establishment’s officers for more intensive work with foreign prisoners, and in that direction ensure to them more specialized professional training like: learning foreign languages, culture, customs or other issues arising in relation to certain group of foreign national prisoners.”

## **Article 3**

After Article 45, new Article 45a shall be added to read as follows:

### **“Article 45 (Restrictions Concerning the Data and Documents Considered Official Secret)**

(1) Data and documents considered official secret, for the purpose of this Law or bylaw enacted on the basis of this Law or other law protecting the personal data of the citizens, must not be communicated or made available to unauthorized persons.

(2) The Ombudsman of Bosnia and Herzegovina may request from the Ministry of Justice or the Establishment to submit to him/her or to enable him/her the inspection of documents or data he/she deems needed for exercise of his/her duty, including those that are registered as confidential or secret in accordance with the law.

(3) In cases referred to in paragraph (2) of this Article, the Ombudsman shall apply the required confidentiality for them and he/she shall not make them available for the public.

(4) Exceptionally, data referred to in paragraph (1) of this Article may be provided to other body authorized by law, if that is not contrary to the objective of protection of personal and private life of such person, i.e. process of resocialization or rehabilitation or if it is stipulated by a regulation that these are not public data or if such data have not been subjected to restrictions necessary in a democratic society.”

## **Article 4**

In Article 48, paragraph (7) shall be amended to read as follows:

“(7) The Commission shall provide recommendations to the responsible bodies of Bosnia and Herzegovina with objective of improvement of the accommodation standards, improvement of treatment and respect for human rights of the persons against whom the criminal sanctions or other measures are being executed, provide proposals and observations pertaining to current laws or other regulations based on the law from the area of for the system of execution of criminal sanctions, conduct confidential interviews with detainees or prisoners with access to all establishments, communicate the reports to the governor of establishment and responsible ministries of justice, collect, process and request the data falling within its competence, as well as other actions from the sphere of independent monitoring.”

After paragraph (7), new paragraphs (8) and (9) shall be added to read as follows:

“(8) The provisions on keeping the official secret of this Law or other regulation shall apply to the Independent Commission in conduct of activities and tasks falling within its competence when it learns about or takes possession of data and documents referred to in Article 45 of this Law.

(9) The expenses of the Commission’s operation shall be borne by the Parliamentary Assembly from corresponding funds within the adopted budget of the Institutions of Bosnia and Herzegovina and its international obligations.”

Current paragraphs (8) and (9) shall become paragraphs (10) and (11).

In current paragraph (8), the full stop in the end of the text shall be replaced with a comma, and the following wording shall be added to read: “that shall be published in the ‘Official Gazette of BiH’”.

## **Article 5**

After Article 48, new Article 48a shall be added to read as follows:

### **“Article 48a (National Preventative Mechanism)**

The Institutions of Bosnia and Herzegovina shall ensure to the body maintaining, i.e. representing the national preventative mechanism for prevention of torture or other cruel, inhumane or degrading treatment or punishment the following:

- a) Access to all information pertaining to the number of persons deprived of liberty;
- b) Access to all information pertaining to treatment of such persons, as well as to the conditions of their detention;
- c) Access to all prison establishments, their facilities and buildings;
- d) Opportunity to individually question the persons deprived of liberty without witnesses, personally or with the aid of an interpreter if need arises, as well as with all other persons for which the national preventative mechanism believes that they may provide relevant information;
- e) Freedom to choose the place they wish to visit and persons they wish to interview;

- f) Right to contact the Subcommittee for Prevention of Torture or Other Cruel, Inhumane or Degrading Treatment or Punishment, to send information to and to meet with the Subcommittee;
- g) All other rights pursuant to the Optional Protocol to the Convention against Torture or Other Cruel, Inhumane or Degrading Treatment or Punishment from 2002, which Bosnia and Herzegovina has ratified on 26.06.2008 and which has been force in Bosnia and Herzegovina since 15.09.2008.”

## **Article 6**

After Article 70, new articles 70a, 70b and 70c shall be added to read as follows:

### “Article 70a

(Medical Measures with Objective of Saving Lives of Persons Deprived of Liberty who Refuse to Take Food)

(1) In cases when a detainee or prisoner refuses to take food, physician should provide medical assistance with consent of the patient, however, when it comes to the phase in which can be expected that the loss of discernment or the hazard for life of such person is pronounced, then the physician shall have the final say in deciding on what is best for the patient when all factors are taken into account. In such circumstances the responsible physician shall form the expert medical team which shall, after observations, if need arises, start with artificial feeding and resuscitation before such phase occurs, and after that to forceful feeding and other medical measures with objective of saving lives of persons deprived of liberty.

(2) In procedure referred to in paragraph (1) of this Article, physician shall pay attention to previously expressed personal and cultural values of such persons regarding the medical treatment, as well as the state of physical health. The procedure of forceful feeding can be applied in extraordinary circumstances after three weeks of hunger, with need of existence of other medical conditions that indicate real hazard for the life and health of such persons, i.e. under the circumstances where such person takes his/her own life or even earlier if the health and mental state does not indicate otherwise.

(3) Forceful feeding objective of which is to save the life of particular person refusing constantly to take food cannot be considered as inhuman and degrading treatment. In order to be legitimate, forceful feeding requires compliance with the following three standards:

- a) There must be a medical need for the treatment;
- b) The procedural guarantees for making decisions must be complied with;
- c) Manner in which the person is feed must not be inhuman.

(4) The principle of the positive obligation of the State is to take effective actions when there is a predictable and inevitable risk for the life of a person who is responsibility of the State bodies of authority, and particularly when such person is deprived of liberty and subject to conditions pronounced by national legislation.

(5) With the objective of preventing the occurrence of serious consequences of a hunger strike, apart from the regular scheduled medical procedure, it can be allowed, if establishment’s physician in cooperation with and after consultations with the Governor of the establishment decides so, that the independent physicians provide advice and medical aid to the strikers.

(6) In procedure pursuant to paragraphs (1), (2) and (3) of this Article, the Management of the Establishment shall be bound to inform without delay the spouse or other member of close family of a detainee or prisoner or a person they had designated to be notified in such case, the Inspector for supervision of the work of the Establishment, then consider the principles and guidelines for management of situation in hunger strike in accordance with the Declaration of Malta – of the World medical association on the ethical management with persons on hunger strike from 2006, practice of the European Court of Human Rights – ECtHRA from the sphere of medical intervention, as well as to enable access to other bodies responsible for monitoring and exercise of human rights and fundamental freedoms, in compliance with law and corresponding international documents.

#### Article 70b

#### (Basic Ethical Principles in Action of the Physicians with Persons Deprived of Liberty on Hunger Strike)

(1) Basic ethical principles in action of the physicians with persons deprived of liberty on hunger strike are:

- a) Respect of the medical ethics and person of the patient in professional contact with vulnerable persons, with obligation that the physicians must maintain the objectiveness in their assessments, and they must not allow to be subject to pressure to violate ethical principles or medical judgment;
- b) Confidentiality of the relationship between the physicians and aforesaid persons regarding the medical condition or other information linked to a patient's condition with acquiring such confidentiality that shall create the possibility of effective resolution of such situations;
- c) Respect of the autonomy of person with ability to assess difficult situations when hunger strike is not voluntary or when it is started with threats or pressure from other strikers or other persons or for attracting publicity or achieving a goal that is contrary to law or when they do that for other intentions or motivations contrary to medical standards, moral criteria or other forms of allowed conduct;
- d) Respect of dual loyalty for both management of an institution and patient with maintaining clinical independence, objectiveness and expert knowledge, as well as the respect of legal regulations in force regulating this matter;
- e) Respect of concept of beneficence, i.e. use of medical skills and knowledge for the benefit of persons they provide treatment for;
- f) Respect of medical sincerity in providing information to the patient on possible consequences of his/her actions, particularly for patients suffering illnesses that are incompatible with prolonged fasting, informing the patient on all actions the physician undertakes and helps the patient in making decision on the basis of correct information for the reason that physicians must not give wrong clinical statements and advice;
- g) Primary application of necessary medical measures also without patient's consent, if he/she, by refusal of food or refusal of treatment risks his/her health or even his/her life, or if due to particular mental condition he/she cannot make a reasonable decision.

(2) Physicians should explain to every striker consequences of hunger to their health, explaining and providing medical history, medical condition and previous illnesses that can seriously risk their health.

(3) Necessary medical measures are those measures approved by a physician or team of physicians that directly remove the risk for life and health of a patient, and in such cases, in line with law, medical coercive measures, with simultaneous medical control mechanisms, can be applied.

(4) If a physician gets the impression that strikers strike under pressure or for other reasons, he/she may make the decision on separation of these persons, and as ultimate measure, he/she may propose that they be referred to i.e. taken to the hospital under the supervision of the Establishment, or to another appropriate medical institution.

**Article 70c**  
(Nutritional Requirements of Foreign Nationals)

Establishment's kitchen, in accordance with financial and other capabilities, should ensure the conditions regarding nutritional requirements of foreign national prisoners, particularly in time of religious holidays of such persons, as well as to respect whether they have particular nourishment or whether they do not eat certain foods in accordance with religious and cultural customs of such persons."

**Article 7**

After Article 73, new Article 73a shall be added to read as follows:

**“Article 73a**  
(Treatment and Security Measures in Medical Institution outside the Establishment)

(1) In urgent and emergency circumstances, except the case provided for in Article 73, paragraph (3) of this Law, when the life of a detainee or convicted person is at risk, or when it is not possible to provide adequate medical treatment in the establishment due to absence of the establishment's physician, the main duty officer in the establishment may refer the detainee or convicted person to the local health institution, and further act according to the physician's instructions, on which he/she shall immediately notify the Governor of the establishment.

(2) In case referred to in paragraph (1) of this Article, the Governor of the establishment shall immediately notify the court conducting the criminal proceedings and he/she shall act according to the court's order.

(3) Security of the detainee or convicted person at treatment in a health institution outside the establishments shall be carried out by the authorized establishment officers.

(4) In case referred to in paragraph (3) of this Article, when security reasons demands so, the assistance to the authorized establishment officers may be provided by the bodies of the Ministry of Security of Bosnia and Herzegovina (hereinafter: Ministry of Security), court police or other police bodies and agencies in Bosnia and Herzegovina, on which, at the proposal of the Governor of the establishment, the court conducting the criminal proceedings shall issue an order.

(5) In case when it concerns the security of the prisoner, the Governor of the establishment shall send the proposal for security assistance to the authorities and police bodies case referred to in paragraph (4) of this Article, and on the basis of that proposal, the said authorities and police bodies shall issue the order on type and method of provision of assistance to the authorized establishment officers."

## **Article 8**

After Article 79, new Article 79a shall be added to read as follows:

### **“Article 79a**

**(Accommodation of Detainee or Prisoner in Separate Room for the Health Reasons)**

- (1) Detainees and prisoners with impaired physical and mental health or with disability or immobility, i.e. paraplegia, shall be placed in a separate room or ward within health clinic or infirmary, where they are under constant control of the health staff of the Establishment.
- (2) Establishment’s physician shall decide on the accommodation referred to in paragraph (1) of this Article.
- (3) Detainees and prisoners referred to in paragraph (1) of this Article shall be on daily basis controlled by a physician or other health worker of the Establishment, provided that this measure shall be terminated if the physician orders so.
- (4) The Establishment shall be bound to ensure separate rooms in accordance with generally recognized medical standards.
- (5) In case that there is no possibility of adequate accommodation and treatment in the Establishment of persons referred to in paragraph (1) of this Article, it shall be acted pursuant to Article 73, paragraph (3) of this Law.”

## **Article 9**

In Article 80, after paragraph (2), new paragraph (3) shall be added to read as follows:

“(3) Notwithstanding the paragraph (2) of this Article, a letter may be opened and inspected if the authorized officer has the reason to reasonably suspect that the letter contains the text or articles the goal of which is to obstruct the administration of justice in any criminal proceedings, to be used for preparation or perpetration of criminal offense, endangering order and security in the Establishment or to be published in the media without prior permission.”

Current paragraphs (3), (4) and (5) shall become paragraphs (4), (5) and (6).

## **Article 10**

After Article 80, new articles 80a and 80b shall be added to read as follows:

### **“Article 80a**

**(Examination of Petitions, Pleas, Complaints and Other Submissions of Detainees and Prisoners)**

In examination of petitions, pleas, complaints and other submissions of detainees and prisoners, all circumstances important for correct assessment of their allegations shall be assessed, and particularly:

- a) Whether the rights provided for in the Constitution of Bosnia and Herzegovina and in acts enumerated in Annex I to the Constitution , law or other regulation regulating the rights and



obligations of detainees and prisoners have been violated by action of the authorized officers or employees of the establishment;

b) Whether the European Minimum Rules for the Treatment of Prisoners, Detainees and Juveniles has been applied to that category of persons;

c) Whether the human rights have been respected, whether there was humane treatment with preservation of physical and mental health of this category of persons;

d) Whether the equal treatment and equal conditions of stay and work of those persons have been applied;

e) Whether the provisions on house rules, privileges and annual leave, as well as all other issues regarding work, instructions, sporting, cultural, information and other similar circumstances are properly applied;

f) Whether all other rights arising from the laws and bylaws from the said sphere or international documents obligating or whose signatory is Bosnia and Herzegovina are properly applied;

g) The management of the establishment shall be bound to examine submitted complaints, petitions or proposals, and if it assesses them warranted, it shall undertake measures prescribed by law, and communicate the response to the applicant on justifiability or measures taken in regard to his/her submissions within time limits specified in accordance with legal and bylaw regulations. Detainees and prisoners may submit their complaints or appeals to the Inspector for supervision of the work of the Establishment, State Ombudsman, Independent Commission, Ministry of Justice or other authority or body authorized for monitoring and exercise of human rights of persons deprived of liberty.

#### Article 80b

(Administrative and Logistical Support of the Service of the Establishment for Timely Submission of Legal Remedies or Petitions of Detainees and Prisoners)

(1) The Establishment shall ensure all of the needed administrative and logistical support to the service of the Establishment to make possible for the detainees and prisoners to timely submit legal remedies in court proceedings, submit the petitions pertaining to life in the Establishment, respect or the rules of conduct, petitions regarding improvement of the internal life and work in the Establishment, as well as other forms of communication referred to in Article 80 of this Law.

(2) The Governor of the Establishment shall at least once in six months conduct an analysis of found irregularities and take measures to have them eliminated in the future or propose to the Minister of Justice enactment of additional regulations or other measures falling within the competence of the Ministry.

(3) Also the Inspector referred to in Article 46 of this Law, in exercise of supervision over the operation of the Establishment, shall be authorized for action referred to in paragraph (2) of this Article, as well as for other actions in accordance with law.”

#### Article 11

In Article 83, after paragraph (3), new paragraph (4) shall be added to read as follows:

“(4) In case that a detainee or prisoner is approved to go on leave referred to in paragraph (3) of this Article, that shall not be considered as privilege, so the criteria for approving privilege shall not be applied, only the security risk shall be assessed.’

Current paragraphs (4) and (5) shall become paragraphs (5) and (6).

### **Article 12**

In Article 123, after the word: “Code”, the full stop punctuation mark shall be replaced with a comma, and the following wording shall be added: “or this Law with possibility of mandatory conditional release and ordering the supervision measures, prohibition or restriction and reporting to a competent body of social care or other legal person or organization providing assistance or other forms of care of persons released from serving the prison sentences, as well as other actions in compliance with regulations in force.”

### **Article 13**

After Article 127, new articles 127a and 127b shall be added to read as follows:

#### **“Article 127a**

**(Accommodation, Effective Right to Assistance of the Interpreter, Privileges and Health Related Informing of the Foreign National Prisoners)**

(1) When a foreign national prisoner is committed to certain establishment, apart from general criteria from the law or other regulations with objective of alleviating prisoner’s feeling of isolation and adequate treatment, it should be strived to carry out his/her commitment in accordance with his/her specific needs and, if feasible, with possibility of communication with other prisoners of same citizenship, language, religion and culture, which is made possible by employing penological methods like: work, culture, leisure, joint exercise, as well as other forms of leisure activities or cultural and educational work, if that is not contrary to security reasons, more efficient realization of treatment or other justified reasons in compliance with the law.

(2) The establishment management shall be bound to enable for the foreign national prisoners to have effective right to assistance of the interpreter when it is needed take part in a proceeding concerning them, particularly including disciplinary proceedings, proceedings after the petitions for conditional release, petition for pardon, request for transfer to further serving of the sentence in the country of origin, as well as in other proceedings when their rights are decided or resolution of pleas, complaints and other submissions submitted for the protection of their rights, provided that that in regard to provision of legal aid, in provision of services of translators or interpreters, they may address t5o the consular representative of their country or to the representative of a country that protects the interests of the foreign national prisoners.

(3) In case of deciding on certain leaves of a foreign national prisoner outside the establishment, every risk of possibility of flight of such prisoner shall be assessed individually, and, in case of approval, requested leave may be used only with issued measures of mandatory supervision.

(4) Establishment’s medical services must ensure that the information on contagious diseases, particularly on hepatitis, HIV, AIDS, TBC and the like, are regularly disseminated in various languages to foreign prisoners, and if they suffer said diseases, they shall be given health care and all other forms of medical care, advice or informing like the other prisoners.

#### **Article 127b**

(Substitution of Prison Sentence)

(1) Prison sentence up to one year that has been pronounced against the sentenced person may, at his/her request, be substituted with a fine paid in a single amount within time limit up to 30 days under conditions defined by Criminal Code.

(2) The court shall issue to the sentenced person whose prison sentence up to one year has been substituted with a fine which was paid in a single amount within time limit up to 30 days from the day of validity of the said court decision the certificate on executed sentence and inform on that the body of internal affairs responsible for maintaining the criminal records.

(3) If the fine is not paid within the time limit referred to in paragraph (1) of this Article, the court shall make a decision on execution of prison sentence. If the fine is paid only in part, the prison sentence shall be executed proportionate to the amount that was not paid.”

**Article 14**

After Article 139, new articles 139a and 139b shall be added to read as follows:

“Article 139a

(Notification on Admission and Release of a Foreign National or Stateless Person)

(1) The establishment shall immediately notify the Service for Foreigners’ Affairs of the Ministry of Security about the date of admission to serve sentence of the foreign national or stateless person, then about the flight or disappearance of a person serving the prison sentence, or is on approved leave outside the establishment, perpetration of a criminal offense or pronounced disciplinary sanctions, transfer of prisoner to another establishment or health institution for treatment, as well as on approval of conditional release, i.e. granting pardon.

(2) The establishment shall notify the competent service about the date of release from serving the prison sentence of person referred to in paragraph (1) of this Article 30 days before expiration of the prison sentence.

(3) The establishment shall send notification referred to in paragraph (1) of this Article also in cases of ordering or terminating detention.

(4) At the request of the Service for Foreigners’ Affairs, the establishment may also provide other data or information that are significant for the work and functioning of the said Service in compliance with law or other separate regulation.

Article 139b

(Notifications of Security Agencies or Services Sent to the Establishment)

(1) The Ministry of Security, i.e. appropriate security agencies or services at the State level or the police services of the entities and of Brčko District of BiH, shall be bound, immediately after they learn such facts, to notify the establishments in Bosnia and Herzegovina about the person who was stripped of citizenship of Bosnia and Herzegovina or who was declared as dangerous for the national security, and who was serving the prison sentence or other measure pronounced in compliance with law.

(2) Apart from the establishments, the court shall also be notified about the person referred to in paragraph (1) of this Article if such person is serving the measure of detention or if he/she has

been sentenced by valid court decision and is at liberty during the procedure of commitment to serving the prison sentence pursuant to Article 127 of this Law.”

### **Article 15**

After Article 158, new articles 158a and 158b shall be added to read as follows:

#### **“Article 158a (Denial of Use of the Privileges for Certain Period)**

(1) In exceptional circumstances, particularly in case of epidemic diseases, natural disasters, or when it is dictated so by interests of security or for other justified reasons in compliance with the law or other regulations, use of privileges may be denied for certain period.

(2) The Governor of the establishment may restrict denial of privileges to a period of up to one month, provided that this measure may be extended due to special circumstances for another 30 days upon the approval of the Minister of Justice.

#### **Article 158b**

**(Restrictions for Approval of Privileges of Persons who were Stripped of Citizenship of Bosnia and Herzegovina or who were declared as Dangerous for the National Security)**

A person who was stripped of citizenship of Bosnia and Herzegovina or who was declared as dangerous for the national security of Bosnia and Herzegovina during the service of the prison sentence or other measure pronounced in compliance with law shall not have approved privileges outside the establishment for the duration of said legal conditions or legal situations, i.e. some other similar legal status ordered on the basis of a separate law or other appropriate regulation.”

### **Article 16**

After Article 160, new Article 160a shall be added to read as follows:

#### **“Article 160a (Transfer to a Special Unit in another Establishment)**

(1) A prisoner for whom, after the execution of the measure of isolation, the reasons for which that measure had been ordered have not ceased, and who is placed in an establishment of semi-open type or in establishment of closed type without the special unit with reinforced supervision, may be transferred to a special unit of an establishment of closed type with reinforced supervision referred to in Article 169 of this Law.

(2) Decision in case referred to in paragraph (1) of this Article shall be made by the Minister of Justice.

(3) An appeal against the decision case referred to in paragraph (2) of this Article shall be allowed to be filed with the Ministry of Justice within three days from the day of reception of the decision, providing that the appeal shall not stay the execution of decision.

(4) Decision referred to in paragraph (3) of this Article made after the appeal shall be final and the administrative dispute against it shall not be possible.

## **Article 17**

In Article 165, paragraph (1), the wording: “annual leave with his/her family” shall be replaced with wording: “privileges to be used outside the establishment”.

After paragraph (2), new paragraph (3) shall be added to read as follows:

“(3) In case of a prisoner who, due to categorization of penal-correctional establishment and internal classification of prisoners, could not fit in treatment in another establishment, the application shall be rejected.”

Current paragraphs (3), (4) and (5) shall become paragraphs (4), (5) and (6).

## **Article 18**

After Article 169, new Article 169a shall be added to read as follows:

### **“Article 169a**

#### **(Security Treatment against the Prisoners under Reinforced Supervision)**

(1) Interest of humane treatment should be created to the prisoners under the treatment of reinforced security, as long as they represent risk, particularly encouraging the prisoners to reduce the risk they had been assessed to represent, support of effective control and security and need for security of person, which indicates that good internal atmosphere should be developed by way of establishment of positive relationships between the prisoners and establishment’s personnel.

(2) Prisoners that are risk for the security of an establishment and public and public order of social community, like the measure of isolation, placement in special unit and reinforced supervision, should in such areas enjoy appropriate treatment as compensation for strict situation of such establishment’s units and they should be encouraged to work on termination of reasons for application of this measure by way of socializing with other prisoners in such unit, as well as greater choice of activities in the treatment of maximum security, according to the program of activities made be the establishment management, with paying particular attention to health problems that may occur as the result such security treatment and attempt to fight against possible negative effects of the said reinforced security.

(3) Prisoners must not be subjected to additional security measures longer that it is necessary, which shall be achieved by regular reconsideration of such decisions, i.e. whether the placement in a special high risk unit or in unit with reinforced security measures is still needed, every six months from enactment of such decision by the Governor and which may be extended only after the written approval of the Minister of Justice, except to a prisoner who was pronounced the long-term prison sentence, when the reconsideration shall be done at least once a year by way of reviewing the prisoner’s improvement in the procedure of reclassification of prisoners. The measure must be terminated soon as the reasons for its existence end.

(4) Except the prisoners referred to in Article 153, paragraph (2) of this Law, prisoners sentenced by final judgment for other criminal offenses against humanity and values protected by international law and for criminal offenses of organized crime referred to in Article 250, paragraphs (2) and (3) of the Criminal Code, and also prisoners against whom the administrative measure of isolation has been pronounced, the transfer to a special unit with reinforced supervision if the reasons for which the measure of isolation had been pronounced have not ended and when

the measure of reinforced supervision was ordered in serving the long-term prison sentence, are the risk group in the sense of threats and possibility of violence against such prisoners by other prisoners, and it is the obligation of the State to protect such kind of prisoners from threats with violence or other dangerous and serious violation of the system of execution of criminal sanctions by setting them apart from other prisoners, separation or requesting transfer for accommodation in another establishment, which shall present and depend in regard to choice of approach from feedback and evaluation of each individual case.

(5) A prisoner shall be entitled to appeal against the decision case referred to in paragraph (3) of this Article to the Ministry of Justice within three days from the day of reception of the decision, providing that the appeal shall not stay the execution of decision.

(6) Decision referred to in paragraph (5) of this Article made after the appeal shall be final and the administrative dispute against it shall not be possible.

(7) The rules on conditions, method and treatment of serving the sentence of prisoners in special unit under the reinforced supervisions shall be enacted by the Minister of Justice.”

### **Article 19**

In Article 174, after paragraph (3), new paragraph (4) shall be added to read as follows:

“(4) In the assessment of the health condition of persons serving the prison sentences, physician may submit an initiative to the Governor of establishment for assessment of justifiability of submitting a proposal for conditional release if a serious or acute health condition of a prisoner indicates so or if medical evaluation indicates the impossibility of healing or progressiveness, i.e. gradual worsening of the health condition of such person with risk for life of such prisoner, and which initiative shall contain the obtained opinion of the expert team of physicians from appropriate medical area.”

Current paragraphs (4) and (5) shall become paragraphs (5) and (6).

### **Article 20**

In Article 175, paragraph (1), after the wording: “release”, the full stop punctuation mark shall be replaced with a comma, and the following wording shall be added: “also including the negative reports and opinions of the establishment in which the approval of conditional release has not been proposed”.

In Article 175, paragraph (2), after the wording: “proposals”, the following wording shall be added: “as well as the negative reports and opinions”.

### **Article 21**

After Article 175, new articles 175a and 175b shall be added to read as follows:

“Article 175a  
(Measures of Supervision, Prohibition or Restriction and Reporting to a Competent Body  
Regarding Assistance to Conditionally Released Person)

(1) In approving a conditional release, the Commission may, in its decision against the persons to whom it approves the conditional release, pronounce the measures of supervision, prohibition or restriction referred to in Article 156, paragraph (3) and paragraph (4), items a), b), c) d), f), g), h) and i) of this Law, as well as to obligate him/her to report to the competent body of social care or other legal person or organization providing assistance or other forms of care of persons released from serving the prison sentences.

(2) In case of pronouncing the measures or obligations referred to in paragraph (1) of this Article, the establishment shall be bound, except in case of persons and bodies referred to in Article 176, paragraph (2) of this Law, to communicate the said decision also to the competent police body or to the competent body of social care or other legal person providing other kind of assistance according to the place of permanent or temporary residence of a conditionally released person.

(3) Measures of supervision, prohibition or restriction shall be executed by the competent police body or other designated state body, whilst the measures of social care or other assistance shall be executed by the competent body of social care or other legal person providing other assistance or care of the said category of persons.

(4) Bodies referred to in paragraph (3) of this Article, in case of violation of or noncompliance with the pronounced measures or requested fulfillment of certain obligations of social care or other kind of assistance, shall be bound to notify the Court or other court in Bosnia and Herzegovina when the Court has transferred the conduct of procedure or other body, in compliance with the Law or international agreement, and the Commission.

(5) After reception of the notification referred to in paragraph (4) of this Article, the Court may by decision pronounce against such person a warning or set a new time limit for execution of said measures or obligations or repeal the decision on conditional release and communicate such decision to the police bodies for execution and returning to continue serving the prison sentence to the establishment he/she was conditionally released from.

(6) The conditionally released person shall be entitled to file an appeal against the decision referred to in paragraph (5) of this Article to the President of the Court within three days from reception of the decision, providing that the appeal shall not stay the execution.

(7) The President of the Court shall decide the appeal against the decision referred to in paragraph (6) of this Article and the issued decision made after the appeal shall be final and the administrative dispute against it shall not be possible to initiate.

(8) Measures of supervision, prohibition or restriction and reporting to a competent body regarding assistance to conditionally released person shall be mandatorily pronounced for persons and criminal offenses referred to in Article 153, paragraph (2) , in conjunction with Article 158, paragraph (1) of this Law.

(9) During the conditional release, the prisoner must not leave the territory of Bosnia and Herzegovina, except otherwise provided by an international treaty or agreement or other separate regulation.

#### Article 175b

##### (Information on Results Achieved in Process of Execution of Conditional Release)

(1) Body of social care, police or other designated state body or legal person, shall be bound to provide the Court or other court in Bosnia and Herzegovina when the Court has transferred the conduct of procedure or other body, in compliance with the Law or international agreement, and

the Commission for Conditional Release, at least once in six months, the information on results achieved in the process of execution of conditional release.

(2) The police body shall be bound to communicate the information referred to in paragraph (1) of this Article to the court and Commission for persons against whom a measure of supervision, prohibition or restriction in approval of conditional release.

(3) Competent body of social care or other designate body shall be bound, within 15 days from the day of reception of the decision of the Commission for Conditional Release as well as documentation and data from an establishment, to inform the conditionally release person against whom certain measure of fulfilling certain obligation or other forms of care about the actions he/she may undertake, and also to inform him/her about his/her obligations in the course of duration of the conditional release.”

### **Article 22**

After Article 178, new Article 178a shall be added to read as follows:

#### **“Article 178a**

**(Conditional Release for Pronounced Prison Sentences of up to Two Years)**

(1) Regarding the pronounced prison sentences of up to two years, the prisoner shall, after serving two-thirds of the sentence, acquire the mandatory conditional release which implies fulfillment of statutory conditions referred to in Article 44 of the Criminal Code, i.e. criteria referred to in Article 174 of this Law.

(2) Decision referred to in paragraph (1) of this Article shall be made by the Governor of the establishment, and measures of supervision shall be recommended by the service of the treatment on which the Governor of the establishment shall decide by said decision.

(3) Prisoners who had not used prison privileges or were treated disciplinarily or violated the house rules or did not subjected themselves to the treatment program or acted contrary to orders of the official persons of the establishment shall not routinely acquire the mandatory conditional release, rather, the Commission shall make the decision on such a prisoner, as well as possible measures of supervision.

(4) The Governor of the establishment shall submit the needed documentation with the above mentioned and other facts to the Commission, pursuant to the provisions regulating the action of the Governor in providing proposals for conditional release.”

### **Article 23**

After Article 210, new articles 210a, 210b, 210c, 210d, 210e, 210f, 210g and 210h shall be added to read as follows:

#### **“Article 210a**

**(Method and Time of Execution of Security Measures)**

(1) Execution of security measures referred to in articles 209 and 210 of this Law shall precede serving of the prison sentence, i.e. the security measure is to be executed first.

(2) The measure referred to in paragraph (1) of this Article shall be executed in the Institute for Forensic Psychiatry, and exceptionally in another health institution and only in case of



impossibility of such referral, a person may be temporarily referred to a special forensic unit of an establishment in which the prison sentence is being served.

(3) The time spent in the health institutions in connection to execution of security measures shall be included in the pronounced prison sentence.

(4) Persons with the pronounced security measure shall be entitled to equal treatment conditions like persons placed in other health institutions.

#### Article 210b

(Establishment's Notification on Need of Providing Assistance after the Execution of Security Measures)

(1) After release from the medical institution of a person with the pronounced security measure of mandatory psychiatric treatment or mandatory treatment of addiction that continued to at least the expiry of serving the prison sentence or to whom the court has approved conditional release, the Institute for Forensic Psychiatry or other specialized institution shall be bound to immediately, and not later than 24 hours after the release, notify the competent body of social care according to the place of permanent or temporary residence of the released person on need and kind of social assistance and care from the scope of work of the said body.

(2) The Institute for Forensic Psychiatry or other specialized institution shall send the notification referred to in paragraph (1) of this Article to the body of social care before release of person referred to in paragraph (1) of this Article when it establishes that due to conditions they live outside the institution, i.e. due to material, housing, family, labor and other conditions or circumstances, they are incapable to take care of themselves and their mental and physical condition, with objective of providing adequate social assistance and care about such persons, as well as the possibility of their placement in a social institution under procedure provided for by legislation in force from the area of health and social care or other separate regulation.

#### Article 210c

(Psychiatric Treatment in Establishment)

(1) For persons having minor mental disorders and who do not fall within the scope of provisions of Article 210a, paragraphs (1) and (2) of this Law, the health service in the establishment where the prison sentence is being executed shall ensure psychiatric treatment to all prisoners needing such treatment and it shall pay particular attention to prevention of committing or attempting to commit self-injury or suicide.

(2) Health clinic or infirmary within the establishment or health institution outside the establishment or separate units under medical supervision, as well as other appropriate forms of health care in compliance with Law shall be at disposal to the persons referred to in paragraph (1) of this Article.

#### Article 210d

(Application of Modern Therapy in Treatment of Persons with pronounced security measure)

(1) During the service of a security measure in a special institution for forensic psychiatry or in a unit of court psychiatry within the establishment, appropriate psychotherapy, pharmacotherapy, sociotherapy, and if possible, work therapy shall be applied, in accordance with the medical

findings of competent physician specialist for neuropsychiatry, i.e. physician specialist from other areas of psychiatry or expert psychiatric team of physicians, depending on mental and physical condition of health of persons with pronounced security measure.

(2) Treatment of persons with pronounced security measure must be humane and with respect of their human dignity as well as in accordance with the principles of medical ethics from the area of mental health, mental disorder and other pathological forms from the area of psychiatry.

#### Article 210e

(Modern Methods of Treatment of Addiction to Alcohol, Narcotics or Other Forms of Toxicomania)

In treatment of addiction to alcohol, narcotics or other forms of addiction – Toxicomania, modern methods of treatment shall be applied, which shall include biological, psychological and social dimension of personality as treatment based on knowledge and research in other scientific and medical disciplines and development of psychiatry itself and its therapy based on a multidimensional principle, i.e. several psychiatric procedures and integral principle, i.e. treatment of not only basic psychical illness but also of relationship between the patient and his/her environment.

#### Article 210f

(Protection and Improvement of Health of Persons with Pronounced Security Measure)

The protection and improvement of health of persons with pronounced security measure shall be exercised by:

- a) Enabling appropriate diagnostic evaluation and psychiatric treatment and addiction treatment;
- b) Scientific research in the area of protection and improvement of health of persons with pronounced security measure and their protection from medical and scientific research without their consent or consent of their representatives or if that is contrary to the law or other regulation or international agreements in areas of medicine, biomedicine, psychiatry or other related medical fields;
- c) Inclusion of persons with pronounced security measure in educational programs;
- d) Recovery of persons with pronounced security measure, their inclusion in family and working and social environment;
- e) Adequately qualified personnel dealing with the health care of persons with pronounced security measure and improvement of their health;
- f) Encouraging association of persons with pronounced security measure, with objective of exercise of their rights, self-help and help;
- g) Other forms of protection and improvement of health, in accordance with separate law or other corresponding regulations.

#### Article 210g

(Respect and Protection of Human Dignity of Persons with Pronounced Security Measure)

(1) Dignity of persons with pronounced security measure must be respected and protected in all circumstances.

(2) Persons with pronounced security measure shall have the right to protection from any form of abuse and degrading treatment.

(3) Persons with pronounced security measure must not be brought into unequal position because of their mental handicap. Special measures undertaken in order to protect the rights or to ensure improvement of the health of persons with mental handicaps shall not be considered to constitute a form of unequal treatment.

(4) The rights and freedoms of persons with pronounced security measure may only be restricted by a law or other separate regulation, if that is necessary for the protection of health or security of such a person or other persons, i.e. environment.

#### Article 210h

##### (Right of Communication, Sending and Receiving Letters and Submissions of Persons with Pronounced Security Measure)

(1) Persons with pronounced security measure shall have the unlimited right to send and receive letters and written submissions from their family members, persons who may help in their treatment, legal representative or agent representing them, bodies, organizations or corresponding body with objective of protection of their legal rights.

(2) Persons with pronounced security measure shall have the right to submit complaints for violations of their rights or other irregularities, and that must be solved without delay.

(3) Persons referred to in paragraphs (1) and (2) of this Article may send their pleas and complaints to the State Ombudsman, Inspector for supervision of the work of the Establishment, Independent Commission referred to in Article 48 of this Law, Council of Ministers' Commission for Monitoring of Penal-Correctional Establishments, Police Stations and Psychiatric Institutions, Ministry of Human Rights and Refugees of Bosnia and Herzegovina – Department for Protection of Human Rights, as well as to the representatives of other institutions, organizations or bodies competent for monitoring and exercise of human rights or protection of persons with mental handicaps, as well as to the body of National Preventative Mechanism for Prevention of Torture or Other Cruel, Inhumane or Degrading Treatment or Punishment in Bosnia and Herzegovina.”

#### Article 24

##### (Consolidated Text)

The Constitutional and Legal Committee of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina and the Constitutional and Legal Committee of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina is authorised to establish the consolidated text of the Law of Bosnia and Herzegovina on the Execution of Criminal Sanctions, Detention and Other Measures within 60 days following the publication of this Law in the “Official Gazette of Bosnia and Herzegovina”.

#### Article 25

##### (Harmonization of Legislation)

The competent authorities of the Federation of BiH, Republika Srpska and the Brčko District shall harmonize their laws in this field with this Law within 90 days from the day this Law enters into force.

**Article 26**  
**(Entry into Force)**

This Law shall enter into force on the eighth day following its publication in “Official Gazette of Bosnia and Herzegovina”.