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

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NOTE: The Criminal Procedure 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, the Parliamentary Assembly of Bosnia and Herzegovina, on the 29th session of the House of Representatives held on May, 14 and June 4, 2008 and on the 18th session of the House of Peoples held on June 17, 2008, passed

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

Article 1

In the Criminal Procedure Code ("Official Gazette of Bosnia and Herzegovina", nos. 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07 and 15/08), in Article 5, Paragraph (1), a coma and words "nor respond to questions asked," shall be added after the word "statement".

Article 2

In Article 6 Paragraph (1), words "and that his statement may be used as evidence in further proceeding" shall be added after the word "him".

Article 3

In Article 8 Paragraph (2) words "their own language" are to be replaced with words "mother tongue or the language they understand".

Article 4

In Article 9 Paragraph (2) words "Indictments, appeals, and other court papers shall be submitted" shall be replaced with the words "Documents shall be submitted".

In paragraph (3) words "in the language used by the person in question in the proceeding" shall be replaced with words "mother tongue or the language they understand".

Article 5

In Article 14, a new paragraph (1) shall be added to read:

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

Paragraph (1) shall become paragraph (2).

Article 6

In Article 20 new Items u) and v) shall be added after Item t) to read:

"u) "Computer system" is any device or a group of mutually connected or linked devices, out of which one or more are automatically processing data on the basis of a programme,

v) Term "Computer data" denotes any presentation of facts, information or concepts in a form suitable for processing in a computer system, including any programme that is able to cause the computer system to execute certain function."

Article 7

In Article 24, Paragraph (2), the word “five” is to be replaced with the word “ten”.

A new Paragraph (4) shall be added after paragraph (3) to read:

“(4) The Panel of the Court’s Appellate Division consisting of three judges shall adjudicate as the third instance.”

Current Paragraphs (4), (5) and (6) shall become paragraphs (5), (6) and (7) respectively.

Article 8

In Article 30, in the title of the Article the words “or defence attorney” shall be added after the word “parties”.

In Paragraph (2), words “Items a) to f)” shall be replaced with words “Items a) to e)”.

Article 9

In Article 34, Paragraph (3), a coma and words “and until the indictment is filed by the Prosecutor” shall be added after the words “or judge”.

Article 10

In Item c) of Article 35 Paragraph (2), the words “with the Law” shall be replaced with the words “with Article 84 of this Law”.

New Item g) shall be added after item f) to read:

“g) to establish facts necessary for deciding claim under property law in accordance with Article 197 and for forfeiture of property gain obtained by commission of criminal offense in accordance with Article 392 of this Law”.

Current Items “g)”, “h)’, “i)” and “j)” shall become Items “h)’, “i)”, “j)” and “k)” respectively.

Article 11

In Article 45, Paragraph (2), the words “immediately after he has been assigned to pretrial custody” shall be replaced with the words “while deciding the proposal for ordering pretrial custody”.

In Paragraph (5), the word “or” shall be replaced with a comma, and the words “or other circumstances” shall be added after the word “indicted”.

Article 12

In Article 46, a new Paragraph (3) shall be added to read:

“(3) The Request for Appointment of a Defense Attorney due to adverse financial situation shall be recorded in the case file. After having established the financial situation of the suspect or accused, the Court shall issue a decision on the request without delay.”

Article 13

In Article 47 Paragraph 2 shall be changed to read:

“(2) Notwithstanding Paragraph 1 of this Article, the Prosecutor shall submit with a request for ordering custody to the preliminary proceedings judge or preliminary hearing

judge evidence relevant for assessment of lawfulness of custody also for the purpose of informing the defence attorney".

In Paragraph (3), the words "the defence attorney of the suspect or accused has" shall be replaced by the words "the suspect, accused or defence attorney have".

In Paragraph (4), the words "Preliminary Proceedings Judge" shall be deleted and the sentence shall begin with the word "Judge", and after a word "defence attorney" a comma shall be added and the words "suspect or accused".

In Paragraph (5) after the word "defence attorney" a comma shall be added and the words "suspect or accused".

Article 14

In Article 51, Paragraph (2) shall be changed to read:

"(2) Search of personal property pursuant to Paragraph (1) of this Article shall include a search of the computer systems, devices for automated and electronic data processing and mobile phone devices. Persons using such devices shall be obligated to allow access to them, to hand over the media with saved data, as well as to provide necessary information concerning the use of the devices. A person, who refuses to do so, may be punished under the provision of Article 65 Paragraph (5) of this Code."

After Paragraph (2), a new Paragraph (3) shall be added to read:

"(3) Search of computers and similar devices described in Paragraph (2) of this Article, may be conducted with the assistance of a competent professional."

Article 15

In the title of Article 56, the words "for search" shall be added after the word "Request".

In paragraph (1), the words "preliminary proceedings judge" shall be replaced with the word "Court".

Paragraph (2) shall be changed to read:

"(2) If an oral request for a search warrant is filed, the Court shall record the further course of communication. If an audio recording device is used or a stenographic record made, the record shall be sent to transcribed within 24 hours, its accuracy shall be verified and it shall be kept along with the original record."

Article 16

In the title of Article 64, the words "or witnesses" shall be added after the word "warrant".

In Paragraph (3), the words "or without the presence of witnesses" shall be added after the words "for search", and in the second sentence the words "or witnesses" shall be added after the words "without warrant".

Article 17

In Article 65 Paragraph (3), the comma after the words "place where the objects are to be seized" shall be replaced with the word "and" and the comma and the words "and notification of the right of the affected person to a legal remedy" after the words "are to be seized" shall be deleted.

Article 18

In Article 67 Paragraph (4), the words “Such warrant should be confirmed by the judge” shall be replaced with the words “the Judge shall decide on its confirmation”.

Article 19

In Article 72 Paragraph (2) and (3), the words “preliminary proceedings judge” are replaced with the word “Court”.

Article 20

After Article 72, Article 72a shall be added to read:

“Article 72a
Order to the telecommunication operator

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

Article 21

In Article 73 Paragraph (2), the words “the measures taken must be confirmed by the judge” shall be replaced with the words “the judge decides about the measures taken”, and the words “following the undertaking of the measures” shall be deleted.

In Paragraph (3), the word “Court” shall be deleted.

Article 22

The title of Article 77 shall be changed to read: “Basic Rules about Questioning”.

In Paragraph (1), the words “or authorised official” shall be added after the word “Prosecutor”.

In Paragraph (3), the word “provisions” shall be replaced with the words “provisions of Paragraph (2)”.

Article 23

In Article 78 Paragraph (2) Item (c), the words “and that, if he does so in the presence of the defence attorney, the statement made is allowed as evidence at the main trial and may, without his consent, be read and used at the main trial” shall be added after the word “favour”.

Article 24

In Article 81, Paragraph (7) a comma and the words “after being warned of the consequences, without legal reasons” shall be added after the word “witness”.

In paragraph (8), the words “imposing a fine” shall be replaced with the words “under Paragraph (5) and (7) of this Article”.

Article 25

In Article 82, a new Paragraph 2 shall be added to read:
“(2) If the person who is not allowed to be heard as a witness has been heard as a witness, the Court decision shall not be based on his testimony.”

Article 26

In Article 83 Paragraph (4) shall be amended to read:
“(4) If a witness has been heard whose testimony is inadmissible and he has not been cautioned thereof or he has not explicitly waived that right or the caution and the waiving has not been entered into records, the Court decision shall not be based on such a testimony.”

Article 27

In Article 84 Paragraph (3), the word “Prosecutor “shall be replaced with the words “Chief Prosecutor of Bosnia and Herzegovina”.

In Paragraph (5), the words “may be “shall be deleted and the words “assigned” shall be replaced with the words “shall be assigned”.

Article 28

In Article 85, after Paragraph (3), a new Paragraph (4) shall be added to read:
“(4) If it is not possible to make an identification in accordance with Paragraph (3) of this Article, the identification shall be done by viewing a photograph of that person or objects placed amongst photographs of persons unknown to the witness or amongst objects of the same kind.”

Article 29

In Article 86 Paragraph (2), a new clause shall be added to read: “The witness shall be cautioned on his right not to answer questions listed in Article 83, Paragraph (1) of this Law and this caution shall be entered into record.”

In Paragraph (3), the words “the Prosecutor or” shall be added after the words “to inform”.

In Paragraph (4), the words “If necessary” shall be deleted and the clause shall begin with the words “The minor”.

Article 30

In the title of Article 90, the words “audio or” shall be added before the word “recording”.

The words “audio or” shall be added after the words “may be recorded on”.

Article 31

The title of Article 103 shall be amended to read “Examination, Autopsy and Exhumation of Corpse”.

In Paragraph (1), the words “that the death was not natural “shall be replaced with the words “that the death was caused by a criminal offence or that it is related to the commission of a criminal offence”.

In Paragraph (2), the words “examination and” shall be added after the word “during”.

Article 32

The title of Article 104 shall be amended to read “Examination and Autopsy of the Corpse outside a Specialized Medical Facility”.

In Paragraph (2), the second sentence shall be amended to read: ”The Prosecutor shall conduct the expert evaluation and shall make a report on it. The findings and opinion of the expert shall be integral part of the report.”

Article 33

In Article 116 Paragraph (2) Item d), a coma and the words “means of transport” shall be added after the word “recording of individuals” and the words “related to them” shall be added after the word “objects”.

Item e) shall be amended to read:

“e) Use of undercover investigators and informants,”

In Item f), the words “and controlled” shall be added after the word “simulated”.

After Paragraph (5), a new Paragraph (6) shall be added to read:

“(6) Undercover investigator is specially trained authorised official who investigates under his or her changed identity. The undercover investigator may participate in legal transactions under his or her changed identity. If it is necessary to establish and keep the identity, appropriate documents may be issued, changed or used.”

Article 34

In Article 117, Item d) the word “of minimum of” shall be replaced with the word “of”.

Article 35

In Article 122, a coma and the words “or as protected witnesses” shall be added after the word “witnesses” and the words “or on the other significant circumstances” shall be added after the words “on the course of the undertaking of the measures”.

Article 36

In Article 125 Paragraph (2), the words “provided that this order must be confirmed by the preliminary proceedings judge within 24 hours after issuance of the order” shall be deleted.

Article 37

Article 131 shall be amended to read:

“Article 131
General Provisions

(1) Custody may be ordered or extended only under the conditions prescribed by this Code and only if the same purpose cannot be achieved by another measure.
(2) Custody shall be ordered or extended by a decision of the Court issued on the motion of the Prosecutor after the Court heard the suspect or accused about circumstances surrounding the grounds for proposed custody, except in a case prescribed by Article 132, Paragraph 1, Item a) of this Code.
(3) The Prosecutor shall submit to the Court a reasoned proposal for extension of custody latest five days before expiration of a deadline from the decision on ordering custody. The Court shall submit the proposal to suspect or accused and his defence attorney.
(4) The duration of custody must be reduced to the shortest necessary time. It is the duty of all authorities participating in criminal proceedings and of agencies extending them legal aid to proceed with particular urgency if the suspect or the accused is in custody.
(5) Throughout the proceedings, custody shall be terminated as soon as the grounds for which it was ordered cease to exist, and the person in custody shall be released immediately. Upon proposal of the accused or defence attorney for termination of custody that is based on new facts, the Court shall hold the hearing or panel session about which the parties and defence attorney shall be notified. Absence of duly summoned parties and defence attorney do not prevent the hearing or panel session from being held. The appeal against the decision on rejecting proposal for termination of custody is allowed. If a proposal is not based on new facts relevant for the termination of custody the Court shall not issue a separate decision.”

Article 38

In Article 132 Paragraph (1) Item c), the word “five” shall be replaced with the word “three”.

In Paragraph (1), Item d) shall be changed to read as follows:
“d) in exceptional circumstances, related to criminal offence for which a prison sentence of ten years or more severe punishment may be pronounced, which is of particular gravity taking into account the manner of perpetration or consequence of the criminal offense, if the release would result in an actual threat to disturbance of public order.”

Article 39

In Article 134 Paragraph (4), a coma shall be deleted after the word “If the person taken into custody has been questioned” and the following words shall be added: “and evidences on which the decision on custody has been grounded as well as”.

Paragraph (5) shall be deleted.

In the current Paragraph (6) that shall become Paragraph (5) the word “cases” shall be replaced with the word “case” while the words “and 5” shall be deleted.

Article 40

Article 136, Paragraph (2) shall be deleted.

Article 41

Article 137, Paragraphs (4) and (5) shall be deleted.

Article 42

In Article 138 Paragraph (2), the words "for the reasons other than lack of jurisdiction of the Court" shall be added after the word "rejected".

Paragraph (3) shall be amended to read:

"(3) After pronouncing the first instance verdict, the custody may last no longer than additional nine months. If during that period no second instance verdict to alter or sustain the first instance verdict is pronounced, the custody shall be terminated and the accused shall be released. If within the nine months the second instance verdict is pronounced reversing the first instance verdict, the custody shall last for no longer than another year after pronouncement of the second instance verdict."

Paragraphs (5) and (6) shall be added after Paragraph (4) to read:

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

Article 43

Article 139 shall be amended to read:

"Article 139
Deprivation of Liberty

(1) The police may deprive a person of liberty if there are grounds for suspicion that he may have committed a criminal offence and if there are any of the reasons as referred to in Article 132 of this Code, but they must immediately, but no later than 24 hours, bring that person before the Prosecutor. In apprehending the person concerned, the police authority shall notify the Prosecutor of the reasons for and time of the deprivation of liberty. The use of force in accordance with law is allowed when apprehending the person.
(2) As an exception to Paragraph (1) of this Article, for crimes of terrorism, the person must be brought before the Prosecutor, at latest, within 72 hours.
(3) A person deprived of liberty must be instructed in accordance with Article 5 of this Code.
(4) If a person deprived of liberty is not brought before the Prosecutor within the period specified in Paragraphs 1 and 2 of this Article, he shall be released.
(5) The Prosecutor shall be obliged to question the apprehended person without delay and no later than 24 hours and decide within that time whether he will release the apprehended person or file the reasoned request for custody of the person in question to the preliminary proceeding judge ensuring that the person is brought before the judge.
(6) The preliminary proceedings judge shall immediately, and no later than within 24 hours, issue a decision on request for custody order.
(7) If the preliminary proceedings judge rejects the proposal for the custody, he shall issue a decision rejecting the request and shall immediately release the person. The Prosecutor may

file an appeal against decision of the preliminary proceeding judge, which does not stay the execution of the decision.
(8) The person taken into custody may appeal the decision on custody, which does not stay the execution of the decision.
(9) In the case referred to in paragraphs (7) and (8) of this Article, the Panel referred to in Article 24 Paragraph (6) of this Code shall decide on the appeal and is obliged to issue a decision within 48 hours of receipt of the appeal by the Court."

Article 44

Article 144 Paragraph (3) shall be amended to read:
"(3) A detainee may have confidential correspondence with any other person. Exceptionally, the Court may issue decision on supervision of such confidential correspondence if so required by the interests of the proceedings. Appeal against this decision is allowed, which does not stay the execution of the decision. A detainee cannot be prohibited from sending a request, complaint or appeal."

Article 45

The title of Article 148 shall be amended to read: "Filing and Emendation of Submissions".

Article 46

In the title of Article 155, the words "audio or" shall be added after the word "recording".

In Paragraphs (1) and (7), the words "tape" shall be replaced with the words "audio or audio-visual".

In Paragraphs (4) and (5), the words "tape" and "the magnetic tape" shall be deleted.

In Paragraph (6), the words "The magnetic tape shall be kept" shall be replaced with the words "Recording shall be kept".

Paragraph (8) shall be deleted.

In Paragraph (9) that shall become Paragraph (8), the words "Paragraph (1) through (8)" shall be replaced with words "Paragraphs (1) through (7)".

Article 47

In Article 165 Paragraph (1), a comma and the words "whether it is necessary to supplement the proceedings" shall be deleted.

Article 48

In Article 171 Paragraph (1), the word „sentencing" shall be replaced with the word „pronouncement of the criminal sanction".

Article 49

The words „Prosecutor or" shall be added in Article 195 Paragraph (1) after the words „shall be filed with the".

Article 50

Article 197 shall be amended to read:

"Article 197

Obligations of the Prosecutor and the Court in Relation to the Establishment of Facts

(1) The Prosecutor has a duty to gather evidence and decide whether the possible claim under property law relates to criminal offence.

(2) The Prosecutor or the Court shall question the suspect or the accused in relation to the facts of concern in the petition of authorized officials."

Article 51

Article 198 Paragraph (1) shall be amended to read:

"(1) The Court shall render a verdict on claims under property law. The Court may propose to the injured party or the accused or the defence attorney to carry out the mediation with the assistance of the mediators in accordance with law if it assesses that the mediation can meet the requirements of the claim under property law. The proposal for the mediation can be initiated before the conclusion of the main trial also by the injured party and the accused or the defence attorney."

Article 52

In Article 206 the sentence "If the suspect or the accused is in custody or in a psychiatric institution he shall not be released but instead the Court shall issue a decision on temporary detention of the suspect or the accused up to a maximum of 30 days following the day of issuance." shall be deleted.

Article 53

In Article 208 Paragraph (2), the words "the Prosecutor or" shall be added after the word "Article," and the words "competent Ministry" shall be replaced with the words "Ministry of Justice".

Article 54

In Article 209, a comma and the words "or other by-law enacted on the basis of the Constitution or law" shall be added after the words "When the law" and the word „conduct" shall be replaced with the words „initiate or continue".

Article 55

In Article 216 Paragraph (3), the words „shall not order the investigation" shall be replaced with the words „shall issue order that the investigation shall not be conducted".

Article 56

In Article 217, Paragraph (3) is added to read:

"(3) If the suspect is placed in custody, the order for brining him to questioning shall be issued by the Prosecutor who shall notify the preliminary proceedings judge."

Article 57

Article 218 Paragraph (4) shall be deleted.

Article 58

In Article 221, the word “medical examination” and a comma shall be added after the word “exception”.

Article 59

The title of Article 222 shall be amended to read: “Medical Examination, Autopsy and Exhumation”.

In the first sentence, the words “medical examination and” shall be added after the word “performance”.

Article 60

Article 224 shall be amended to read:

“Article 224

Cessation of Investigation

(1) The Prosecutor shall order that the investigation of a suspect should cease if it is established that:

a) the act committed by the suspect is not a criminal offence,

b) the circumstances that exclude criminal liability of the suspect exist except in the case under Article 206 of this Code,

c) there is insufficient evidence that the suspect committed a criminal offence;

d) that the act is covered by amnesty, pardon or statute of limitations or if there are some other obstacles that preclude prosecution.

(2) The Prosecutor shall inform the injured party enjoying the rights under Article 216 of this Code, the suspect if he was questioned and the person that reported the crime about the cessation and grounds for cessation of the investigation in writing.

(3) In the cases under Item c) of Paragraph 1 of this Article the Prosecutor may reopen the investigation at a later date if new facts and circumstances imply that there are grounds for suspicion that the suspect committed a criminal offence.”

Article 61

Article 225 Paragraph (2) shall be deleted.

After Paragraph (3) that shall become Paragraph (2), the new Paragraph (3) shall be added to read:

“(3) The indictment shall not be issued if the suspect was not questioned.”

Article 62

In Article 227 Paragraph (1) item e), the word “names“ shall be deleted and the words “or pseudonym of protected witnesses,” shall be added after the word “experts,”

In item g) the word “material” shall be replaced with the word “evidence”.

Article 63

Article 228 shall be amended to read:

"Article 228

Decision on Indictment

(1) Immediately on receipt of the indictment the preliminary hearing judge shall examine whether the Court has jurisdiction to try, whether the circumstances under Article 224 Paragraph (1) item d) of this Code exist, and whether the indictment was properly drafted (Article 227 of this Code). If the Court finds that the indictment was not properly drafted it will act in accordance with Article 148 Paragraphs (3) and (4) of this Code.

(2) The preliminary hearing judge may confirm or discharge all or some of the counts in the indictment within 8, and in complex cases within 15 days of receipt of the indictment. If the preliminary hearing judge discharges all or some of the counts he shall issue decision that will be delivered to the Prosecutor. An appeal can be filed within 24 hours. The Panel from Article 24 Paragraph (6) of this Code shall decide on this appeal within 72 hours.

(3) During the confirmation of the indictment, the preliminary proceedings judge shall examine each count in the indictment and evidence submitted by the Prosecutor in order to establish grounded suspicion.

(4) Upon confirmation of some or all counts in the indictment, the suspect shall have the status of the accused. The preliminary hearing judge shall present the accused and his defense attorney with the indictment.

(5) The preliminary hearing judge shall present the accused who is not detained with the indictment without delay, and if the accused is already detained, the preliminary proceeding judge shall present him with the indictment within 24 hours after the confirmation of the indictment. The preliminary hearing judge shall inform the accused that within 15 days of delivery of the indictment he has the right to submit the preliminary motions, that the plea hearing shall be scheduled immediately after the decision on preliminary motions is issued or after the expiration of the deadline for submission of preliminary motions, and shall request the accused to list the proposed evidence that he intends to present at the main trial.

(6) Upon discharge of all or some counts in the indictment, the Prosecutor may bring a new or an amended indictment that shall be based on new evidence. The new or amended indictment shall be submitted for confirmation."

Article 64

Article 229 shall be amended to read:

"Article 229

Guilty Or Not Guilty Plea

(1) A plea of guilty or not guilty shall be entered before the preliminary hearing judge in the presence of the Prosecutor and the defence attorney. Before the plea of guilty or not guilty the accused shall be informed about all possible consequences of plea in sense of Article 230 Paragraph (1) of this Code. In case that the accused does not have the defence attorney the preliminary hearing judge shall check whether the accused understands the consequences of plea and whether the conditions for appointment of the defence attorney in accordance with Article 45 Paragraph (5) and Article 46 of this Code exist. The Plea and the given instructions shall be entered in the record. If the accused fails to enter a plea, the preliminary hearing judge shall, *ex officio*, record that the accused enters a plea of not guilty.

(2) If the accused enters a plea of guilty, the preliminary hearing judge shall refer the case

to the judge or to the Panel for scheduling the hearing at which it shall be determined whether the conditions referred to in Article 230 of this Code exist.
(3) A plea of not guilty shall never be held against the accused in fashioning a sentence if the accused is found guilty at the trial or subsequently changes his plea from not guilty to guilty.
(4) After entering a plea of not guilty into the record, the preliminary hearing judge shall refer the case to the judge or the Panel that has been assigned to try the case so that they can schedule the trial and the evidence that support the indictment shall return to the Prosecutor. The main trial shall be scheduled within 30 days from the day when the accused entered the plea of guilt. In exceptional cases, this deadline may be extended for 30 additional days."

Article 65

Article 230 shall be amended to read:

"Article 230

Deliberation on the Guilty Plea

(1) In the course of deliberation of the statement on the plea of guilty from the accused, the Court must ensure the following:

a) that the plea of guilty was entered voluntarily, consciously and with understanding,
b) that the accused was informed that by his guilty plea he shall waive the right to trial,
c) that there is enough evidence proving the guilt of the suspect or the accused,
d) that the accused was informed of and understands the possible consequences in relation to the claim under property law and forfeiture of property gain obtained by commission of criminal offense.
e) that the accused was informed of the decision on reimbursement of the expenses of the criminal proceedings and that the accused may be relieved of the duty to reimburse as referred to in Article 188 Paragraph (4) of this Code.
(2) If the Court accepts the statement on the plea of guilty, the statement of the accused shall be entered in the record and the Court shall continue with the hearing for the pronouncement of the sentence.
(3) If the Court rejects the statement on plea of guilty, the Court shall inform the parties and the defense attorney to the proceeding about the rejection and say so in the record. Statement on the admission of guilt is inadmissible as evidence in the further course of the criminal proceeding."

Article 66

Article 231 shall be amended to read:

"Article 231

Plea Bargaining

(1) The suspect or the accused and the defense attorney, may negotiate with the Prosecutor about the conditions of admitting guilt for the criminal offence with which the suspect or accused is charged until the completion of the main trial proceedings or the appellate hearing proceedings.
(2) The plea agreement shall not be entered into if the accused pleaded guilty at the plea hearing.
(3) In plea bargaining with the suspect or the accused and his defence attorney on the admission of guilt pursuant to Paragraph 1 of this Article, the Prosecutor may propose an im-

prisonment sentence bellow legally prescribed minimum or more lenient criminal sanction for the suspect or accused in accordance with the provisions of the Criminal Code.

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

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

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

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

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

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

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

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

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

(8) If the Court rejects the agreement on the admission of guilt, the Court shall inform the parties to the proceeding and the defense attorney about the rejection and say so in the record. At the same time, the date of the main trial proceedings shall be determined**.** The main trial shall be scheduled within 30 days. Admission of guilt from this agreement is inadmissible as evidence in the criminal proceedings.

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

Article 67

Article 233 shall be amended to read:

"Article 233

Reasons for Motion and the Decision on Motion

(1) Preliminary motions are motions that:

a) challenge jurisdiction,

b) stress the circumstances from Article 224 Paragraph (1) Item d) of this Code,

c) allege formal defects in the indictment,

d) challenge the lawfulness of evidence obtained,

e) seek joinder or separation of proceedings,

f) challenge the refusal of a request for appointment of the defense attorney pursuant to Article 46 Paragraph 1 of this Code.

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

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

Article 68

After Article 233, Article 233.a shall be added to read:

"Article 233.a

Pre-trial Hearing

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

Article 69

In Article 239 Paragraph (2), the comma and the words "that the truth is found" shall be deleted.

Article 70

The words "or a new one is retained" shall be added in Article 248 Paragraph (3) after the words "defence attorney is appointed" in the first sentence.

Article 71

Article 251 shall be amended to read:

"Article 251

Resumption of the Adjourned Main Trial

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

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

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

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

Article 72

Article 253 Paragraph (1) shall be amended to read:

"(1) A record of the entire course of the main trial must be kept. If the course of the main trial was recorded in accordance with Article 155 of this Code, the transcript of the undertaken ac-

tion shall, upon justified request of the parties and the defense attorney, be submitted to the parties and the defense attorney no later than three days from the day of the undertaken action in the main trial. The justifiability of the request shall be decided upon by the judge or the presiding of the Panel."

Article 73

In Article 259, new Paragraph (2) is added to read:
"(2) The judge or the presiding judge shall instruct the accused that he may give a statement in the capacity of a witness during the evidentiary proceedings and if he decides to give such statement he shall be subject to direct and cross-examination as provided for in Article 262 of this Code, i.e. instructed as provided for in Article 86 of this Code. In that case, the accused as witness shall not take an oath or affirmation. The Court shall give the opportunity to the accused to consult about this right with his defense attorney beforehand, and if he does not have the defense attorney the Court shall carefully assess whether the legal assistance of a defense attorney is necessary."

Article 74

Article 260 shall be amended to read:

"Article 260
Reading of the Indictment and Opening Statements

(1) The main trial shall commence by reading of the indictment. The indictment shall be read by the Prosecutor.

(2) After the indictment has been read, the judge or the presiding judge shall ask the accused whether he has understood the charges. If the judge or the presiding judge finds that the accused has not understood the charges, the judge or the presiding judge shall summarize the content of the indictment in a manner understandable to the accused. The Prosecutor shall then briefly state the evidence by which the Prosecutor expects to build his case.

(3) The accused or his defense attorney may then present the summary of the defense plan."

Article 75

Article 261 Paragraph (2) Item f) shall be amended to read:
"f) all evidence relevant for the pronouncement of the criminal sanction.".

Article 76

In the third sentence of Article 262 Paragraph (1), the words "and to the questions in favour of his own testimony" shall be added after the words "asked during direct examination".

Article 77

Article 264 Paragraph (1) shall be amended to read:
"(1) It shall not be allowed to ask an injured party about any sexual experiences prior to the commission of the criminal offence in question. Any evidence offered to show, or tend to show the injured party's involvement in any previous sexual experience, behaviour, or sexual orientation, shall not be admissible."

Article 78

Article 266, Paragraph (2) shall be amended to read:
"(2) The text of the oath or the affirmation is as follows: "I swear or affirm that I shall speak the whole truth regarding everything that I shall be asked before the Court and shall not fail to reveal anything known to me."

Article 79

Article 268 shall be amended to read:

"Article 268
Sanctions for Refusing to Testify

(1) If the witness refuses to testify without providing a justified reason and after being warned of the consequences, the witness may be fined an amount up to 30.000 KM.
(2) If the witness still refuses to testify, the witness may be imprisoned. Imprisonment shall last until the witness agrees to testify, or until his testimony becomes irrelevant or until the finalization of the criminal proceedings but not longer then 30 days.
(3) The Panel (Article 24 Paragraph 6 of this Code) shall decide on appeal filed against the decision on fine or imprisonment. An appeal against the decision on fine and imprisonment shall not stay the execution of the decision."

Article 80

Article 270 Paragraph (5) shall be deleted.
In Paragraph (6) that shall become Paragraph (5), the words "and was subject to cross-examination" shall be deleted.

Article 81

In Article 271 Paragraph (1), a comma and the words "or the Court" shall be added after the words "by both parties and the defence attorney".

Article 82

In Article 272, Paragraph (3) shall be amended to read:
"(3) The parties, defence attorney and injured party shall always be invited to attend the examination of witnesses or the reconstruction. Examination shall be carried out as it is at the main trial in accordance with Article 262 of this Code."

Article 83

In Article 273 Paragraph (1), the words "direct or" shall be added after the words "and may be used in" and a comma and the words "and subsequently presented as evidence" shall be added after the words "in rejoinder".
After Paragraph (2), Paragraph (3) shall be added to read:
"(3) If the accused during the main trial exercises his right not to present his defence or not to answer questions he is asked, records of testimonies given during the investigation may, upon decision of the judge or the presiding judge, be read and used as evidence in the main trial, only if the accused was, during his questioning at investigation, instructed as provided for in Article 78 Paragraph (2) Item (c) of this Code."

Article 84

In Article 277 Paragraph (2), the words “and they may be time limited” shall be deleted.

Article 85

In Article 280 Paragraph (2), the words “of the Prosecutor” shall be added after the words “proposals”.

Article 86

Article 283 Item b) shall be deleted.
Items c), d), e) and f) shall become Items b), c), d) and e) respectively.

Article 87

In Article 285 Paragraph (2), the words “is not able to pay” shall be replaced with the words “does not pay”.

Article 88

In Article 286, Paragraph (2), a comma shall be added after the words “of the parties” and the word “and” shall be added before the word “the defence attorney” and the word “their” shall be deleted.

Article 89

In Article 297, Paragraph (2), the words “to the preparation of the main trial or” shall be deleted.

Article 90

In Article 302, the words “and the transcript of the records from the main trial” shall be added after the word “record”.

Article 91

In Article 305, Paragraph (2) shall be added to read:
“(2) The deadlines from Article 289 Paragraph 1 of this Code shall apply to preparation of the written decision rendered in a session of the Panel.“

Article 92

In Article 314 Paragraph (1), the words „Item f) and j)“ shall be replaced with the words „Item f), g) and j)“.

Article 93

In Article 315 Paragraph (4), a comma and the words „and in complex cases not later than 6 months“ shall be added after the word „months“.

Article 94

Article 317 Paragraph (2) shall be amended to read:
„(2) If the Panel of the Appellate Division finds that it is necessary to repeat the evidence presented in the first instance proceedings, testimony of examined witnesses and experts and written findings and opinions of experts shall be admitted as evidence and may be read or reproduced if those witnesses and experts were cross-examined by the opposing party or the defence attorney or they were not cross-examined by the opposing party or the defence attorney although this was made possible as well as in cases otherwise provided by this Code, or if it is about the evidence referred to in Item e, Paragraph 2 of Article 261 of this Code.“.

Article 95

In the Chapter XXIII, after Article 317, Section 1a and Article 317.a shall be added to read:

„**Section 1a – Appeal against an Appellate Division Verdict**

317.a
General Provision

(1) An appeal is admitted against the verdict of the Appellate Division in the following cases:
a) if the Appellate Panel modified a verdict of acquittal of the court in the first instance and pronounced a verdict finding the accused guilty,
b) if on the basis of the appeal to the acquittal verdict the Appellate Panel in a hearing pronounced a verdict finding the accused guilty.
(2) An appeal against an Appellate Division verdict shall be ruled on by the Panel in the third instance composed of three judges.
(3) The provisions of Article 309 of this Code shall also apply to the co-accused who did not file an appeal against a verdict in the second instance.
(4) A hearing may not be held before this Panel.“

Article 96

In Article 322, the words „Article 307 and Article 309“ shall be replaced with the words „Article 306, Article 307 and Article 309“.

Article 97

In the title of the Chapter XXIV the word „remedy“ shall be replaced with the word „remedies“.

The words “Section 1-” shall be added before the title “Repeating the Criminal Proceedings”.

Article 98

After Article 324, Article 324.a shall be added to read:

„Article 324.a
Repetition of Criminal Proceedings

(1) The verdict may be modified without repetition of the criminal proceedings if two or more verdicts against the same convict rendered several valid penalties and provisions on pronouncing a single new sentence for merger of crimes were not applied.
(2) In the case referred to in Paragraph 1 of this Article the court shall, with this new verdict, modify the previous verdict with respect to the decision on sentencing and pronounce a single penalty. The court in the first instance which tried the case in which the strictest type of penalty was pronounced has competent jurisdiction to issue the new verdict, and if the penalties were of the same kind, that court has competent jurisdiction which pronounced the highest penalty; and if the penalties are equal in that respect, that court has competent jurisdiction which was the last to pronounce a penalty.
(3) The new verdict shall be rendered by the court in a session of the panel on petition of the competent prosecutor or the convicted or the defence attorney, but after hearing the adverse party.
(4) If in the case referred to in Paragraph 1 of this Article the verdicts of other courts are also taken into account when the penalty is pronounced, a certified copy of the new final verdict shall also be delivered to those courts.“

Article 99

In Article 330, Paragraph (1), the words in the bracket “Paragraph (6)” shall be replaced with the words “Paragraph (4)”.

Article 100

In Article 331, Paragraph (3), the words “as set in Article 332 Paragraph (2) of this Code” shall be added after the word “proceeding”.

Article 101

In Article 332, Paragraph (1), the words “after the Prosecutor returns the documents” and the coma shall be deleted.

In Paragraph (3), the words “or that the subject matter be returned to the investigative phase” shall be deleted.

Article 102

In Article 334 Paragraph (2) shall be changed as follows:
“(2) The Prosecutor may request one or more of the following criminal sanctions or measures to be pronounced: fine, suspended sentence or security measures: ban on carrying out a certain activity or duty, forfeiture of the item as well as forfeiture of material gain acquired by the criminal offence.”

Article 103

In Article 335, Paragraph (3), the words “and forward it for further procedure in accordance with this Code” shall be replaced with the words “and shall act in accordance with Article 228 of this Code”.

Article 104

In Article 336, Paragraph (1), the words “without delay, and at the latest within 8 days of confirmation of the indictment” shall be added after the word “hearing”.

After Paragraph (1), a new Paragraph (2) shall be added to read:

“(2) The presence of the parties and defence attorney shall be necessary at the hearing. In case of their absence provisions of Articles 245, 246 and 248 of this Code shall apply.”

In Paragraph (2) that shall become Paragraph (3) Item c), the words “present the accused with the evidence” shall be replaced with the words “invite the Prosecutor to present the accused with the contents of the evidence”.

Article 105

Article 337. Paragraph (1) shall be changed as follows:

“(1) If the accused pleads not guilty or raises any objections to the indictment, the judge shall forward the indictment for the purpose of scheduling the main trial, in accordance with this Code. The main trial shall be scheduled within 30 days.”

Article 106

Article 342 Paragraph (1) shall be deleted.

In Paragraph (2) that shall become Paragraph (1), the word “bodies” shall be replaced with the word “everyone”.

Current Paragraph (3) shall become Paragraph (2).

Article 107

In Article 349, Paragraph (1), the coma and the words “nor may the course of the proceeding be visually or audio recorded” shall be deleted.

Article 108

In Article 353, the words “against the minor” shall be replaced with the words “towards the minor”.

Article 109

In Article 354 Paragraph (1), the words “against the minor” shall be replaced with the words “towards the minor”.

In Paragraph (3), the words “and persons” shall be added after the word “dwelling”.

Article 110

In Article 358, Paragraph (2), the words “ten days” shall be replaced with the words “15 days”.

In Paragraph (4), the following two new sentences shall be added: “The review of justification of the custody shall be carried out by the Panel for Juveniles upon the expiration of one month period following the date of issuance of the most recent decision on custody. The appeal against this decision shall not stay its execution.”

Article 111

In Article 360, Paragraph (1), the words “to announce that he is dismissing the case and file a motion for dismissal of case or” shall be added after the words “be supplemented or”.

Article 112

In Article 361, the following Paragraph (3) shall be added after Paragraph (2):
„(3) The Panel may dismiss the case involving a juvenile and decide that the proceedings be continued before a judge for juveniles.”

Article 113

In Article 364, Paragraph (1), the words “related to the preparations for the main trial” and the coma shall be deleted.

In Paragraph (4), the words “and supplement of the indictment” shall be deleted.

The following Paragraph (5) shall be added after Paragraph (4):
“(5) The Prosecutor, juvenile, defence attorney, parent or guardian of the juvenile shall be invited to the hearing, and a representative of the social welfare centre shall be notified of the hearing and may be present at the hearing. The Prosecutor and defence attorney of the juvenile are obliged to be present at the hearing. If the Prosecutor or the defence attorney fails to appear at the hearing without a justification, the judge for juveniles shall notify the Prosecutor’s Office and the Bar Association thereof.”

Article 114

In Article 388 Paragraph (2), the word “able” shall be replaced with the word “capable”.

In Paragraph (3), the words “the Court shall act in accordance with Article 283, Item f) of this Code” shall be replaced with the words “the Panel referred to in Article 24 Paragraph (6) of this Code shall issue a Decision on adjournment of proceedings.”

Article 115

Article 389 shall be amended to read:

“Article 389
Procedure in Case of Mental Incompetence

(1) If the suspect has committed a criminal offence in the state of mental incompetence and if legally prescribed conditions for ordering mandatory placement in a health institution for seriously mentally incapacitated persons exist, the Prosecutor shall propose in the indictment that the Court establishes that the suspect committed an unlawful act in a state of mental incompetence, and that he shall be issued a temporary order on mandatory placement in a health institution, with the health institution being informed about it.
(2) Upon the reasoned proposal of the prosecutor, the detention of the suspect or accused under Paragraph 1 above may be ordered for reasons under Article 132 of this Law. When detention of the suspect is ordered or extended, he shall be confined in a health institution for a period that may last as long as the reasons under Article 132 exist, but not longer than time lines under Articles 135 and 137, paragraphs 2 and 3 of this Code, or until the temporary order on mandatory placement in a health institution has become final and binding.

(3) If, after the main trial is conducted, the Court establishes that the accused committed an unlawful act in a state of mental incompetence, it shall pass a judgment stating that the accused committed the offence in a state of mental incompetence and shall issue a special decision ordering temporary and mandatory placement in a health institution for the duration of up to six (6) months. The judgment and the decision may be appealed, and such an appeal must be filed no later than 15 days of delivery of the decision.
(4) Once the decision referred to in Paragraph 3 of this Article has become final and binding, the Prosecutor shall, in accordance with a special legislation regulating the protection of these persons, notify the competent court, for the purpose of initiating proceedings for mandatory placement of seriously mentally ill persons in a health institution. The medical documentation and final and binding decision on temporary mandatory placement in a health institution shall be submitted with this notification.
(5) If, during the main trial, the evidence presented indicates that the accused committed the unlawful offence in a state of full mental competence, reduced, or significantly reduced mental competence, the Prosecutor shall abandon the proposal from Paragraph 1 of this Article, continue with the proceedings and change the indictment. In case of reduced or significantly reduced mental capacity, the Prosecutor may propose a security measure of mandatory psychiatric treatment, pronounced along with another criminal sanction.
(6) Should the Court find that the accused was not in a state of mental incapacity at the time of committing the offence, and the Prosecutor has not abandoned the proposal referred to in Paragraph 1 of this Article, the Court shall issue a judgement dismissing the charges.
(7) After the proposal referred to in Paragraph 1 of this Article has been filed, the suspect or accused must have his defence attorney."

Article 116

In Article 391 Paragraph (1), the word "convicted person" shall be replaced with the word "accused" and the words "and moral" shall be added after the word "security".

In Paragraph (2) and (3), the word "Court" shall be replaced with the words "judge or Panel".

Article 117

In Article 400 Paragraph (3), the words "set a new deadline for compliance with the obligations or lift the suspension" shall be replaced with the words "extend the deadline for compliance with the obligation or replace the obligation with another corresponding obligation or relieve the convicted person of complying with the pronounced obligation".

Article 118

In Article 410, the following new paragraph (7) shall be added after Paragraph (6):
"(7) The expenses of organization and transport of the convicted person from a foreign country shall be born by the Ministry of Justice of Bosnia and Herzegovina."

Article 119

Article 412, Paragraph 4 shall be deleted.
Paragraph (5) shall become Paragraph (4).

Article 120

In Article 414 Paragraph (2), the word "hand over" shall be replaced with the word "extradite".

Article 121

In Article 415, Paragraph (1) Item b), the words “is not in the process of seeking asylum” shall be replaced with the words “had not filed a motion for asylum until the moment of filing the request for extradition”.

Article 122

In Article 418 Paragraph (1), the words “upon the motion of the Prosecutor” shall be added after the words “referred to in Article 416 of this Code” and the words “shall issue an order to detain the alien” shall be replaced with the words “shall issue a decision ordering custody”.

Article 123

In Article 420 Paragraph (1), the words “preliminary proceedings judge” shall be replaced with the words “Prosecutor”.

Article 124

The title of Article 449 shall be changed as follows: “Deciding on Cases Pending before Other Courts and Prosecutor’s Offices”.

In paragraph (2), the word “these courts” shall be replaced with the words “the courts which have territorial jurisdiction”.

Article 125

In cases in which the indictment has been confirmed until the entry into force of this Law, the proceedings shall be continued in accordance with the provisions of the Criminal Procedure Code of Bosnia and Herzegovina (“Official Gazette of Bosnia and Herzegovina”, number 36/03, 26/04, 63/04, 13/05, 48/05 and 46/06), unless the provisions of this Law are more favourable to the suspect or the accused.

Article 126

Constitutional-Legal Commissions of the HoR and HoP of the Parliamentary Assembly of Bosnia and Herzegovina are authorised to prepare consolidated version of the CPC Bosnia and Herzegovina within 60 days from the day of publication of this Law in the “Official Gazette of Bosnia and Herzegovina”.

Article 127

The competent bodies of the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District of Bosnia and Herzegovina shall harmonize their criminal procedure legislation with this Law within 90 days from the entry into force of this Law.

Article 128

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