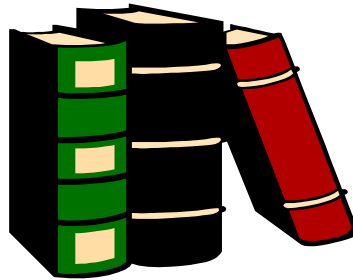




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## Department for Legal Affairs



# **LAW ON AMENDMENTS TO THE CRIMINAL PROCEDURE CODE OF THE BRČKO DISTRICT OF BOSNIA AND HERZEGOVINA**

**“Official Gazette of the Brcko District of Bosnia and Herzegovina”,  
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**LAW**  
**ON AMENDMENTS TO THE CRIMINAL PROCEDURE CODE**  
**OF THE BRČKO DISTRICT OF BOSNIA AND HERZEGOVINA**

**Article 1**

In the Criminal Procedure Code of the Brčko District of Bosnia and Herzegovina – Consolidated Text – (Official Gazette of Brčko District of Bosnia and Herzegovina, No. 33/13), in Article 34, paragraph 1 shall be amended to read as follows:

“(1) The Chief Prosecutor shall decide on disqualification of the Deputy Chief Prosecutor and prosecutors. The collegium of the Prosecutor’s office shall decide on disqualification of the Chief Prosecutor.”

In paragraphs 3 and 4 the word “prosecutor” shall be replaced with words “Chief Prosecutor”.

**Article 2**

In Article 68, paragraph 2, in the end of the text, the following wording shall be added: “and the person from whom the objects and documentation is temporarily seized may put their seal and signature on the wrapping”.

**Article 3**

In Article 71, paragraph 2 shall be amended to read as follows:

“(2) The Prosecutor shall be bound to notify the person or the enterprise from which the objects were seized, the pre-trial judge and the defense counsel about the opening of temporarily seized objects or documentation referred to in Article 68, paragraph (2) of this Law. Sealed wrapping shall be opened, and files and documents shall be inspected and signed on even in the case that some of the summoned persons do not respond.”

**Article 4**

In Article 114, paragraph 2, the following wording shall be added: “The obtained information and data referred to in this paragraph shall be considered official secret”.

**Article 5**

In Article 121, new paragraph 2 shall be added to read as follows:

“(2) The obtained data or evidence referred to in paragraph 1 shall be considered official secret”.

**Article 6**

In Article 138, paragraph 1 shall be amended to read as follows:

“(1) When the Court pronounces a prison sentence against an accused, it shall order custody against the accused or the custody shall be extended taking into account all circumstances relating to committing of criminal offense, i.e. personality of the perpetrator. In this case, a special decision shall be issued, and appeal against such decision shall not stay its execution.”

#### **Article 7**

Article 232 shall be amended to read as follows:

“(1) The Prosecutor may withdraw the indictment without prior approval of the court before its confirmation. After the confirmation of the indictment and before the commencement of the main trial, the only with the Prosecutor may withdraw the indictment explained with a proposal only with the approval of the preliminary hearing judge who confirmed the indictment, and only for important reasons.

(2) In the case referred to in paragraph (1) of this article, the preliminary hearing judge shall approve the withdrawal of the indictment by the decision, and the suspect, i.e. the accused and the defense counsel as well as the injured party shall be notified of such decision.”

#### **Article 8**

In Article 305, new paragraphs (2), (3) and (4) shall be added to read as follows:

“(2) The Appellate Court shall decide in a panel session whether a hearing would be held.

(3) The hearing before the Appellate Court shall be held only if it is necessary to present, because of erroneously or incompletely established state of the facts, new evidence, and if there are justified reasons to refer the case back to the first instance court for a repeated main trial.

(4) Defendant and his/her defense counsel, prosecutor, damaged party, legal representatives and authorized persons of the damaged party, as well as those witnesses and expert witnesses for which the Court decides to be heard, shall be summoned to the hearing before the Appellate Court.”

Current paragraph (2) shall become paragraph (5).

#### **Article 9**

Article 306 shall be amended to read as follows:

“The Appellate Court shall review a judgment in the part contested by the appeal and *ex officio* whether the Criminal Code has been violated to the detriment of the defendant.”

#### **Article 10**

Article 310 shall be amended to read as follows:

“(1) The Appellate Court may reject an appeal as untimely or inadmissible or reject the appeal as unfounded and confirm or modify the first instance judgment, or revoke the judgment and hold the main trial and refer the case back to the first instance court for a repeated main trial or order holding of the hearing before the Appellate Court.

(2) The hearing before the Appellate Court must be held if the judgment in the same criminal case was already revoked once.”

### **Article 11**

Article 315 shall be amended to read as follows:

“(1) In honoring the appeal, the Appellate Court shall revoke the first instance judgment and refer the case back to the first instance court for a repeated trial, if it finds that:

- a) there is a major violation of the provisions of the criminal procedure, excluding the cases from Article 314, paragraph (1) of this Law;
- b) it is necessary to order new main trial before the first instance court due to an erroneous or incomplete finding of facts.

(2) The Appellate Court may order that the new main trial be held before another judge, i.e. before the fully changed panel.

(3) The Appellate Court may also revoke parts of the first instance judgment if certain parts of the judgment can be separated without detriment to a rightful trial.

(4) If a defendant is in custody, the Appellate Court shall review if the reasons for custody still exist and it shall pass the decision on extension or termination of custody. An appeal against such decision shall not stay its execution.”

### **Article 12**

Article 316 shall be amended to read as follows:

“(1) In the explanation of the judgment, i.e. decision revoking the first instance judgment, the Appellate Court should assess the allegations from the appeal.

(2) When the first instance judgment is revoked for serious violations of criminal code provisions, it should be stated in the explanation which provisions were violated and in what they consisted of.

(3) When the first instance judgment is revoked due to erroneously or incompletely established state of the facts, it shall be stated in what the deficiencies in establishment of the state of facts consisted of, i.e. why the new evidence and facts are important and significant for rightful decision.”

### **Article 13**

After Article 317 (Hearing before the Appellate Court), new Article 317a) (Submitting the Decision of the Appellate Court and Action of the First Instance Court) to read as follows:

“(1) The second instance court shall return all documents to the first instance court with sufficient number of verified copies of its decision for serving them to the parties and other interested parties.

(2) The first instance court to which the case was referred to for the trial shall take the earlier indictment as basis. If the judgment of the first instance court was only partially revoked, the first instance court shall take as basis only the part of the indictment that pertains to the revoked part of the judgment.

(3) At the new main hearing, the parties and defense counsel may assert new facts and present new evidence.

(4) The first instance court shall be bound to perform all procedural actions and deliberate all contentious matters to which the Appellate Court pointed to in its decision. Testimonies of the heard witnesses, experts witnesses and written findings and opinion shall be accepted as evidence if such witnesses or expert witnesses were cross-examined during testifying by other party or defense counsel or were not cross-examined by other party or defense counsel even though that was made possible for them, as well as in the case if otherwise is specified by this Code, and if it concerns the evidence referred to in Article 261, paragraph (2), subparagraph e) of this Code.

(5) In pronouncing of the new judgment, the first instance court shall be bound by ban specified in Article 307 of this Code.”

#### **Article 14**

Current Article 317a0 shall become Article 317b).

#### **Article 15**

In Article 324a), new paragraph 5 shall be added to read as follows:

“In the procedure of quasi repetition of a criminal procedure, the provisions of Article 304 of this Law shall not apply.”

#### **Article 16**

In Article 334, paragraph (2), after the word: “duty”, the comma punctuation mark and the following wording shall be added: “ban on driving motor vehicles”.

#### **Article 17**

This Law shall enter into force on the eighth day after its publication in the Official Gazette of Brčko District of Bosnia and Herzegovina.

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SPEAKER OF THE  
ASSEMBLY OF THE BD BIH  
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